

A Study on the Impact of the COVID-19 Pandemic on the Rights and OSH of Seafarers and Tendency in 2022 Amendments of Maritime Labour Convention

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팬데믹이 선원의 권리 및 안전보건에 미친 영향과 2022년 해사노동협약 개정 동향 연구

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Abstract : *The COVID-19 pandemic can be deemed one of the greatest hardships faced by mankind in the 21st century. All industries have been severely affected and workers are still experiencing deep difficulties due to the changed working and living environment. Seafarers have been recognized by the international community as key workers since the pandemic began. They are also working internationally to establish a Level Playing Field through the protection of their rights through the Seafarers' Employment Agreement and the implementation of international labour standards. However, despite the obligations under international conventions to be implemented by State parties and the recommendations by international organizations, the rights of seafarers under the Maritime Labour Convention were violated and their occupational safety and health of seafarers were further threatened throughout the pandemic. This article analyzes the impact of the international shipping industry and the implementation of the Maritime Labour Convention based on each country's measures during the COVID-19 pandemic. Furthermore, the amendments of the Maritime Labour Convention adopted through the fourth Special Tripartite Committee were analyzed based on the conference documents and reports to comprehend the implied meaning. The adopted eight amendments to the Maritime Labour Convention are expected to positively affect the seafarers' rights, safety and health in the future, but the international community's efforts should continue because the issues of maximum working hours, maximum service period on board, and the repatriation of seafarers still remain unsettled.*

Key Words : *Maritime Labour Convention, COVID-19, Special Tripartite Committee, ILO, Seafarers' rights, Occupational Safety and Health*

요 약 : COVID-19로 인한 팬데믹은 21세기 인류가 당면한 가장 큰 고난 중의 하나라고 할 수 있다. 전방위로 모든 산업에 심각한 피해를 줬으며 특히, 산업현장의 노동자는 COVID-19로 변화된 근로 및 생활환경으로 많은 고통과 어려움을 지금도 겪고 있다. 선원은 팬데믹이 시작된 후 일찍이 필수업무종사자의 지위를 국제사회로부터 인정받았다. 또한 국제적으로는 해사노동협약을 통해서 이들의 권리 보장과 국제노동기준의 이행을 통해서 공정한 경쟁체제 확립에 노력하고 있다. 그러나 당사국이 준수해야 할 국제협약상의 의무와 국제기구의 권고에도 불구하고 해사노동협약상의 선원권리는 침해받고 선원의 안전보건이 더욱 위협받는 상황이 팬데믹 동안 발생하였다. 이 논문은 COVID-19에 대한 각국의 대응조치가 국제해운업계와 해사노동협약 이행에 끼친 영향분석과 함께 제4차 특별삼자간위원회를 통해서 채택된 2022년 해사노동협약 개정을 회의준비문서와 보고서를 중심으로 분석하였다. 채택된 8개의 해사노동협약 개정문은 선원의 권리와 안전보건에 있어서 향후 긍정적인 영향을 줄 것으로 기대되지만 선원의 최대근로시간, 최대승무기간 및 송환의 문제는 여전히 난제로 남아 있기 때문에 국제사회의 노력이 지속되어야 할 것이다.

핵심용어 : 해사노동협약, COVID-19, 특별삼자간위원회, 국제노동기구, 선원의 권리, 안전보건

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1. Introduction

COVID-19, which raged in 2020 and turned the whole community into a pandemic, took significant effects on economy activity around the world. In particular, seafarers, who play a core role in global shipping industry, did their best to ensure that global economy be continued stably by performing their functions during the pandemic. Although the contributions of seafarers should be respected, their treatment in real situation was not, even worse than before. For example, shore leave of seafarers was not allowed, and they were frequently denied to access any medical care from shore (Lee et al., 2022).

Maritime Labour Convention (MLC) was adopted to ensure the fundamental rights of seafarers and decent working and living condition. Despite the fact that the Convention came into force, in the early stages of the pandemic, the cases which violated regulations and Codes of the MLC were frequently taken place due to the insufficient measures of the shipping industry and States to respond to the COVID-19.

In such a situation where seafarers' rights were being violated and the safety and health of them were exposed to the COVID-19, the fourth Special Tripartite Committee (STC) was held twice on April 2021 and on May 2022 to adopt amendments of the MLC. This paper aims to explore and analysis the effect of the pandemic on seafarers' rights under the MLC and the trend of international community, focusing on the discussion of the STC, and considering how the discussions were reflected into the amendments of the MLC. In addition, through reviewing the minutes and reports of the STC, it is to analyze the position of each stakeholder (seafarer, shipowner and governments), in conclusion, the recommendations and the direction of the international organizations such as International Labour Organization (ILO) and International Maritime Organization (IMO) for continuous discussion to improve seafarers' labour standards are proposed.

2. The Impact of the Pandemic on the Implementation of MLC

2.1 Legal Status of MLC in Shipping Industry

Since the establishment of ILO, it has been deserved to protect and promote the workers' rights and welfare. Generally speaking, seafarers are exposed to hard working environment, they had

worked in poor condition on board even they are core role in the shipping industry and fisheries. ILO has adopted approximately sixty legal instruments dealing with seafarers' rights, Occupational Safety and Health (OSH), and welfare. However, those instruments had weak influence on the industry because the number of ratified States are not enough for the standards to be implemented globally and most of them were outdated.

The initial work to revisit the labour instruments over maritime sector began in 1995 after ILO standard-setting policy discussed in 1994 (McConnell et al., 2011). The new convention, MLC, was finally adopted through long, dynamic and complex negotiation mechanism at the 100th International Labour Conference in 2006. Then, it entered into force in 2013 and now over 100 countries ratified it so far (ILO, 2022c).

The MLC is often called as a "Seafarers' Bill of Rights". There are fundamental rights for seafarers in Article III and Article IV of the MLC. These are directly or indirectly linked to general human rights ensured by International Covenant on economy, Social and Cultural Rights and International Covenant on Civil and Political Rights. Also the MLC is called as the "Consolidated Convention" because it consists of thirty eights seafarers' labour conventions adopted previously by ILO. The structure of the MLC such a vertical integrated format is similar with International Convention on Standards of Training, Certification and Watchkeeping (STCW), but it is more effective and complex as the explanatory note to the regulations and the Code of the MLC explained (McConnell et al., 2011).

Seafarers are existing everywhere over the world, in addition they are moving with ships. Seafarers' rights shall be universe and applied equally to all ships regardless of nationality of ship and nationality of seafarer. In order to achieve effective implementation and enforcement, the Regulation 5.2.1 of the MLC stipulates Flag State Control (FSC) and Port State Control (PSC), in particular, emphasize the cooperation between States parties as well as between an administration of a State party and social partners in the State party in Article 1 and Article 7.

The MLC introduced the new jurisdiction in maritime governance, labour supplying State jurisdiction is stipulated at Article 5, paragraph 5. This jurisdiction does not conflict with flag State jurisdiction, but rather strengthens the protection of seafarers' rights stipulated in the MLC. When considering the reality that most of seafarers are being recruited through the agent located in a territory of a country where seafarer resides, therefore, labour supplying State can't deny a duty to protect nationals or residents.

The enforcement of the MLC leads the shipping industry into the right direction, particularly, Level Playing Field among shipowners for the protection of seafarers' rights. It consequently balanced international legal governance in maritime sector as a new pillar since most of maritime conventions, before the MLC took into effect, are concerned about safety of ship and protection of marine environment implemented by International Convention for the Life at Sea (SOLAS), International Convention for the Prevention of Marine Pollution from Ships (MARPOL) and STCW.

2.2 The Effects of the COVID-19 pandemic on Seafarers' Rights and OSH

1) General Issues on Seafarer' s Working Environment

Generally, seafarers are involved in dangerous works on board ship and also previous studies commonly address that works of seafarers deteriorated their health and the occupational injury rate is relatively higher than jobs based on land (Lefkowitz, 2013; Roberts et al., 2014). Furthermore, seafarers seems to be suffering from severe mental health according to a previous study (Lefkowitz et al., 2019) their suicide occupied 5.9% of total deaths among seafarers from 1960 to 2009 (Roberts et al., 2014). It is 4.2 times higher than suicides in all deaths worldwide in 2012, average 1.4% of total deaths in the world (WHO, 2014), in case of the comparison with the former.

There is fatigue as a classic issue on human factor in terms of OSH, fatigue is caused by various factors such as working load, working and living environment on board, working hours and the numbers of seafarers working on board, etc. UN Convention on the Law of the Sea (UNCLOS) Article 94(1) requires that every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. Also, UNCLOS Article 94(3)(a) requires that every State shall take measures to ensure safety of ships flying its flag with regard to the manning of ships, labour conditions and the training of seafarers, taking into account the applicable international instruments. Therefore, flag State has a discretion to determine manning level for the safety of the ship operation, however, if international instruments exist, flag State should comply with or consider them.

IMO has endeavored to deal with fatigue because it is recognized as one of main reasons in marine casualty (IMO, 2019). However, there is no specific requirement in international conventions which impose shipowner to employ the certain numbers of seafarers called manning level. Flag State shall

consider both STCW and MLC when determining manning level with IMO' Resolution A.1047(27) (IMO, 2011), which provides the basic principles and factors which should be considered at determining the manning level.

2) Key Issues caused by COVID-19 in Shipping Industry

Since the COVID-19 expanded over world, workers in all workplaces has been suffered from changed working environments and social systems such as wearing mask and personal activity restriction, even lost jobs due to the workplace closure. While the key workers such as health care, public service and maritime service continue to work their duties for the public safety and security and the world economy (ILO, 2020). Specially, seafarers on board had faced a lot of difficult challenges with regard to their fundamental rights and OSH than ever before.

At the beginning of the pandemic, World Health Organization (WHO) declared to prohibit any travel or trade restrictions across countries (WHO, 2022). However, contrary to WHO's activities, some countries prohibit the movement and replacement of seafarers. The International Chamber of Shipping (ICS) announced that only about 25% of seafarers' replacement carried out from March to August in 2020 by restrictions and national policy of port States, closure of air ports and suspension of international flights (ICS, 2022).

The COVID-19 had the significant impact on the implementation of the MLC, as International Transport Workers' Federation (ITF) and ICS respectively said on the observation submitted to ILO' Committee of Experts on the Application of Conventions and Recommendations (CEACR). Every State that ratified MLC failed to implement major provisions of MLC during COVID-19 pandemic. The result of the fail means the violations of seafarers' rights and there is potential risk that fatigue and other health problems linked to the violations of the MLC could result in marine casualty. These issues raised during the Part I meeting of the fourth STC in 2021.

Concerning the notice from shipping industry, the CEACR stressed that *force majeure* may no longer be invoked from the moment that options are available to comply with the provisions of the MLC, 2006. Also urged that every State that ratified the MLC applies all needed measures at once to restore all seafarers' rights and implement fully all requirements under the MLC (ILO, 2020). Moreover, any unavailability or limitation of measures for repatriation further deteriorate the abandoned seafarers. IMO organized expeditiously Seafarer Crisis Action Team (SCAT) to

help abandoned seafarers and resolve the personal problem caused by COVID-19 with ILO, ISC and ITF (IMO, 2022b).

In terms of OSH, seafarers has suffered from serious occupational stress, burnout, nightmares and insomnia as the result of the pandemic (Damian et al., 2020), on the other hand, there is different view concerning the current issue of OSH in shipping industry, which is caused by other factors than the pandemic (Pauksztat et al., 2022).

3. The Discussion and Summary of the Fourth meeting of the STC

The fourth STC meeting (STC IV) was scheduled to open in 2021 at ILO headquarter, Geneva in Swiss before the pandemic. However the dramatic change of world due to the pandemic replaced the whole meeting process of the fourth STC meeting (STC IV). The meeting had been divided into two Parts, the Part I opened as a type of virtual meeting in April 2021 and the Part II did as a hybrid, in-person presence and virtual presence in May 2022.

3.1 The Main Issues during the Part I

The main issue is the effect of the MLC implementation since the pandemic. The Part I meeting focused on sharing perspectives and the opinions of each stakeholders such as seafarers group, shipowners group and governments group based on the observations of the CEACR.

Above all, the most serious damage to seafarers was the long-period service onboard caused by crew exchange crisis. Cases of violating the maximum duration of service on board stipulated by the MLC had occurred all over the world, and the situation in which no State could provide alternatives to fundamentally solve this problem was more serious (ILO, 2021). In particular, it was emphasized that the negative action of a State is further driving seafarers to forced labour because they hardly refuse shipowners requests to sign Seafarers' Employment Agreement (SEA) (ILO, 2020).

Probably it is necessary to make the MLC more flexible when there are confusions and arguments in implementing and interpreting like the current pandemic times through the amendment of the MLC. Seafarers' group claimed that there was a need to conduct cooperation with the United Nations to analyze the impact of the humans' rights of seafarers due to the pandemic (ILO, 2021). This claim was also adopted as a resolution.

There is a timely presentation on "CULTURE OF ADJUSTMENT" during the meeting. This analyzed the implementation in shipping industry with regard to the maximum working hours and minimum resting hours stipulated in Code A2.3. paragraph 5 of the MLC and it gave a significant impact to all participants. It pointed out that the regulations on the maximum working hours and the minimum resting hours of seafarers, closely related to the safety of ships and the rights of seafarers, are in fact ineffective due to the cognitive dissonance of all stakeholders (WMU, 2020). The observance of working hours on board was a chronic default that had been constantly raised in the industry before the pandemic. Although the MLC came into effect, violations of working hours still occur frequently in ships and the malpractice on recording further deteriorate the working and living environment of seafarers on board.

3.2 The 2022 Amendments of the MLC : the Part II

The Part II meeting had focused on discussing the proposed 12 amendments of the MLC, which was suggested to ensure seafarers' rights and improve OSH. After long debate, 8 of them were adopted by a vote at the end of the meeting as following <Table 1>. These amendments, finally, were approved at the 110th session of International Labour Conference on 22 June 2022 and according to Article XV of the MLC, they are expected to enter into force on 23 December 2024.

The highest number of amendments of the MLC have been adopted to protect seafarers' rights and prepare another pandemic since the MLC entered into force. Because nobody could not expect the pandemic when the MLC adopted in 2006, the pandemic truly shows the weak points and legal uncertainties in it. Therefore, the STC VI might be a kind of turning point for the future development of the MLC.

The followings are improved and enhanced in terms of seafarers' rights and OSH through the amendments. First of all, the detailed requirements for Personal Protective Equipment (PPE) added to Code A4.3 paragraph 1(b). The amendment reflects the necessity of provision of suitable size PPE for women seafarers, that were suggested at ILO's Sectoral Meeting on Recruitment and Retention of Seafarers and the Promotion of Opportunities for Women Seafarers (ILO, 2022b).

Secondly, food and catering supplied on board are directly related to health of seafarer and it belongs to the responsibility of shipowner according to Regulation 3.2 of the MLC. Particularly, in Code A3.2. paragraph 2(a) that "and shall be provided free of

charge during the period of engagement” was added. However, the newly added texts are already exists in Regulation 3.2 paragraph.2. Therefore, that amendment is more or less to make clear the meaning of Code A3.2. paragraph 2. While, the amendment of Code A3.2. paragraph 2(b) was controversial. The first proposal was simply to add ‘healthy’ in the original text. However, the EU members which ratified the MLC submitted sub-document that the term ‘healthy’ is subjective, therefore, ‘balanced’ is more suitable. That opinion was agreed by both seafarers’ group and shipowners’ group (ILO, 2022a).

Thirdly, the Code A2.5.1 paragraph 9 was newly adopted. This amendment specially concerned about repatriation. As the seafarer vice-chairperson of the STC IV explained, Code A2.5.1 paragraph 5(a) and (b) already covers the role of repatriation by port State and flag State in case of the abandonment of seafarer. However, those requirements in the MLC had been not implemented as the MLC said, he pointed out that there is legal conflict between SOLAS, which require that the certain number of seafarers shall work on board for the safety of ship, and the MLC, which requires that the repatriation shall be ensured. The proposers thought that the present texts in the MLC did not sufficiently address the stakeholders duties (ILO, 2022a). Some sub-amendments are submitted and long discussion concerning about repatriation had lasted. Summing-up, there are two opinions. One is to modify the proposal to complement the current text in the MLC. Another is no amendment needed for the MLC because that issues raised by social partners are involved with IMO’ conventions and it is more effective to deal that at ILO-IMO joint working group (ILO, 2022b). The adopted new paragraph is totally different from the original proposal by social partners. More or less, it contains the basic principles to deal with the abandoned seafarers.

Fourthly, the amendments concerning medical care on board ship and ashore, Code A4.1 paragraph 5 and 6, Code B4.1.3 paragraph 4 and 5 and Code B4.1.4 paragraph 1(k), adopted. During the pandemic, seafarers’ rights to access to medical care on shore has been denied and, even allowed to shore leave, they received discriminatory treatment than nationals in port States (ILO, 2022a). These violations against the MLC were belonged to the responsibility of the States that ratified the MLC, therefore, most of these amendments are to improve States’ practice. Notably, the amendment of Code A4.1 paragraph 6 is concerning the repatriation of seafarer’ body, who died during a voyage on board.

Fifthly, in practice, Title 5 in the MLC stipulates the enforcement of PSC reflected from IMO’s conventions. It starts

from inspection of Maritime Labour Certificate and Declaration of Maritime Labour Compliance (DMLC), and other evidence according to Code A2.5.2 paragraph 7, financial security preventing the abandonment of seafarer. The financial security document is usually issued by P&I clubs to the insured persons. The MLC defined ‘shipowner’ as the identity responsible for all matters required by the MLC. However, sometimes, the name of shipowner and the name in the financial security in the DMLC document is not identical because the financial security is ensured by the registered owner in case that the shipowner is different from the registered owner. This difference has not been acceptable in some PSC officers, thus, resulted in recognized as a severe deficiency and sequentially cause economic loss to shipowner. Therefore, the social partners proposed minor amendment to Appendix A2- I (g) (ILO, 2022b).

Sixthly, the amendment about the access to internet was one of the controversial issues in the STC IV. The real-time accessibility to internet in young generation is quite sensitive, all seafarers are eager to access the internet service for communication with family, friends and for recreation. It effects on the satisfaction with working as well as well-being on board and, also even though that gives various negative effects such as disturbing sleep and rest time, etc., the access to internet has became part of life during the pandemic and people more and more depends on internet service. The importance of social connectivity was also raised at the sectoral meeting in 2019 (ILO, 2019b) and the internet connectivity could help living condition and any issued caused by isolation on board (ILO, 2019a).

The proposed amendment was criticized by shipowners’ group and some issues of the amendments are raised by the governments’ group concerning with the limitation of internet service in ports over the world, particularly security issue, various information technology infrastructure and the large geographic scope in the certain States. Seafarers’ group was disappointed with the result of the meeting compared to the significant role of seafarer during the pandemic, seafarer vice-chairperson expressed that the default position was no change in using the internet, nevertheless, supported the amendment agreed by other groups (ILO, 2022a).

Seventhly, usually seafarer are employed through the recruitment agency and placed on board after signing SEA. However, sometimes seafarers found that SEAs were never signed by shipowners, and it caused financial loss to them. The intention of the proposer (seafarers’ group) was that the recruitment and placement agency shall provide adequate information to seafarers

how to claim any damage occurred by itself. It was revised by shipowners' group and concluded it to amend Code A1.4 paragraph 5(c)(vi) even though some governments preferred the revision of Code B as non-mandatory (ILO, 2022a).

Eighthly, the proposal concerning mandatory reporting of seafarer fatalities are made by several governments' group. The current international maritime conventions do not directly deal with any seafarers' fatalities, for example, SOLAS, Chapter 1, Regulation 21 requires that each administration undertakes to conduct an investigation subject to find the reasons and for the amendment of any regulation of SOLAS. However, it does not deal with seafarers fatalities on board such as mental health, suicides and other occupational accidents in international level. According to the previous research, the pandemic much deteriorate the existing risks of seafarers at the view of OSH (Shan, 2021). The proposed amendment is to provide simplified taxonomy for classifying fatalities on board at sea at annual basis by States that ratified the MLC and to enhance the implementation of Code A4.3 paragraph 5 and Code B4.3.5.

The finally adopted text became much simpler than the origin

because the taxonomy for the fatalities was not included in the amendment, therefore, ILO should provide the report format for State parties (ILO, 2022a).

4. Recommendations : Future Challenge and Unfinished Issue

4.1 How to implement Seafarer' Working and Resting Hours

WMU's research showed the reality of the international shipping industry. A culture involved with seafarers, shipowners, flag States and port States disregard working/resting hours' regulations of the MLC, after all, that overshadows the fundamental meaning of the MLC.

In order to improve the culture for the future, the will and efforts of all stakeholders are urgently required since it is impossible only by the institutional measures. Above all, it is necessary to raise awareness of the shipping industry and States, where violations of the maximum working hours or minimum resting hours are taken place. It is not only clear that supervision and monitoring of seafarers' working hours should be strengthened,

Table 1. Summary of the Proposals and 2022 Amendments of the MLC

No.	Main Issue	Proposed Amendment (Standard A & Guideline B)	Proposer	Adopted Amendment
1	Personal protective equipment	Standard A4.3 para.1(b)	Seafarer & Shipowner	Standard A4.3 para.1(b)
2	Food and catering	Standard A3.2 para.2(a) & (b), and para.7(a)	Seafarer & Shipowner	Standard A3.2 para. 2(a) & (b), and para.7(a)
3	Repatriation	Standard A2.5.1 para.8	Seafarer & Shipowner	Standard A2.5.1 para.9
4	Medical care ashore	Standard A4.1 para.5 & para.6/ Guideline B4.1.3 para.4 & 5	Seafarer & Shipowner	Standard A4.1 para.5 & para.6/ Guideline B4.1.3 para.4 & 5/ Guideline B4.1.4 para.1(k)
5	Financial security in situations of abandonment	Appendix A2- I (g)/ Appendix A4- I (g)	Seafarer & Shipowner	Appendix A2- I (g)/ Appendix A4- I (g)
6	Communications	Standard A3.1, para.17/ Guideline B3.1.11 para.4	Seafarer	Standard A3.1 para.17/ Guideline B3.1.11 para.4/ Guideline B4.4.2 para.5
7	Seafarers' employment agreement	Standard A2.1, para.4	Seafarer	Withdraw
8	Repatriation	Standard A2.5.1	Seafarer	Defer discussion on the proposal until the fifth STC
9	Recruitment and placement	Standard A1.4 para.5(c)(vi)	Seafarer	Standard A1.4 para.5(c)(vi)
10	Financial security	Standard A2.5.2 para.9(a)	Seafarer	Withdraw
11	Mandatory reporting of seafarer fatalities at sea	Standard A4.3 para.5(a) / Guideline B4.3.5 para.3 & 4	Governments	Standard A4.3, para.5(a)/ Guideline B4.3.5 para.4 & 5
12	Clarification of the maximum duration of service periods on board	Guideline B4.3.5,	EU members	Discussion at the fifth STC

but also long-term efforts such as increasing the number of the experienced seafarers' labour inspectors with expertise and strengthening enforcement by flag States and port States are necessary. First of all, it is desirable to start a discussion to find a solution voluntarily in the shipping industry, the problem is not from the MLC but it is from the malpractice. It also hoped that international agreements and supports to start developing a scientific model for minimum manning standards to ensure working and resting hours of seafarers in the near future at ILO and/or IMO.

4.2 Prolonged Proposals to the 5th meeting of STC

1) Repatriation

Except for that two proposals submitted by seafarers' group (No. 7 & 10 in the table) were withdrawn, other two proposals are deferred or will be discussed again at the 5th meeting of the STC. One of them is concerned about repatriation of seafarer. The repatriation is recognized as a unbreakable right of seafarers and since the MLC entered into force, the definition of abandonment and new financial security system was introduced by the 2014 amendment, which entered into in 2017. Even though international society including IMO and ILO has tried to eliminate the abandonment of seafarer, it is surprised that a number of abandonment has been increasing since 2017 (IMO, 2022a). The purpose of the proposal by seafarers' group is simply to replace the seafarer's country of residence, which is the destination of repatriation, with the seafarer's home location. During the pandemic, the movement of people was restricted by such as the closer of air port, a boundary closer between counties or quarantine inspection. Most of the activities to respond to COVID-19 obstruct the repatriation of seafarer and sometimes impose considerable financial loss on seafarer. Furthermore, seafarer, for example Filipinos and Indonesian, reluctantly must move long distance to reach home from an arrival of a country of residence and it also cause the financial loss on seafarers (ILO, 2022b).

However, this proposal were strongly opposed by the shipowners' group because the proposal introduced new concepts which are not in the MLC, where a destination of repatriation is referring to an arrival of a country, and the proposal will cause the increased cost for repatriation. In fact, all seafarers always do not want to be repatriated to home promptly after the expiration of their SEAs, some of them want to visit other places for personal reason, therefore, the MLC stipulates the flexibility that the destination of repatriation could be mutually agreed by both

shipowner and seafarer according to Code B2.5.1 paragraph 5. Furthermore, considering the State practice, the difficulties of repatriation were caused by the decision of the government, that is totally out of the control of seafarer and shipowner. The point of this problems should move to the treatment of key workers and the repatriation coverage to get home and it could be discussed in collective bargaining agreement at national level (ILO, 2022a). On the other hand, the opinions of governments were various but generally supported the seafarers' group (ILO, 2022a). However, shipowners' group strongly confronted to repatriate seafarers to home location and the discuss could not progress due to the limitation of time. Consequently, the decision was made that the further discussion would continue until the fifth meeting of the STC.

Even if seafarers arrived the home country during the pandemic, a situation occurred where protection measures to stay shelters were applied for a long period of time due to domestic quarantine policy, and the seafarers had to pay the expenses during the period. The destination of repatriation has not yet been revised since the repatriation system for seafarers was adopted in 1926, and there are cases where a long-distance movement is required depending on the geography scope of home country. It is the reason why shipowners objected to the draft amendment related to the repatriation is not caused by them, but the expenses is incurred by each country's policy. If a stronger infectious disease than the COVID-19 (coronavirus disease 2019) occurs, the quarantine authorities are likely to implement much protective measures, so it is appropriate to support the finance through domestic law and policy for key workers (Lee et al., 2022) However, since the economic situation of each country is different and the support policy for key workers might be different accordingly, it is need to be considered that if there is possibility for agreement between seafarer and shipowner, it will be rather convenient for seafarers to reach the destination of repatriation, the place of residence.

2) Maximum period of service on Board

Seafarers could not leave ships reluctantly at the beginning of the pandemic when SEAs expired because of lack of the transportation or a situation in which seafarers are not able to be exchanged. However, it is a violation of the MLC if seafarers work on board more than 11 months according to Code A2.5.1 paragraph 2(b) of the MLC and there is no any exception. The proposal by the EU members are intended to clarify the maximum period of service on board of the MLC, that was raised during the

pandemic and even before. However, the proposal contained many potential issues contrary to the intention of the proposer. (A) one of them is that the extension of the maximum period of service on board is allowable by a competent authority of a flag State, a case-by-case basis. (B) the other is the revision of Code A2.5.1 paragraph 2(b), which is to replace 12 months, maximum period of service on board including annual leave, with 11 months. According to interpretation of the CEACR, 11 months is the *de facto* maximum period of service on board except for annual leave in consideration with Code A2.4 paragraph 2. (C) another is that new text ‘any training periods on board’, which 12 months is required as the period of onboard training according to STCW, is added to Code A2.5.1 paragraph 2. for exception of the maximum period of service on board.

The seafarers’ group pointed out that even if the exceptions are acceptable due to satisfy with the certain conditions, the amendments allow seafarers to work longer on board than the current MLC. Also, the cadet, recognized as seafarer in the MLC, is not the case where the provision applies because he or she is not required to complete the onboard training once in STCW (ILO, 2022a).

Also, the shipowners’ group criticized that the proposal would not resolve the concerns mentioned by the proposer because the action of States will be nothing affected by that amendment. The shipowner vice-chairperson said that he could not understand why the proposer focused on the maximum 11 months. The shipowner vice-chairperson thought that the reasons why seafarer stayed longer than the maximum period were led by governments during the pandemic but not by shipowners. With regard to (C), if the amendment would be done as proposed, cadets frequently move long distance to join the ship and it makes more difficult for cadets to get the onboard training.

The legal adviser of ILO said concerning the proposed amendment to codify 11 months, the *de facto* maximum period of service on board, was understandable in terms of harmonization of State practice in line with the interpretation of the CEACR, however, the shipowner vice - chairperson strongly objected the text in the amendment ; “the maximum service periods on board shall be 11 months. In cases provided for by the competent authority and, with the mutual consent of the seafarer and shipowner concerned, the service periods on board may be extended for a period mutually agreed upon”, because he insisted that shipowner should be involved in any agreement which extends the maximum service periods, otherwise, shipowner might face

with the situation that has not been agreed (ILO, 2022a).

Continually, the modifications of the amendment and the exchanges of views had taken place for long time. However, the agreed text can not be adopted until the end of the meeting. Finally, France representative, on behalf of EU members, suggested that it was necessary to amend the Code of the MLC relating to that matter and discuss at the next meeting of the STC and finally all agreed.

All groups clearly understood and agreed the maximum duration of service on board as 11 months, and as experienced through the pandemic, there were significantly various opinions on the conditions of allowing work beyond 11 months in exceptional circumstances. For example, there is a need to limit the period exceeding 11 months. How long should it be set? What are exceptional cases and in what format the extended agreement shall be written? and how quickly the administrations of flag States approve the agreements between seafarers and shipowners? Since there are many questions rose, it is necessary to prepare in advance for the next meeting of the STC.

In addition, although cadet is defined as seafarer in the MLC, it seems that a clear interpretation of whether it can be regarded as a seafarer subject to Regulation 2.4 of the MLC (Entitlement to leave) should be presented from the ILO with respect to paid leave. The MLC stipulates a comprehensive seafarer definition, and cadet is considered to be seafarer under the train according to STCW, who is working or engaged on board rather than being understood as employed seafarers. Furthermore, “seafarers employed on ships” is an expression not used in other regulations of the MLC rather than Regulation 2.4, therefore, it is necessary to provide a clear interpretation whether the Regulation is an expression referring to a specific group of seafarers, who are only employed with exceptions. The CEACR is appropriate and legal body which can consider that question and respond it.

5. Conclusion

The COVID-19 pandemic was the time that brought great pain and lessons to all mankind and States over the world. Seafarers endured unjustified treatment and discrimination while they ensured economic activities of other industries and supply of daily necessities for all human to sustain during the pandemic. All entitlements and rights in the MLC ensured by international community have been infringed, furthermore, if another pandemic would occur, the painful time will be repeated and the existence

of the MLC may become meaningless. The 4th meeting of STC might be evaluated as the conference that leaves many regrets, despite the fact that it had an opportunity to look into all regulations and Codes of the MLC for the future.

The issues during the 4th meeting still needs the clarification and works. Concerning the abandonment of seafarer, ILO-IMO joint working group will soon start works on reviewing guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases, developing on guidelines on the fair treatment of seafarers detained on suspicion of committing maritime crimes again and other issues (ILO, 2022d). Even though that working group could not adopt the mandatory instrument, it is hoped that the joint working group will become an opportunity to take a leap forward in the field of seafarers' rights in international law.

References

- [1] Damian, A. J., A. Tichianaa, B. Daniel, and L. W. Angela(2020), Mental Health Challenges Faced by Essential Workers During COVID-19. BMC Blog Network On Health. Retrieved from <https://blogs.biomedcentral.com/on-health/2020/07/14/mental-health-challenges-faced-by-essential-workers-during-covid-19> on October 19 2022.
- [2] ICS(2022), The COVID-19 pandemic: The crew change crisis, Current Issues. Retrieved from <https://www.ics-shipping.org/current-issue/the-covid-19-pandemic-the-crew-change-crisis/> on October 19 2022.
- [3] ILO(2019a), Conclusions on the recruitment and retention of seafarers and the promotion of opportunities for women seafarersSMSWS/2019/9, p. 3. Retrieved from https://www.ilo.org/sector/activities/sectoral-meetings/WCMS_674553/lang-en/index.htm on October 11 2022.
- [4] ILO(2019b), Recruitment and retention of seafarers and the promotion of opportunities for women seafarers, ILO, p. 28.
- [5] ILO(2020), General observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) during the COVID-19 pandemic, pp. 1-3. Retrieved from https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_764384/lang-en/index.htm, last visit on October 30. 2022.
- [6] ILO(2021), Final report-Fourth Meeting of the Special Tripartite Committee of the Maritime Labour Convention, 2006, as amended-Part I (STCMLC/Part I /2021/3), ILSD & SPD, pp. 13-15, p. 26.
- [7] ILO(2022a), Final report-Fourth Meeting of the Special Tripartite Committee of the Maritime Labour Convention, 2006, as amended-Part II (STCMLC/Part I /2022/4), ILSD & SPD, pp. 20-26, pp. 33-37, pp. 40-44, p. 47, pp. 52-56.
- [8] ILO(2022b), Proposals for amendment to the Code of the Maritime Labour Convention, 2006, as amended in accordance with Article X V, STCMLC/Part II/2022/1, pp. 2-7, p. 10.
- [9] ILO(2022c), Ratifications of MLC, 2006 - Maritime Labour Convention, 2006 (MLC, 2006). Retrieved from <https://www.ilo.org/global/standards/maritime-labour-convention/lang-en/index.htm> on October 19 2022.
- [10] ILO(2022d), Resolution concerning the establishment of a Joint ILO - IMO Tripartite Working Group to identify and address seafarers' issues and the human element (GB.343/LILS/4).
- [11] IMO(2011), Principles of Minimum Safe Manning, Resolution A.1047(27).
- [12] IMO(2019), Guidelines on Fatigue, MSC.1/Circ.1598.
- [13] IMO(2022a), Report on the IMO/ILO joint database of abandonment of seafarers, LEG 109/4(a) submitted by ILO & IMO, p. 2.
- [14] IMO(2022b), Supporting seafarers. Retrieved from <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Support-for-seafarers-during-COVID-19.aspx> on October 20 2022.
- [15] Lefkowitz, R. Y.(2013), Incidence of Injury and illness in Merchant Seafarers, Public Health Thesis, Yale University.
- [16] Lefkowitz, R. Y. and S. D. Martin(2019), Seafarer Mental Health Study, ITF Seafarers' Trust, p. 29.
- [17] Lee, J. W., S. H. Hong, J. M. Lee, and C. H. Lee(2022), Study on the Role and Protection of Seafarers as Essential Workers in the Shipping Industry to prepare for the Post COVID-19, KSMES, 28(2), pp. 327-330.
- [18] McConnell, M. L., D. Devlin, and C. Doumbia-henry(2011), The Maritime Labour Convention, 2006-A Legal Primer to an Emerging International Regime, Martinus Nijhoff Publishers, pp. 20-125.
- [19] Pauksztat, B., M. R. Grech, and M. Kitada(2022), The impact of the COVID-19 pandemic on seafarers' mental health and chronic fatigue: Beneficial effects of onboard peer support, external support and Internet access, Marine Policy, 137(2022), p. 1.
- [20] Roberts, S. E, D. Nielsen, A. Kotłowski, and B. Jaremin (2014), Fatal Accidents and Injuries among Merchant Seafarers

Worldwide, *Occupational Medicine*, 64(4). pp. 259-266.

- [21] Shan, D.(2021), Occupational Health and Safety Challenges for Maritime key Workers in the Global COVID-19 Pandemic, *International Labour Review*, pp. 371-381.
- [22] WHO(2014), Preventing suicide : A global imperative, p. 31.
- [23] WHO(2022), Updated WHO Recommendations for International Traffic in Relation to COVID-19 Outbreak. Retrieved from <https://www.who.int/news-room/articles-detail/updated-who-recommendations-for-international-traffic-in-relation-to-covid-19-outbreak> on October 30 2022.
- [24] WMU(2020), A Culture of Adjustment-Evaluating the implementation of the current maritime regulatory framework on rest and work hours, WMU, p. 9. Retrieved from <https://www.wmu.se/scholarly-books/a-culture-of-adjustment-evaluating-the-implementation-of-the-current-maritime-regulatory-framework-on-rest-and-work-hours> on October 20 2022.

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