One Small Step for the United States, May be One Giant Leap for Seafarer's Rights

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ONE SMALL STEP FOR THE UNITED STATES, MAY BE ONE GIANT LEAP FOR SEAFARERS’ RIGHTS

I. INTRODUCTION

The distance between San Francisco and Hong Kong is 6044 nautical miles and from New York City to Singapore, 10,133 nautical miles. While these physical distances will never change, technology has helped bring these cities closer together. One of these technological areas is in the world’s shipping industry, or merchant marine. The continual advancements have allowed seamen to travel across the Atlantic Ocean in approximately nine days, as compared to Henry Hudson’s two and one-half month voyage. However, while the progress such as “Flex” engines or bulbous bows have helped to

2. See id. (enter Port of Departure as “New York & New Jersey” in the country of “United States” and the Port of Arrival as “Singapore” in the country of “Singapore,” then press “calculate”).
4. The U.S. Merchant Marine, WORLD WAR II U.S. NAVY ARMED GUARD AND WORLD WAR II U.S. MERCHANT MARINE, http://www.armed-guard.com/about-mm.html (last updated Jan. 27, 2014, 8:14 AM) (“The merchant marine is collectively those commercial, non-naval ships that carry cargo or passengers or provide maritime services, and the civilian crewmen and officers who sail those ships.”).
5. See Transit Time, Distance Calculator, SEA-RATES.COM, https://www.searates.com/reference/portdistance/?B=16959&E=7214 (last visited Dec. 31, 2015) (showing the approximate time to ship cargo by sea from New York to the United Kingdom is eight days and seventeen hours).
establish a stronger, more efficient shipping industry, progress in obtaining labor rights on an international level for seafarers has been a lengthy, arduous process. The United States has been at the forefront of protecting its own sailors through the Merchant Marine Act (hereinafter the Jones Act). Nevertheless, the United States has struggled to help ensure the rights of the thousands of foreign sailors that come in and out of its ports every day. This struggle may have an end in sight through the ratification of the Maritime Labour Convention, 2006. The United States should consider ratification of this international Convention to help promote the welfare of seafarers on a global scale, but only after careful consideration of why the Convention was created, who helped construct the Convention, the Convention’s structure and scope, the standards the Convention will look to impose, how the Convention will be enforced, and what effect the United States’ ratification may have on a domestic and global scale.

II. UNITED STATES’ GIANT LEAP FOR THE PROTECTION OF ITS SAILORS

Justice Story termed seamen “wards of the admiralty.” He saw the plight and disadvantageous position seamen were in, and proclaimed

[s]eamen are by the peculiarity of their lives liable to sudden sickness from change of climate, exposure to perils, and exhausting labour. They are generally poor and friendless and acquire habits of gross indulgence, carelessness and improvidence.... Every court should watch with jealousy an encroachment upon the rights of seamen,
because they are unprotected and need counsel; because they are thoughtless and require indulgence; because they are credulous and complying; and are easily overreached.  

The inclinations felt by Justice Story reached beyond the borders of America to the United Kingdom where Lord Stowell recognized the need for sailors' rights and protections, and stated:

[op]n the one side are gentlemen possessed of wealth, and intent, I mean not unfairly, upon augmenting it, conversant in business, and possessing the means of calling in the aid of practical and professional knowledge. On the other side is a set of men, generally ignorant and illiterate, notoriously and proverbially reckless and improvident, ill provided with the means of obtaining useful information, and almost ready to sign any instrument that may be proposed to them; and on all accounts requiring protection, even against themselves.

The viewpoints of these men are fairly taken. Throughout history seamen faced storms, death, disease, trouble finding competent employees, impressment, horrid living conditions, and rules of sea

14. Id. (quoting Harden, 11 F. Cas. at 483).
15. Id. at 484-85 (quoting Hume v. Moore-McCormack Lines, Inc., 121 F.2d 336, 341 (2d. Cir. 1941)).
16. See Remembering the November 1913 "White Hurricane," WEATHER READY NATION (Nov. 7, 2013), http://www.nws.noaa.gov/com/weatherreadynation/news/131107_white.html#VQJwoEJhd6c (showing one of the deadliest storms to strike the Great Lakes that resulted in a dozen major shipwrecks and estimated 250 lives lost at sea).
18. See Karl Vogel, Scurvy — "The Plague of the Sea and the Spoyle of Mariners," 9 BULL. N.Y. ACAD. MED. 459, 467 (1933). While describing the effects that an unknown December sickness had on his crew, Vogel conveys, some did lose all their strength, and could not stand on their feete, then did their legges swel, their sinnowes shrinke as black as any cole. Others also had all their skins spotted with spots of blood of a purple colour; then did it ascend up to their ankels, thighs, shoulders, armes and necke; their mouth became stincking, their gummes so rotten that all the flesh did fall off, even to the roots of the teeth which did also almost all fall out." (quoting Richard Hakluyt in his description of the symptoms of scurvy onboard the vessels in Jaques Cartier's crew heading to New Foundland.
19. See Jesse Lemisch, Jack Tar in the Streets: Merchant Seamen in the Politics of Revolutionary America, 25 WM. & MARY Q. 371, 375, 378-79 (1968) (showing ships were willing to take nearly any man they could, including thieves, murderers, deserted soldiers, and anyone in trouble with the law).
that favored harsh discipline.\textsuperscript{22}

In order to counteract history and breathe life into the views of Justice Story and Lord Stowell, the United States enacted the Merchant Marine Act of 1920, more commonly known as the Jones Act.\textsuperscript{23} The Jones Act has offered a variety of protections to U.S. sailors including employment on U.S. vessels, safeguarding sailors through the U.S. legal system,\textsuperscript{24} and helping to ensure safe and secure U.S. waterways.\textsuperscript{25}

A. Statutory and Case Law Protections

Cabotage was historically one of the first forms of protection offered to U.S. sailors.\textsuperscript{26} Cabotage restrictions can also be found in the Jones Act, only allowing a vessel that “is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade,” to bring cargo or passengers between U.S. ports.\textsuperscript{27} Additionally, 75\% of the crew of any vessel engaged in cabotage must be American citizens.\textsuperscript{28} Because of this law, barges and vessels that travel from one port in the United States to another must be made in the United States and operated by United States merchant seamen, affording them a guarantee of jobs so

\begin{itemize}
\item \textsuperscript{20} See id. at 383 (showing one impressment operation that took place in New York in 1757 took 800 men, or more than quarter of the city’s adult male population into the navy).
\item \textsuperscript{21} See Vogel, supra note 18, at 460 (writing in a diatribe about the food aboard his ship, John Holland stated, “[f]or the men will, and do run away rather than eat it, and those that do or are forced to stay, contract diseases, sickness, and often death.” Admiral Hawke described a “fresh supply” of bread brought onboard his vessel as “full of maggots and weavils”); id. at 462 (explaining that French ships would throw their dead into the bilges, and along with the dead bodies the water used to clean the decks or from the ocean would run down into the bilges creating a foul stench and terrible living conditions); id. at 464 (quoting Antonio Pigafetta, a young Italian man onboard a vessel, who stated that the biscuits they ate were in a powder form filled with worms and stunk of rat urine, sawdust was used as food, and rats became such a delicacy that they paid “half a ducat apiece for them”).
\item \textsuperscript{22} See Norris, supra note 13, at 481-82 (explaining how punishments aboard a vessel were to be “cruel and unusual” and that the striking of the vessel’s master could lead to a hand being removed “in a painful manner” or death).
\item \textsuperscript{23} Jones Act, ch. 250, 41 Stat. 1007 (1920) (codified as amended at 46 U.S.C. § 30104); The Jones Act, supra note 10.
\item \textsuperscript{24} 46 U.S.C. § 30104 (2012).
\item \textsuperscript{26} See Bryant E. Gardner, Is the Jones Act Redundant?, 21 U.S.F. MAR. L.J. 95, 97 (2009) (stating that the first U.S. Congress enacted the first cabotage law, which charged larger taxes to foreign ships or to ships not owned by a U.S. citizen, but engaged in cabotage).
\item \textsuperscript{27} 46 U.S.C. § 55102(b)(1) (2012).
\item \textsuperscript{28} GOURE, supra note 25, at 13.
\end{itemize}
long as companies wish to move goods through U.S. waterways.\textsuperscript{29}

A second protection provided to U.S. sailors, found within the Jones Act, is in 46 U.S.C. § 30104.\textsuperscript{30} This section of the Jones Act allows for a seaman who was injured or died from injury during the course of employment to “elect to bring a civil action at law, with the right of trial by jury, against the employer.”\textsuperscript{31} These sentiments were reiterated in \textit{Panama R.R. Co. v. Johnson}, where the Supreme Court ruled that a seaman who suffered injury during employment may elect to pursue a case at law with the right to a trial by jury or under admiralty jurisdiction in the federal courts.\textsuperscript{32}

The Supreme Court later bolstered the rights of U.S. sailors in \textit{Warren v. United States}.\textsuperscript{33} Upon the United States’ passage of the ILO’s Shipowners’ Liability Convention, shipowners became liable to seamen for any injury suffered while “in the service of the ship” as long as the seaman’s act was not a “willful act.”\textsuperscript{34} In \textit{Warren}, Justice Douglas, delivering the opinion of the Court, interpreted the phrase “in the service of the ship” broadly, allowing sailors on shore leave to be included in the phrase because “reli[ing] the shipowner of his obligation in the case of injuries incurred on shore leave would cast upon the seaman hazards encountered only by reason of the voyage.”\textsuperscript{35} Sailors were then not only allowed to elect which court their trial may be held in, but also received the benefits of shipowner liability for injuries occurring ashore.\textsuperscript{36}

Another Supreme Court case bolstering U.S. sailors’ rights based on the Jones Act was \textit{Kernan v. American Dredging Co.}.\textsuperscript{37} In \textit{Kernan}, the Supreme Court found that if a shipowner is in violation of a statute, and that violation directly results in the injury or death of a seaman, the shipowner will then be liable for the injuries, whether or not the statute

\begin{itemize}
  \item \textsuperscript{29} See id. (showing that the United States was looking to protect its shipbuilding and Merchant Marine through the Jones Act).
  \item \textsuperscript{30} 46 U.S.C. § 30104 (2012).
  \item \textsuperscript{31} Id.
  \item \textsuperscript{32} Panama R.R. Co. v. Johnson, 264 U.S. 375, 391 (1924).
  \item \textsuperscript{33} See \textit{Warren v. United States}, 340 U.S. 523, 530 (1951) (allowing petitioner, a messman, aboard respondent’s vessel to collect maintenance and cure due to injuries suffered while ashore, but still “in the service of the ship” so long as the injuries were not deliberate).
  \item \textsuperscript{34} Convention between the United States of America and Other Members of the International Labor Organization Concerning the liability of the Shipowner in the Case of Sickness, Injury, or Death of Seamen art. 2, Sept. 29, 1939, 54 Stat. 1693, T.S. No. 951.
  \item \textsuperscript{35} \textit{Warren}, 340 U.S. at 529 (quoting Aguilar v. Standard Oil Co. of N.J., 318 U.S. 724, 733 (1943)).
  \item \textsuperscript{36} Id. at 530; Panama R.R. Co., 264 U.S. at 391.
  \item \textsuperscript{37} Kernan v. American Dredging Co., 355 U.S. 426, 438-39 (1958) (allowing for recovery for death of a seaman whether or not a shipowner was negligent when in breach of statutory duty).
\end{itemize}
was enacted to prevent those certain injuries. This ruling has essentially allowed seamen to bypass proving causation if an injury occurred because of a shipowner's violation of a statute.

The final benefit afforded to seamen discussed in this section is that penalty wages are afforded to U.S. sailors if their employer fails to pay them in a timely manner. 46 U.S.C. §10313(f) stipulates that the master of the vessel shall pay the seaman the balance of his due wages "within 24 hours after the cargo has been discharged or within 4 days after the seaman is discharged, whichever is earlier." If those wages are not paid within due time, section (g)(1) allows for the seaman to collect "2 days' wages for each day payment is delayed." This legal protection has ensured throughout the years that seamen are paid by their employers and it's done so in a timely manner.

B. What the Jones Act has Created

After the Great War, many nations realized the power and necessity of having a strong merchant marine. This was one of the fundamental reasons behind the creation of the Jones Act. What it has left the United States with today are varying levels of protections to American sailors, as previously mentioned, as well as roughly 70,000 jobs working on or with Jones Act vessels, roughly 400,000 direct and indirect jobs through United States shipyards, and $24 billion in annual labor income.

Of equal importance to the labor and job protection offered, the Jones Act additionally provides the United States with national

38. Id. at 432-33.
40. Id. §10313(g)(1).
42. GOURE, supra note 25, at 13.
43. See id. (stating that the Jones Act was created to help "ensure the health of a robust domestic shipbuilding industry and merchant marine").

http://scholarlycommons.law.hofstra.edu/hlelj/vol33/iss1/8
American ports and waterways are heavily populated with American flagged vessels and American seamen because of this firm requirement that only U.S. flagged vessels may go from U.S. port to U.S. port. Furthermore, the Jones Act has allowed for the United States to have a merchant marine that is able to supply vital sealift in support of the navy and other various missions in times of peace and war. Recent examples of the sealift support offered by the U.S. Merchant Marine include: nearly 60% of all military supplies delivered to Iraq and Afghanistan; the Military Sealift Command’s fleet of over 100 non-combatant vessels used to supply naval ships throughout all oceans; support offered during natural disasters such as Hurricane Katrina, the Indian Ocean tsunami, and the nuclear meltdown in Japan; and finally, Jones Act vessels providing “the single greatest sealift of people in history off Manhattan Island during 9/11.”

The Jones Act has afforded great protections to United States sailors and to the United States, yet the fact remains that the American merchant vessels make up only 2% of the entire global cargo tonnage. There are thousands of sailors on vessels of foreign flags that have not been provided similar privileges.

III. WHY SEAFARERS’ WOULD BE THANKFUL FOR A SMALL STEP

Captain Roy Whelan poignantly stated, “[T]hey say the only difference between us and prisoners in jail is that not many prisoners drown.” In the current world market, there are an estimated 1.2 million seafarers working on ships worldwide, and nearly 90% of world trade has been accounted for through maritime transport. Yet, despite

47. GOURE, supra note 25, at 9, 13.
48. Id.
49. Id. at 9.
50. Id. at 7.
51. Id.
52. Id. at 9.
55. See infra Part III.
the vital role seafarers play in economies throughout the world, they have struggled on an international scale to gain similar rights to those working ashore.\textsuperscript{58} The shipping industry has created a labor environment that has allowed for seafarers to be exploited in a variety of ways.\textsuperscript{59} In particular, as stated in an International Labor Organization (ILO) video, seafarers have been forced into "fees for finding employment, non-payment of wages, breach of contracts, poor food supplies, unhygienic living spaces, and even abandonment in foreign ports."\textsuperscript{60} Additionally, difficulties arise from harsh working conditions, fatigue from work and long work hours, high levels of stress, little shore leave, months away from home, and cultural isolation due to multi-national crews.\textsuperscript{61} Finally, onboard training has become increasingly difficult due to "reductions in the number of crew members per ship, faster turnarounds on shipping jobs, more frequent crew changes, and multinational crews with divergent language and cultural backgrounds," equating to a more dangerous work environment and less reliable end product.\textsuperscript{62} Understanding some of these issues more in depth will help paint a clearer picture of the labor environment some seafarers have endured.

\textbf{A. Abandonment}

The recent global economic downturn hit many people, including ship owners.\textsuperscript{63} Ship owners found themselves facing bankruptcy, insolvency, or having their vessels arrested due to liens from creditors.\textsuperscript{64} Some ship owners felt the best way to handle this situation was through abandonment, or suddenly cutting ties and any connection with the vessel and its crew.\textsuperscript{65}

Finding oneself in a foreign country with little food or water, no


\textsuperscript{60} Id.

\textsuperscript{61} Id.

\textsuperscript{62} Bauer, supra note 58, at 644-45.


\textsuperscript{64} Id.

\textsuperscript{65} See id. (showing how certain shipowners simply wait for their vessels to be detained by a port State before abandoning their vessels to make as much money as possible).
financial resources, and no earned wages is a common scenario for an abandoned crewmember. 

When a shipowner makes the decision to abandon a vessel, a pattern arises. While in port the ship will run out of fuel, therefore losing generators for the ship’s power. Soon thereafter, food and water supplies begin to run low. Shipowners either drift into the background and cannot be traced by the crew or they may continue to make false promises to crewmembers that cannot be kept. Furthermore, seafarers usually have not been paid, not only affecting those onboard, but their families at home as well. As Rear Admiral Charles Michel, former chief of the U.S. Coast Guard Office of Maritime and International Law, and Amber Ward, staff attorney at the Operations Law Group of the U.S. Coast Guard Office of Maritime and International Law, stated in a joint paper, “[a]t best, abandoned seafarers are often subject to cruel, inhumane, and degrading treatment, and at worst, they may find themselves in life-threatening conditions with no means of sustenance...” Regardless of how it happens, abandonment is a serious issue that no one should have to endure.

B. Unpaid Wages

On a yearly basis, crews of roughly 1500 ships complain about non-payment of wages. Employers have been guilty of promising future payments or making small advancements to keep crews’ hopes alive that payment will come. Meanwhile, the employer’s only goal is to keep the vessel operating at the lowest cost for as long as possible. While many seafarers eventually receive payment after reporting the issue, others never see the money they earned or must wait months or years for outstanding wages to be settled. These situations place strain on seafarers and more importantly their families who often depend on monthly allotments from employers.

66. See id.
67. Id.
68. Id.
69. See id.
70. Id.
71. Id.
72. Id.
73. Non-Payment of Wages, supra note 41.
74. Id.
75. See id.
76. Id.
77. SRI Annual Review 2012, supra note 63.
C. Incidents of Seafaring

Various studies have been conducted on seafaring and its effects on mariners.\textsuperscript{78} These studies have shown that seafaring is one of the more hazardous occupations in the world, exposing seafarers to toxic materials and other physical hazards, higher death rates from work-related accidents compared to shore-based workers, high levels of work-related stress, and increased levels of fatigue.\textsuperscript{79} These “incidents of seafaring” have become a necessary evil to ensure the quick, efficient, and profitable delivery of goods from one port to another.\textsuperscript{80}

A variety of factors can be seen as the reason for these “incidents of seafaring.”\textsuperscript{81} One factor is constant separation from family and a shore-based lifestyle.\textsuperscript{82} The most common work schedule for mariners is five months aboard a vessel with one month off.\textsuperscript{83} In more extreme cases, seafarers have found themselves aboard vessels with no relief system in place, leading to periods onboard vessels for well over six months at a time, and even some over a year.\textsuperscript{84} This is common amongst Filipino workers performing low-skilled or unskilled work.\textsuperscript{85} These workers find themselves onboard for long periods of time, but on short contracts, allowing shipowners to force the seafarer to constantly reapply for his position.\textsuperscript{86} These contract scenarios, combined with long periods of time away, create mental stressors that cannot compare to any job ashore.\textsuperscript{87}


\textsuperscript{79} Oldenburg et al., supra note 78, at 249; McKay & Wright, supra note 78, at 6.

\textsuperscript{80} See McKay & Wright, supra note 78, at 3 (stating that there are commercial pressures causing the time ships spend in port to decrease); McCain’s Job Killing Plan to Repeal Jones Act Fails, STAND (Jan. 26, 2015), http://www.thestand.org/2015/01/mccain-plan-would-repeal-jones-act-kill-jobs/ (stating that vessel production in America contributes $36 billion to gross domestic product); U.S. Public Port Facts, AM. ASS’N PORT AUTHORITIES, http://www.aapa-ports.org/industry/content.cfm?ItemNumber=1032 (last visited Oct. 29, 2015) (listing investment-backed economic improvements and opportunities in the seafaring industry).

\textsuperscript{81} See, e.g., Oldenburg et al., supra note 78, at 251; McKay & Wright, supra note 78, at 3.

\textsuperscript{82} Oldenburg et al., supra note 78, at 251; McKay & Wright, supra note 78, at 9.

\textsuperscript{83} McKay & Wright, supra note 78, at 4.

\textsuperscript{84} Oldenburg et al., supra note 78, at 251; see McKay & Wright, supra note 78, at 4 (showing that some 43% of seafarers come aboard a vessel with no type of relief system with paid leave).

\textsuperscript{85} Oldenburg et al., supra note 78, at 253.

\textsuperscript{86} Id.

\textsuperscript{87} Id. at 251.
Along with long stints away from home, technology has allowed shipowners to reduce the size of the crew aboard vessels and have reduced time in port. Because of this, crews have become more exhausted due to long working days and frequent, quick port turnarounds. Higher work loads coupled with long work hours, broken sleep patterns because of duty length or poor weather, a lack of days off, and external factors, such as high noise levels, vibration, and adverse weather, all factor in to high levels of stress and fatigue. Moreover, limited time is allotted for recreational activities aboard to help relieve any stress. Finally, many seafarers are known to cope with the incidents of seafaring by resorting to alcohol consumption. When these factors are taken as a whole, it becomes clear why these "incidents" are a contributor to a seafarer's lifestyle in an adverse way and why one would hope for them to only improve.

D. Too Common of an Example

One instance of how seafarers have been exploited may be found in the cruise ship industry. Many of the lower-paid staff comes from desolate economic situations in countries such as Peru, Uruguay, the Philippines, and Indonesia. These workers go to local, private recruiting agencies to find employment onboard the various cruise lines. These recruits are then forced to pay a fee to the agency, and to pay for their "return airfare, medical examinations, seafarers' book, visa, and [administrative fee[s]] all before they have had the opportunity to earn a penny as a seaman on a cruise ship."

After incurring substantial debt, the recruits travel long distances to reach their assigned vessel. Upon arrival recruits are left with the choice of signing their employment contract with the cruise ship, or

89. Oldenburg et al., supra note 78, at 252.
90. Id. at 251-52.
91. Id. at 253.
92. Id. at 252; McKay & Wright, supra note 78, at 7.
94. Id.
95. Id.
96. See id. at 1229.
going home. As expected, most feel compelled to sign the contract without reading it. Once aboard, the recruits, now employees, work a normal shift ranging from ten to fourteen hours, in most cases seven days a week. Employees also share rooms with workers from various countries. At the end of the day, or six to ten month contract, the seamen find themselves making as little as $400 a month. Finally, if a seafarer chose to argue his or her contract, most contracts have arbitration clauses compelling arbitration in countries where these seamen would incur insurmountable debt to arbitrate their claim. Cruise ship employees are only one example of seafarers that have found themselves in these types of situations.

The drastic lack of rights and hardships faced by seafarers has been due in large part to the Flag of Convenience (FOC) system. This system has allowed vessels and shipowners neither to apply labor laws nor find favorable labor standards to allow for maximum profits.

IV. THE FLAG OF CONVENIENCE SYSTEM

The FOC system can be traced back to the prohibition era where various U.S. flagged vessels—in particular the M/V Reliance and the M/V Resolute—were “reflagged” under Panama. By registering or “reflagging” their vessels in the open registry of Panama, shipowners would be allowed to circumvent U.S. prohibition laws and sell alcohol on their vessels. Open registry countries made registration available to all vessels no matter the shipowner’s nationality, and once a vessel is registered or “flagged” in a certain country, the vessel becomes an extension of the laws and jurisdiction of that country. This system has created two things: a “race to the bottom” mentality amongst open

97. Id.
99. Wales, supra note 93, at 1220.
100. Id.
101. Id. at 1221.
102. Id. at 1238.
103. See A Day in a Life at Sea, supra note 59.
104. Bauer, supra note 58, at 645.
105. See infra Part IV. (breaking down the FOC system).
106. See Bauer, supra note 58, at 645-46.
108. Id.
109. Wales, supra note 93, at 1221; Wing, supra note 107, at 176.
registry countries\textsuperscript{110} and vast amounts of confusion for seafarers.\textsuperscript{111}

The "race to the bottom" mentality is based on open registry countries competing amongst each other to try and register as many vessels as possible.\textsuperscript{112} Countries compete by lowering their labor standards, safety standards, and environmental standards, offering tax incentives, and simplifying registration to encourage shipowners to register.\textsuperscript{113} Examples begin with ships flying a Cambodian flag that may save up to $15,000 every time the vessel calls to port.\textsuperscript{114} In 1997, Sweden eliminated corporate and capital gains taxes for shipping countries that registered with it.\textsuperscript{115} The small island country of Vanuatu created a tax scheme favoring larger vessels over 35,000 tons to induce vessel registration.\textsuperscript{116} Governments of these countries receive substantial revenue from vessel registration fees, and some see the revenue as necessary to prevent economic downturn.\textsuperscript{117} This has pegged the rights of seamen against the economic survival of various nations, and is a reason why the FOC system can be associated with the hardships faced by seafarers mentioned previously.\textsuperscript{118}

Aside from the "race to the bottom" mentality, the FOC system has created a scenario for seafarers where discerning their legal rights or the proper jurisdictions where these rights may be enforced has become increasingly difficult.\textsuperscript{119} As a commentator once stated,

\begin{quote}
[i]t is not unusual for a seafarer to work on a vessel registered in a foreign country, sailing on the high seas and calling at ports in countries other than that of her flag, owned by citizens of yet other countries, insured in other countries, perhaps chartered by interests in other countries, managed by a company in another country, and carrying cargo owned by citizens of other countries.\textsuperscript{120}
\end{quote}

\begin{itemize}
\item \textsuperscript{111} See Wales, supra note 93, at 1222 n.49 (describing how many flagged countries do not have laws comparable to U.S. maritime laws).
\item \textsuperscript{112} See Allen, supra note 110, at 303-04 (describing the benefits states receive for registering more ships).
\item \textsuperscript{113} Bauer, supra note 58, at 646.
\item \textsuperscript{114} Wing, supra note 107, at 176.
\item \textsuperscript{115} \textit{id}.
\item \textsuperscript{116} \textit{id}.
\item \textsuperscript{117} See Wales, supra note 93, at 1222.
\item \textsuperscript{118} See Wing, supra note 107, at 177.
\item \textsuperscript{119} See Bauer, supra note 58, at 645.
\item \textsuperscript{120} \textit{id} (quoting Douglas B. Stevenson, Book Review, 36 J. MARIT. L. & COMM. 567, 567)
\end{itemize}
With so many vessels registered in different countries, various international laws sporadically ratified and implemented by different countries, and crews coming from all across the globe, there is no wonder why any seafarer may not understand his or her rights.

To oppose the race to the bottom mentality and help educate and fight for the rights of seafarers, certain organizations such as Seafarers' Rights International (SRI) and the International Transport Workers' Federation (ITF) have been organized.\(^\text{121}\) SRI has constructed a legal database as well as a phone application to help educate and inform seafarers of their rights in varying legal situations, with an overall goal to provide seafarers with "high quality research, education and training in the law concerning seafarers..."\(^\text{122}\) Meanwhile, the ITF has looked to strengthen unions worldwide and help to educate seafarers about FOCs and the rights they have on their respective vessels.\(^\text{123}\) The ITF has even helped recover millions of dollars in unpaid wages for seafarers throughout the years.\(^\text{124}\) Yet, with the push these organizations have made in educating and fighting for seafarers' rights, the FOC system remains intact and has been surmised by Seafarers' Section Secretary for the ITF John Whitlow:

> The crisis [in the seafaring industry] is manifested in the projected shortage of suitably skilled and qualified seafarers, the growing age of the world fleet, the large number of lives lost at sea, the lack of flag State implementation and the spiraling increase in the number of port State control detention... [T]he principal cause of the crisis is unfair competition and the competitive distortion caused by the existence of the [FOC] system.\(^\text{125}\)

However, the ILO adopted the Maritime Labour Convention in 2006, with the hope that enough countries would ratify the Convention and take a step in a positive direction to secure the rights of seafarers.\(^\text{126}\) There is no doubt that ratification by the United States would strengthen the Convention, but careful consideration and analysis of the Convention

\(^{121}\) See About Us, INT'L TRANSP. WORKERS' FED'N, http://www.itfseafarers.org/about.cfm (last visited Jan. 11, 2016); SRI Annual Review 2012, supra note 63.

\(^{122}\) SRI Annual Review 2012, supra note 63.

\(^{123}\) About Us, supra note 121.


\(^{125}\) Bauer, supra note 58, at 646.

\(^{126}\) Id. at 643, 648.
must be done.

V. THE MARITIME LABOUR CONVENTION, 2006

International concerns for seafarers’ working conditions can be traced back to Part XIII of the Treaty of Versailles, which was drafted by the Commission on International Labor Legislation. Those drafting were tasked with establishing a set of principles that the future International Labor Organization (ILO) would aim to instill amongst countries to protect their seamen. Such principles included considering “the very special questions concerning the minimum advantages to be accorded to seamen . . . at a special meeting of the International Labour Conference devoted exclusively to the affairs of seamen.”

Justice Story and Lord Stowall felt seamen required special attention in regards to their welfare, accordingly the ILO followed suit. The ILO, as of this writing, has passed 189 Conventions – the ILO’s “legally binding international treaties that may be ratified by member states” and of the 189, 41 Conventions are tied to the maritime sector, well more than any other. However, the efforts put forth by the ILO did not directly translate to the well-being of seafarers. The reasons for the poor translation could be attributed to a combination of the following:

129. See Bollé, supra note 127, at 136.
130. Id.
131. See Norris, supra note 13, at 484-86.
1. Conventions only focusing on specific issues;\textsuperscript{136}

2. Fragmented ratification from member nations;\textsuperscript{137}

3. Limited enforcement within member nations that have ratified Conventions;\textsuperscript{138}

4. Uneven application by shipping companies;\textsuperscript{139}

5. ILO standards only seen as exerting pressure on government to comply; and\textsuperscript{140}

6. Vast structural changes and globalization within the shipping industry in the preceding twenty-five years and no way to amend past Conventions to meet the changes.\textsuperscript{141}

All of these wide-ranging issues, combined with the problems effecting seafarers mentioned previously, led the ILO to a five-year progression of meetings and consultations that culminated in the adoption by all of the Member States of the ILO’s Maritime Labor Convention (MLC) of 2006.\textsuperscript{142}

A. Who Created the Maritime Labor Convention of 2006

The MLC has been seen as a comprehensive reform, the first of its kind to consolidate practically entire sectors of past ILO conventions and creating an over one hundred-page document touching upon a vast span of seafarers working conditions.\textsuperscript{143} The overall goals of the MLC are for it to become the “seafarers’ bill of rights” to make shipping safer and more humane, to create an even playing field amongst shipowners, and to produce clarity for industry labor standards.\textsuperscript{144} To create such

\textsuperscript{136} Id.
\textsuperscript{137} Lilie, supra note 132, at 195.
\textsuperscript{138} See id.
\textsuperscript{139} See id.
\textsuperscript{140} See id. at 192.
\textsuperscript{141} Bollé, supra note 127, at 138.
\textsuperscript{142} Id. at 139.
\textsuperscript{144} Id. at 36, 39. The other “three pillars” of shipping have become commonly accepted throughout U.S. and foreign flagged vessels, and have become a regular aspect of shipping life for sailors. Id. at 36-37.
sweeping reform, which looks to codify maritime shipping labor standards, governments, shipowners, and seafarers culminating in over eleven hundred accredited participants united to create the MLC.\textsuperscript{145}

Before the United States ratifies a piece of international legislation, careful attention must be paid to how the work came together. Understanding the ILO's voting structure and negotiation history is vital for any member State that may ratify the Convention.\textsuperscript{146} This understanding also allows for member States to properly interpret the codes and regulations of the MLC.\textsuperscript{147} The voting structure of the ILO when creating the MLC was a 2:1:1 configuration; governments made up half of the voting, while seafarers and employers split the voting a quarter each.\textsuperscript{148} This structure is commonly known as the ILO's tripartite structure.\textsuperscript{149}

At first glance it may seem that governments would have superiority in the voting scheme;\textsuperscript{150} however, not every Member State has the same common goal.\textsuperscript{151} There are three types of Member States, or governments, all within the ILO, and all of them have different objectives.\textsuperscript{152} It is primarily the seafarers and the employers that combine into their own separate groups and exude great influence over ILO Conventions.\textsuperscript{153} In most cases, these groups speak under one unified voice for all members of the group;\textsuperscript{154} their goal is to influence the Member States to vote along with their group if a disagreement shall arise.\textsuperscript{155}

While seafarers and employers form their own unified approaches, most governments find themselves at odds with each other so much so that no unitary policy is created.\textsuperscript{156} The main reason for this is the three types of Member States found within the ILO: flag states, port states, and labor supplying states.\textsuperscript{157} As previously discussed, a flag state is a state where shipowners may commonly elect to register their vessel,
therefore having the vessel become an extension of the state.\textsuperscript{158} These States are expected to implement relevant international legislation and carry out established inspection routines on their vessels.\textsuperscript{159} An example of a flag state would be Panama, where as of January 1, 2012 there were 8,127 vessels registered.\textsuperscript{160}

Port states are commonly trafficked countries.\textsuperscript{161} Their objective is to, "protect their own citizens and shore lines..."\textsuperscript{162} Port states achieve their goal through random inspections of vessels’ safety standards.\textsuperscript{163} Singapore may be seen as a port state due to the high volume of ship traffic that comes through the country’s ports.\textsuperscript{164} Finally, labor supply states are states where seafarers claim their residence.\textsuperscript{165} The main responsibility for these states is to ensure that the workers being supplied have the proper certification and identity documents, and that recruitment agencies are not taking advantage of the workers.\textsuperscript{166} The Philippines is an example of a labor supply state due to the large percentage of workers in the maritime workforce.\textsuperscript{167} With vast differences in obligations and agendas, it is easy to understand why the government’s overall views in voting for the MLC are arduous to decipher.\textsuperscript{168}

Negotiations between these three entities came together at high-level working group meetings.\textsuperscript{169} Beginning in December of 2001 and in October of 2002, July of 2003, and January 2004, these groups came together at high-level working group meetings.

\begin{itemize}
\item \textsuperscript{158} See id. at 46.
\item \textsuperscript{159} Lillie, supra note 132, at 198.
\item \textsuperscript{161} See Blanck, supra 143, at 46 (stating that a port state is a nation where the ship has come into port, making it commonly trafficked).
\item \textsuperscript{162} Lillie, supra note 132, at 199.
\item \textsuperscript{163} Id.
\item \textsuperscript{164} See Top 50 World Container Ports, \textsc{WorldShipping.Org}, http://www.worldshipping.org/about-the-industry/global-trade/top-50-world-container-ports (last visited Nov. 14, 2015) (showing Singapore as the number two nation in 2013 for volume of containers brought in).
\item \textsuperscript{165} Lillie, supra note 132, at 200.
\item \textsuperscript{166} Id. at 200-01.
\item \textsuperscript{167} Executive Summary: \textit{A Programme of Action to Promote the Welfare and Protect the Interest of the Filipino Seafarer in the 21st Century}, \textsc{Philippine Seafarers Assistance Program}, http://www.psap-parola.org/section/resources/maritime-industry/ (last visited Nov. 14, 2015).
\item \textsuperscript{168} See Lillie, supra note 132, at 209.
\item \textsuperscript{169} Id. at 206.
\end{itemize}
together to discuss the principles desired in the MLC.\footnote{170} After the four meetings, a Preparatory Technical Maritime Conference (PTMC) was conducted in September of 2004, where the MLC negotiations were to be finalized.\footnote{171} After a heated debate between seafarer’s group and employer’s group over port state inspections, the seafarer’s group walked out on the conference.\footnote{172} In April of 2005, negotiations resumed, with seafarers taking a firm stance on what they felt would be the backbone of the MLC.\footnote{173} Ultimately, after a final conference from February 7-23, 2006, the MLC was adopted.\footnote{174}

The MLC was adopted with 314 votes for and only four abstentions.\footnote{175} However, the MLC was not to take effect until one year “after the ILO receives thirty instruments of ratification equaling at least [33\%] of the world’s gross tonnage of ships.”\footnote{176} The goal was to have enough members for legitimacy, yet a low enough threshold to have the MLC in effect within five years after its adoption.\footnote{177} While the MLC did not meet its ratification goal of five years, it recently had its thirtieth member state ratify the Convention on August 20, 2012.\footnote{178} This gave shipowners twelve months from the date of ratification to become compliant with the MLC.\footnote{179}

It is important to note that upon the adoption of the MLC, the United States was firmly onboard with the Convention.\footnote{180} The Maritime Administration (MARAD), the United States Coast Guard, and the Department of Justice represented the United States government.\footnote{181} The Chamber of Shipping of America and the Seafarers International Union represented the employers and seafarers respectively.\footnote{182} All four delegates of the United States voted in favor of the Convention.\footnote{183} As stated by the government,
the United States believes that this is a historic moment, and a great achievement for the International [Labor] Organization and the international maritime community: the development of an international set of standards that guarantees seafarers decent working and living conditions. . . . We believe this is a historic moment, as the global maritime community has created the fourth pillar to ensure a level playing field and to further marginalize substandard shipping. We look forward to continued careful consideration of this Convention.184

On paper, the United States believed this Convention could work, and could bring seafarers the rights they deserve by providing shipowners with a level playing field. Yet, it is with careful reservation that the United States looks to implementing the MLC, with worries about how effective the Convention will really be.

B. Structure and Scope of the MLC

1. Structure

The MLC is broken down into parts: articles, regulations, standards, and guidelines.185 Articles and regulations of the MLC make up the heart, or the core rights, of the MLC’s obligations.186 The standards and guidelines make up the Code, which is split into two sections: Code Part A being the standards, and Code Part B being the guidelines.187 These two sections give member states the details on how to implement the articles and regulations.188 The guidelines are the only part that is not legally binding; however the MLC urges participants to give “due consideration” to the guidelines.189 For example, Standard A4.1 requires all ships to provide prompt medical care, to have medical necessities aboard the vessel, and to have a medicine chest,190 but if a member choses to arrange for the safe keeping of proper medical supplies in something not considered a medicine chest, then that may be

185. Blanck, supra note 143, at 42.
186. Id.
187. Id. at 42-43.
188. Id. at 43.
190. Id. regulation 4.1(1)(b), at 54.
acceptable.\textsuperscript{191} The MLC was innovative in what it was looking to accomplish, putting most of the past Conventions into one up to date, comprehensive document, but the MLC’s structure and flexibility is something that no other Convention has applied.\textsuperscript{192} Historically, when a Convention was outdated or obsolete, the only way to change the Convention was to adopt an entirely new one.\textsuperscript{193} Once adopted, the previous Convention could not be ratified by a member state.\textsuperscript{194} Moreover, if a member state ratified both Conventions, the second ratification was deemed standing for that member.\textsuperscript{195} This led to various Member States having varying rules and regulations based on the last ratification of a Convention, thereby causing more confusion than progress.\textsuperscript{196} The MLC looked to change these procedures in order to adapt to a rapidly changing industry.\textsuperscript{197}

Within the MLC lies two ways to make amendments to the Convention.\textsuperscript{198} One of the amendment processes allows for amendments to be made to any provision of the MLC.\textsuperscript{199} This amendment marks the first time that the ILO allowed for changes or amendments to be made to the articles, regulations, or main body of an ILO Convention.\textsuperscript{200} The second procedure allows for amendments to be made to the Code.\textsuperscript{201} Furthermore, an amendment may be blocked “if more than forty percent of the ratifying Member States, representing at least forty percent of the gross tonnage of the ships of ratifying Member States, express disagreement with an amendment.”\textsuperscript{202} This allows for checks and balances within the MLC, with the hope that the MLC will be able to adapt to the shipping industry’s demands.\textsuperscript{203}

\begin{itemize}
\item \textsuperscript{191} Id. explanatory note 10, at 13.
\item \textsuperscript{192} Blanck, supra note 143, at 48.
\item \textsuperscript{193} Id.
\item \textsuperscript{194} Id.
\item \textsuperscript{195} See id. at 48-49.
\item \textsuperscript{196} See id. at 39, 49 (implying that varying rules and regulations led to confusion among the member states).
\item \textsuperscript{197} See id. at 50.
\item \textsuperscript{198} Id. at 49.
\item \textsuperscript{199} Id.
\item \textsuperscript{200} Id.
\item \textsuperscript{201} Id.
\item \textsuperscript{202} Id. at 50.
\item \textsuperscript{203} See id. at 49, 50.
\end{itemize}
2. Scope

Article 2, paragraphs 2 through 6 establish the scope of the MLC.204 The goal of the ILO was for a broad scope, which was accomplished with its definition given to the term seafarer, "any person who is employed or engaged or works in any capacity on board a ship to which [the MLC] applies."205 This allows for the low paid cruise ship workers, previously mentioned, to be covered.206 Furthermore, the "Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks."207

As broad ranging as the above definitions are, even encompassing Mobile Offshore Drilling Units (MODUs),208 the MLC still carved out a few exceptions. Ships that navigate "exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply," have been excluded.209 An example may be a ferryboat that operates strictly on the Mississippi River.210 The other exception is for ships less than 200 gross tons engaged in domestic voyages.211 It is up to the member state if they wish to apply certain provisions to these vessels.212

204. Id. at 43.
205. MLC, supra note 189, art. II(1)(f), at 3.
206. A Day in a Life at Sea, supra note 59.
207. MLC, supra note 189, art. II(4), at 3. A main concern the United States found with this was that it covered ships engaged in domestic voyages. Blanck, supra note 143 at 43-44. This could cause concern for the ILO reaching into domestic affairs and outside of their jurisdiction as an international organization.
209. MLC, supra note 189, art. II(1)(i), at 3.
211. Blanck, supra note 143, at 44.
212. Id.
C. Standards the MLC Will Look to Impose

Many of the MLC’s protections to seafarers are found in Part A of the Code, which is divided into five titles. The titles are as follows: (1) Minimum Requirements for Seafarers to Work on a Ship; (2) Conditions of Employment; (3) Accommodation, Recreational Facilities, Food and Catering; (4) Health Protection, Medical Care, Welfare and Social Security Protection; and (5) Compliance and Enforcement. Within each title lie regulations, further breaking down the section. The regulations within each title are as follows: (1) Minimum age, medical certificate, training and qualifications, and recruitment and placement; (2) Seafarers’ employment agreements, wages, hours of work and hours of rest, entitlement to leave, repatriation, seafarer compensation for the ship’s loss or foundering, manning levels, and career and skill development; (3) Accommodation and recreational facilities, food and catering; (4) Medical care onboard ship and ashore, shipowners’ liability, health and safety protection and accident prevention, access to shore-based welfare facilities, and social security; (5) Flag State responsibilities, Port State responsibilities, and Labor-supplying responsibilities. Each of the titles and regulations set forth in the MLC give the member states a minimum requirement and guidelines to then establish its own laws and regulations. Whatever flag a vessel is registered under would then have to apply the newly formed regulations, with the minimum standard set forth by the MLC.

VI. THE CORNERSTONE TO THE MLC

Title 5 Compliance and Enforcement is the cornerstone to the entire MLC. When an international organization sets forth on a task of implementing a vast comprehensive set of regulations, enforcement becomes a major concern. Article XIII “establishes an international representative committee to oversee compliance,” Article V allows

213. See MLC, supra note 189, at iv.
214. Id.
215. Id.
216. Id.
217. Id. art. VI(2), at 5.
218. Id. art. V(1)-(2), at 5.
219. Blanck, supra note 143, at 53.
221. Id.
"for in-port inspections of ships" by nations that have ratified the Convention, and Title V sets forth the tasks of each member state, whether they are a flag state, port state, or labor supplying state, based on their relationship to the vessel in question. Combined, these sections of the MLC are to give the Convention its backbone, yet questions still arise as to how effective the MLC will be.

A. Flag State Compliance and Enforcement

The initial enforcement of the MLC falls upon the shoulders of the flag state. As previously mentioned, it is up to the flag state to establish a set of regulations based on the MLC's standards and guidelines. Regulations created by flag states are to be implemented "after consultation with the seafarer and shipowners' organizations concerned." The flag state must create an effective ship inspection procedure and a procedure to ensure these vessels continue to comply with the standards set after an initial inspection. To be effective, flag states must be able to inspect the working and living conditions of a vessel registered to fly the state’s flag. The specific working and living conditions are set forth in Appendix A5-I of the MLC. If the standards are successfully met, a Maritime Labor Certificate (Certificate) and a Declaration of Maritime Labor Compliance (Declaration) are given to the vessel. It is important that the flag state allows for its vessel inspectors to detain ships found in serious breach of the MLC. The power given to vessel inspectors helps to legitimize compliance and enforcement of the MLC. As stated by G.E. Kurz, President of Mobil Shipping and Transportation Co., for the ILO conventions to be effective,

[t]ough, well-aimed port State inspections are critical, but so is the role of flag States. They have to show greater vigilance in assuring

222. Id.
223. Blanck, supra note 143, at 46.
224. Id.
225. MLC, supra note 189, art. VI(2), at 5.
227. Blanck, supra note 143, at 46-47.
228. Id. at 47.
229. MLC, supra note 189, standard A5.1.3(1), at 77.
230. Blanck, supra note 143, at 47.
231. See id.
compliance with the conventions to which they are parties and resist the temptation to overlook deficiencies for the purpose of attracting and retaining vessels under their registry.232

Enforcement of the proper working and living conditions established by the flag state through vessel inspections does not guarantee success for the MLC; the MLC may still be vulnerable to member states undermining the convention or member states’ inability or resistance to meet the new, more stringent requirements of the MLC.233 The following are various flag state issues with the potential to either undermine the convention, or deem it ineffective, which the United States must observe: capacity, member states’ internal structures, and the ILO’s history of “soft” law.

Some flag states, most of which are known as FOCs (Flags of Convenience), have a high level of registered tonnage.234 With a high number of ships to inspect, untrained and minimal inspectors, and ships traveling all over the globe that rarely call to port in the flag state, various member states may not have the requisite capacity of trained people to inspect the conditions on all vessels.235 To remedy this issue, classification societies236 have been allowed to inspect vessels on international voyages and issue Certificates and Declarations.237 Along with classification societies, the ILO has established the Maritime Labor Academy.238 As of the date of this writing, the Academy sports six different courses to help increase the number of inspectors and to ensure uniformity of inspections throughout all ports of call and flag states.239 Those courses are:

1. “Training of trainers and maritime inspectors in the application of


233. See Bauer, supra note 58, at 650 (giving an example of how two countries may find their way around implementing the MLC).


235. See id. at 107 (showing Panama and its large gross tonnage for its flagged vessels).


237. See McConnell, supra note 226, at 135.

238. Id. at 136.

the ILO Maritime Labour Convention, 2006”;
2. “Workshop on national legal implementation of the ILO MLC, 2006”;
3. “Workshop for ships’ operators and officers on the ILO MLC, 2006”;
4. “Awareness-raising workshop on the MLC, 2006 for seafarers and seafarers’ representatives”;
5. “Implementing the Maritime Labour Convention, 2006 (MLC, 2006) in the cruise industry”; and

The ILO has also offered Guidelines for Flag State Inspections Under the Maritime Labour Convention, 2006. These precautions by the ILO are in their infancy, and it is vital that the United States monitors the effectiveness of the class societies and new inspectors implementing flag state inspections. All parties and inspections need to be in harmony with the flag state’s regulations in order for the MLC to succeed.

One of the key elements of the MLC is the tripartite structure between the Member state’s government, seafarers, and shipowners in implementing international obligations. However, a problem may arise where a country may not have a representing organization, or if there is one, it does not represent the proper seafarers or shipowners. To combat the issue, Article VII of the MLC allows for the Special Tripartite Committee, established in Article XIII of the MLC, to stand in as a representative for any organization that may be absent. To put all seafarers and shipowners on equal grounds, it is critical that the Special

240. See id. (giving the course names, explanations for each one, and a link to detailed descriptions of the courses).
242. See McConnell, supra note 226, at 131.
243. Id. at 138.
244. MLC, supra note 189, art. VII, at 6, art. XIII, at 8.

http://scholarlycommons.law.hofstra.edu/hlelj/vol33/iss1/8
Tripartite Committee adequately represents whichever organization is not present to ensure that all member states’ regulations properly fit into the Articles and Codes of the MLC.

Inevitably, there will always be someone who wants to push the limits of a system. In most cases, international obligations and regulations set forth by the ILO have been seen as “soft international law.” These regulations are called “soft” because they only set standards that the organization desires its member states to follow, rather than laying down “directly enforceable legal obligations.” “Soft international law” may lead to flag states rubber-stamping inspection Certificates and Declarations, or two flag states agreeing amongst themselves to not strictly enforce the MLC when vessels of one of the two States calls to port in the other. There is nothing in the MLC that allows the ILO to enforce the Convention upon one of its members.

However, there are a few ways that this issue could be nullified. The first is through port state inspections. Second, the MLC could require member states to have independent bodies that carry out ship inspections along side flag state inspectors. The International Transport Workers’ Federation (ITF) has been willing to step into that role. The ITF has taken a strong stance in ensuring that the MLC is implemented and enforced to its fullest, and has also put out guides for seafarers and other information online in regards to the MLC. Finally, the role of class societies in carrying out flag state inspections is crucial. The inspections carried out by class societies need to be honest, forthcoming, and unbiased. It may even behoove the ILO to ensure that class societies carry out inspections a certain amount of times on a sporadic basis to ensure an unbiased result. This should help to prevent rubber-stamping of Certificates and Declarations and help to ensure the survival of the MLC.

245. Bauer, supra note 58, at 649.
246. Id.
247. See id.
248. See infra Part V.B.
249. See, e.g., Bauer, supra note 58, at 650.
250. Id.
251. See ITF Global, ITF Welcomes in the Seafarers Bill of Rights, the MLC, YOUTUBE (Aug. 13, 2013), https://www.youtube.com/watch?v=5CmXhW-JSA4 (showing the ITF President and General Secretary give a ringing endorsement of the MLC, 2006 and their hope to ensure its proper implementation).
B. Port State Compliance and Enforcement

Of near equal importance to flag state inspections for compliance are port state inspections. Port state inspections are a crucial system of checks created in response to the possibility of flag states rubber-stamping their ships’ Certificates and Declarations. Creators of the MLC wanted to bring about a “no more favorable treatment” provision, forcing member states to refrain from giving non-ratifying nations favorable treatment in regards to inspections. Whenever a vessel of a member or non-member state enters into the port of a member state, they may be subject to a port state inspection of equal depth. Generally, if the vessel is ever inspected outside of the flag state by a port state inspector, the presentation of the Certificate and Declaration should create a prima facie case for the ship having complied with the working and living conditions requirements. However, more detailed inspections may be carried out if: ships do not carry a Certificate or Declaration; the Certificate or Declaration are falsely maintained, not maintained, or do not have required information; “there are clear grounds” for belief that the working or living conditions do not meet the Convention’s requirements; belief that the ship has changed flags only to evade Convention requirements, or a complaint was made in regards to vessel nonconformity with Convention working and living conditions requirements.

Additionally, if a vessel is found to be noncompliant, the inspector has the authority to carry out the following actions: bring notice of the deficiency to the vessel’s master with a set deadline to rectify the issue, bring the deficiencies to the attention of the organizations for the seafarers and ship-owners in the port State, “notify a representative of the flag state,” and inform the next port of call of the

253. See Bauer, supra note 58, at 649.
254. MLC, supra note 189, art. V(7), at 5.
255. Id. art. V(4), at 5.
256. See id. regulation 5.2.1(2), at 86.
257. Blanck, supra note 143, at 47.
258. MLC, supra note 189, standard A5.2.1.1(a), at 86.
259. Id. standard A5.2.1.1(b), at 86.
260. Id. standard A5.2.1.1(c), at 87.
261. Id. standard A5.2.1.1(d).
262. Id. standard A5.2.1.4.
263. Id.
264. Id. standard A5.2.1.4(a).
deficiencies and the deadline.\textsuperscript{265} If a deficiency is found to be a repeated act or is so egregious that it compromises the safety and health of the crew onboard, the port state inspector may take the appropriate steps to detain the vessel until the deficiencies are remedied.\textsuperscript{266} However, it is important to note that inspectors are encouraged to avoid creating undue delays for vessels,\textsuperscript{267} and should therefore use reasonable discretion when implementing protocol.

Just as flag states may have problems with compliance and enforcement, so too may port states. As mentioned for flag state inspectors, it is crucial that port state inspectors are similarly honest, forthcoming, and unbiased.\textsuperscript{268} The authority listed above given to port state inspectors to enforce a flag states regulations on the flag state’s vessels is a necessary check on flag states.\textsuperscript{269} It would be incumbent upon the United States to ensure this system of checks is clearly working before adopting the Convention, and that the Convention’s ultimate goal of seafarer rights and an even playing field for ship-owners is achieved.

Other smaller issues for port state implementation may be garnering enough funds to create seafarer welfare centers, providing access to shore-based onshore medical advice and services, or addressing issues such as social security for seafarers that may be beyond an inspector’s expertise.\textsuperscript{270} These issues seem unlikely to be the downfall of the Convention; however, the ILO needs to monitor the port states that may not be able to meet the requirements immediately to ensure the requirements are eventually met.

C. Labor State Compliance and Enforcement

Of the three types of member states found in the MLC, labor states have the smallest regulations section under Title V.\textsuperscript{271} These member states are to “ensure the implementation of the requirements of this Convention regarding the recruitment and placement of seafarers as well

\begin{itemize}
\item 265. Id. standard A5.2.1(4)(b).
\item 266. Id. standard A5.2.1(6), at 87-88.
\item 267. Id. standard A5.2.1(8), at 88.
\item 268. See Bauer, supra note 58, at 649-50 (“Flag states … are likely to [obey] provided that port states inspect incoming vessels in earnest and respond to a lack of compliance by rejecting the goods and refusing future dealings with ships that sail under the offending flag.”).
\item 269. Id. at 649.
\item 270. McConnell, supra note 226, at 134, 138.
\item 271. See MLC, supra note 189, regulation 5.3, at 90 (comparing the overall amount of regulations under regulation 5.3 for labor supplying states to regulation 5.1, at 73-85, for flag states and regulation 5.2, at 86-89, for port states).
\end{itemize}
as the social security protection of seafarers that are its nationals . . . .” 272
To meet this requirement, labor states are to set up a system of
inspections of recruitment agencies throughout the country. 273

While the Convention on paper seems simple to follow, for some
countries with less developed economies, this may be a daunting task. 274
These countries may have more pressing issues, and thus may need to
focus their legal drafting and resources on such issues, thereby putting
MLC legal drafting on the back burner. 275 This is a factor the United
States should remain keen on when looking at the Convention’s
effectiveness; however, the United States should not overlook various,
what seem to be positive, steps taken by the ILO and recruitment
agencies. As previously mentioned, the ILO has created a workshop
through its Maritime Labour Academy called “Workshop on national
legal implementation of the ILO MLC, 2006.” 276 The goal of the course
is to help those states implementing the MLC, 2006 into their legal
systems. 277 The hope is that once the legal system is in place and the
laws are followed, the United States will be able to better monitor its
seafarers. Another positive trend is that many seafarer recruitment
services are beginning to voluntarily open their doors for inspection and
certification. 278 For example, Insearch Human Resources, a Mexican
recruitment agency, has reached out to one of the classification societies
in order to become MLC 2006 certified. 279 This shows that not only are
ship-owners, labor organizers, and member states taking the Convention
seriously, but recruiters are also, which is another positive step in
compliance and enforcement of the MLC.

272. Id. regulation 5.3(1).
273. Id. standard A5.3(1).
274. McConnell, supra note 226, at 139.
275. See id.
276. See supra pp. 193-95.
277. See Maritime Labour Academy, supra note 239.
279. See Quienes Somos, INSEARCH HUMAN RESOURCES S.A.DE C.V.,
http://insearch.dyndns.org (last visited Nov. 13, 2015) (showing on the bottom of the page the
recruitment agencies certification with Lloyd’s Register – one of the various class societies). This is
the recruitment agency used by Princess Cruises to hire someone from Mexico in search for a job in
the cruise industry hotel department. See How to Apply for Cruise Ship Jobs, PRINCESS CRUISES,
VII. WHAT RATIFICATION OF THE MLC CAN DO FOR THE UNITED STATES AND IN TURN OTHERS

The United States has been cautious in regards to ratification of international conventions. There is little doubt the MLC will be any different. The United States has taken great strides to protect U.S. sailors. However, the merchant marine and shipping industry is a globalized market. One way the United States can help ensure the safety of its ports, waterways, and sailors is by implementing the MLC to help address such concerns.

A. Effect on United States Sailors at Home and Abroad

On the surface, it may seem as though the MLC does not have much to offer the United States, particularly not to its sailors, who are protected through the Jones Act. Nevertheless, if one was to dig into the details of the MLC, there are a couple of elements that may affect the United States and its sailors in a positive way. The first element has to do with the MLC inspection regime and U.S. sailors. Due to labor laws of the United States, little to no transition or legislation should be necessary for U.S. flagged vessels to be compliant with the MLC. Currently, the United States Coast Guard (USCG) has created a Statement of Voluntary Compliance-Maritime Labour Convention (SOVC-MLC) to give to U.S. flagged vessels that have demonstrated compliance with U.S. laws and regulations that comply with the MLC. However, by not ratifying the MLC, U.S. flagged vessels would not have the appropriate Declaration or Certificate to prove a prima facie case for compliance, which could lead to a more in depth inspection by port states. Port states have the right to reject the

281. See supra Part II.
282. See supra Part I (showing how the merchant marine has expanded across the globe over time).
283. See supra text accompanying note 10.
285. See supra note 230.
286. See supra note 230.
287. See Blanck, supra note 143, at 47.
SOVC-MLC created by the Coast Guard because the United States has not ratified the MLC.\textsuperscript{288} While it is doubtful that any MLC nonconformities would be found in a more in depth port state exam of a U.S. flagged vessel, the problem is that the exam takes up time. One of the challenges faced by seafarers is detachment and little social interaction.\textsuperscript{289} The more time spent on a vessel conducting an inspection, the less time, if any is available, for seafarers to go ashore and enjoy recreational time, especially if a vessel is only calling to port for twelve to twenty-four hours.\textsuperscript{290} By the United States adopting the MLC, and therefore ensuring all U.S. flagged vessels are in compliance and have the proper Certificate and Declaration, less time could be spent inspecting, and more time could be allotted for sailors to go ashore and break the monotony of a sea-going life.

The second element has to do with the future of American sailors at home. By adopting the MLC, the United States’ Port State Control (PSC), by way of the USCG, would play a role in inspecting foreign flagged vessels coming into U.S. ports by ensuring they are up to MLC standards.\textsuperscript{291} While it is rare to find an American sailor onboard a foreign flagged vessel, policies have recently been brought to the Senate floor that could make this a more frequent occurrence.\textsuperscript{292} Senator John McCain placed an amendment in the Keystone Pipeline Bill that would repeal parts of the Jones Act.\textsuperscript{293} Senator McCain stated, “[t]his is an amendment to modify the Jones Act, an archaic 1920s-era law that hinders free trade, stifles the economy and hurts consumers—largely for the benefit of labor unions.”\textsuperscript{294} Supporters of Senator McCain’s point of view, such as British Shipping Minister Robert Goodwill, see the Jones Act as “blatant protectionism” and feel that the shipping industry thrives

\textsuperscript{288} NVIC No. 02-13, supra note 284, at 3.
\textsuperscript{289} See Oldenburg et. al., supra note 78, at 253.
\textsuperscript{290} McKay & Wright, supra note 78, at 3.
\textsuperscript{291} See supra Part. V.B.
\textsuperscript{292} See supra Part. V.B.
when government keeps its hands off. The authors of the report *Puerto Rico—A Way Forward* feel that the Jones Act is one of the numerous factors stifling the Puerto Rican economy. Other commentators also feel that the Jones Act is hindering the economies of United States territories and states. Additionally, Senator McCain and other policy makers hope to increase free trade and jump-start the economy by creating competition between U.S. shippers and shipbuilders, and those of foreign flags. While the amendment failed, it is important to note. The loss of the Jones Act could hinder sailors’ rights and protections they have had for decades, and even lead to the end of a United States Merchant Marine. If U.S. sailors wanted to continue their jobs, they would be forced to do so on foreign flagged vessels. By adopting the MLC, the United States, through PSC, would be able to inspect the labor conditions aboard those vessels with potential American crewmembers. Yes, this is all hypothetical, and there is great support for the Jones Act throughout Congress and the maritime community; however, as long as people believe the Jones Act must be repealed, there is a chance United States sailors could end up on foreign flagged vessels. “It’s one of these things you just propose amendments to bills and encourage hearings and sooner or later the dam breaks,” stated Senator McCain, referring to the Jones Act. If the day ever did come where the Jones Act was repealed, adopting the MLC would allow the United States to be one step ahead in protecting its


297. *See, e.g.,* Schultz, supra note 44 (stating that repealing the Jones Act could benefit the American economy, as it may be cheaper to build ships elsewhere).

298. *See Floor Statement, supra note 294* (stating that for a vessel to be American flagged it must be built in the United States where costs are roughly five times as much, and the costs to operate an American flagged vessel are 2.7 times greater).

299. *See McCain’s Job Killing Plan to Repeal Jones Act Fails, supra* note 80 (showing that 400,000 U.S. shipbuilding, seafaring, and supply chain jobs could potentially be lost in the maritime industry).

300. *See supra* pp. 170-72.

301. *See MLC 2006 Enforcement Through Port State Control Inspections in Ports (MLC Regulation 5.2.1), Officer of the Watch* (May 1, 2013) [hereinafter MLC Regulation 5.2.1], http://officerofofthewatch.com/2013/05/01/mlc-2006-enforcement-through-port-state-control-inspections-in-ports-mlc-regulation-5-2-1/.

302. Schuler, supra note 293.

303. Id.
seamen working on foreign flagged vessels.  

B. United States Port State Control and the Effect of the MLC

There is more than $3.8 billion worth of imports and exports moving through U.S. seaports each day. Of the entire world fleet, U.S. flagged vessels makes up roughly 2%. To meet the $3.8 billion each day most of the vessels coming in and out of U.S. ports must be foreign flagged. For example, in a single day USCG Sector New Orleans has twenty to thirty ships come into port. If the United States were to adopt the MLC, PSC Officers could help ensure that the labor standards on all foreign flagged vessels are up to MLC standards.

The United States Coast Guard is currently responsible for PSC in the United States. PSC inspection’s main focus is on safety and security, as well as on ensuring that the vessels are in compliance with all international and applicable U.S. regulations. For example, the disabling of a ship’s hypermist system in the engine room by crewmembers is a serious safety violation that could result in multiple vessel detentions. This system is one of the primary firefighting systems found throughout newer vessels’ engine rooms, and, as per international regulations, must be capable of immediate activation. However, enforcing substandard labor conditions on a vessel has been found to be more arduous for PSC.

As of this writing, the most recent ILO Convention that the United States ratified in regards to the Merchant Marine was Convention No.

304. See MLC Regulation 5.2.1, supra note 301.
305. U.S. Public Port Facts, supra note 80.
307. Interview with LTJG Rebecca Grimes, Port State Control Officer, USCG, New York, (Mar. 21, 2015).
308. Id.
309. See supra Part V.B.
313. Id.
314. See STUDENT GUIDE, supra note 11, at 1-13 (showing ways PSC may be able to enforce labor regulations).
147, the Merchant Shipping (Minimum Standards) Convention.\textsuperscript{315} The Convention came into force in the United States on June 15, 1989.\textsuperscript{316} As per the United States Coast Guard’s Port State Control Officer Student Guide on Convention No. 147, the purpose of the Convention was “to improve employment conditions on merchant ships, and expand the ability of Port States that are party to the Convention to take steps to protect the health and safety of seamen manning merchant vessels calling in those states.”\textsuperscript{317} The Convention aimed to establish minimum labor standards throughout the shipping industry.\textsuperscript{318} These standards were to be achieved through an effective PSC exam and reporting system.\textsuperscript{319}

While in theory Convention No. 147 was intended to advance human rights and labor rights for seafarers, the Convention has fallen short in applicability in the United States.\textsuperscript{320} As stated previously, many of the ILO Conventions have been sporadically ratified by various nations, which has led to confusion and scattered enforcement.\textsuperscript{321} Convention No. 147 has been no different, as only thirty-three member states have ratified the Convention.\textsuperscript{322} For the United States to detain a vessel of a signatory nation there must be a “clearly hazardous condition,”\textsuperscript{323} USCG authorization to intervene, and the condition “must be related to navigation, vessel safety, and the protection of the marine environment” (nothing in regards to labor standards).\textsuperscript{324}

Furthermore, the “clearly hazardous condition” must be something that can be tied to the Port and Waterways Act (PWSA), 33 U.S.C. § 1223.\textsuperscript{325} Only then may a vessel be detained by the PSC, an act that may truly send a message to a shipowner and flag state.\textsuperscript{326} Furthermore, if a condition on a vessel is deemed a “clearly hazardous condition” but cannot be related to any part of the PWSA or U.S. Code, PSC must try to defer the issue to another agency such as the Department of Labor, the

\textsuperscript{315} See Ratifications for United States, supra note 280.
\textsuperscript{316} Student Guide, supra note 11, at 5.
\textsuperscript{317} Id.
\textsuperscript{318} Id.
\textsuperscript{319} See id. at 1.
\textsuperscript{321} See supra notes 133-42 and accompanying text.
\textsuperscript{322} Commandment Instruction, supra note 320, Enclosure (2).
\textsuperscript{323} See Student Guide, supra note 11, at 1, 3, 14.
\textsuperscript{324} Id. at 14.
\textsuperscript{325} Id. at 13.
\textsuperscript{326} See id.
Occupational Safety and Health Administration, or the ITF to handle the issue.\footnote{327} It is important to note that these agencies may not detain a vessel,\footnote{328} and, therefore, an immediate economic impact upon a shipowner is unlikely to be felt. Finally, if a condition is found but is not seen as a "clearly hazardous condition," no action by the PSC is authorized, and only notice of the condition is brought to the vessel's master.\footnote{329} This shows how difficult it is for the PSC in the United States to enforce substandard labor conditions. As stated by USCG veteran LTJG Rebecca Grimes, a former PSC Officer in Sector New Orleans,

\begin{quote}
[i]t is frustrating when you get onboard a vessel and you know a labor standard such as unpaid wages may not be up to standard and you cannot find a way to require the issue to be rectified. If there is not a clear tie to the PWSA or other U.S. Code then our only option is to encourage the vessel master to contact the company to remedy the situation and making a note for future inspectors.\footnote{330}
\end{quote}

By adopting the MLC, the United States would be creating a more advantageous labor enforcement program for the USCG PSC. It would allow for the PSC to ensure that the crew onboard these vessels are responsible, well trained, and well rested.\footnote{331} These factors could lead to safer waterways throughout the United States, safer living conditions for seafarers onboard foreign flagged vessels, and a safer working environment for all seafarers.\footnote{332}

The ratification by the United States of one of the largest Conventions to pass through the ILO does not come without possible setbacks. As previously mentioned, if the United States were to adopt the MLC, it would become one of the larger port States with one of the larger PSC regimes to have ratified the MLC.\footnote{333} Some may see the

\begin{footnotes}
327. See id. at 11.
328. See id.
329. Id. at 14.
330. Interview with Rebecca Grimes, supra note 307.
331. See A Seafarers' Bill of Rights, supra note 252, at 1, 9, 16.
\end{footnotes}
MLC as an opportunity for flag States to take a more passive role in the inspection of its vessels. As stated by Craig Allen in the San Diego International Law Journal, “the knowledge that diligent port States will be scrutinizing their [flag states’] vessels might well make it easier for some flag [s]tates to relax their efforts.” The reason for this is clear: if port states will be doing much of the work inspecting vessels, then flag states could step back and only fix problems as they become apparent. This has the potential to push the level of contact between flag states and their vessels further away, leaving it to class societies and port states to carry the burden of enforcement.237

While the potential looms for flag states to distance themselves from the vessels flying their flag, there have been systems established by the United States and other countries to potentially combat that issue. These systems were based on PSC inspections, and were created to help enforce the other three pillars of maritime international law: the international conventions for Safety of Life at Sea (SOLAS), Training, Certification, and Watchkeeping for Seafarers (STCW), and the Prevention of Pollution on Ships (MARPOL 73/78). These systems are basic matrices that allow for countries like the United States to “target” certain vessels or certain vessels flying the flag of a certain flag state as they come into the country’s waterways. The “targeting” allows for PSC to determine which vessels need to be inspected, essentially creating a “black list” for vessels with past safety, training, or environmental safety deficiencies. The United States has gone as far

as creating a Port State Control in the United States Annual Report as seen in Appendix B to make numbers public such as: PSC Statistics by Port, Flag Administration Safety Compliance Performance Statistics, and Recognized Organization Safety Compliance Performance. These matrices have allowed for more frequent vessel inspections on flag state vessels that have not been up to proper standards and hopefully these matrices will force flag States to keep close ties with their vessels. Nevertheless, all of these matrices do not include factoring in labor standards. By ratifying the MLC, the United States could add labor deficiencies to their “targeting” program, allowing for a crackdown on flag states and certain vessels that have been noncompliant with MLC standards. This should help seafarers in gaining further labor rights in the maritime industry, while also encouraging flag states to play a more active role in ensuring the rights of seafarers.

VIII. CONCLUSION

The goal of the MLC is for it to become the fourth pillar in the international regulatory scheme, complementing the other three pillars created by the International Maritime Organization. That fourth pillar looks to serve as the “seafarers’ bill of rights.” While still in its infancy, the MLC comes with great hope for success. However, for this Convention to succeed, it needs ILO member states to ratify it. As ratification grows, so too does the support system for seafarers’ rights. Having the United States, such a prominent figure in the global economy, ratify the MLC may be a signal to the rest of the world and to all FOC nations that this Convention is a firm step towards ensuring the rights and safety of those sailing the high seas. There is no doubt that

342. See generally id.
344. See PORT STATE CONTROL IN THE UNITED STATES 2013 ANNUAL REPORT, supra note 341, at 6.
345. See id. (showing no factors for labor).
347. Id.
349. See Wing, supra note 107, at 179.
the United States could take the responsible time to review the structure, scope, enforcement protocol, and possible effects the MLC may have, but in the end it seems ratification by the United States would only help to ensure that seafarers across the globe gain the rights they deserve. As John F. Kennedy remarked:

[A]ll of us have, in our veins the exact same percentage of salt in our blood that exists in the ocean, and, therefore, we have salt in our blood, in our sweat, in our tears. We are tied to the ocean. And when we go back to the sea—whether it is to sail or to watch it—we are going back from whence we came.350

The time seems ripe for the United States to not only protect its sailors who have looked to go back from where they once came, but to also help protect all those sailors that have looked to take on the challenges of a seafarer’s life.

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