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CONCEPT OF SEAFARER
BEFORE AND AFTER THE
MARITIME LABOUR CONVENTION 2016:
Comparative analysis of the legal effects of
defining legal concepts in the shape of
legal terminology

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Abstract:

The Maritime Labour Convention 2006 (MLC) came into force on August 2013 and is considered to be an important international regulation as regards securing seafarers' rights. This article presents research on the concept of *seafarer* in maritime labour regulation from the perspective of legal linguistics. The article examines international maritime labour law, the MLC and national (Denmark, Finland, Germany, Norway, and UK) maritime labour law in order to identify the impact of the MLC on the concept of *seafarer* in maritime labour law, as well on the application of the MLC to those employed on board a ship in general.

The article is based on the the author's distinction-awarded Master's thesis "Concept of *seafarer* and *shipowner*. before and after the Maritime Labour Convention 2006" defended at the Riga Graduate School of Law in January, 2015. The article reflects the state of affairs in respect of the concept of seafarer as at 6 January 2017.

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Key words: Maritime Labour Convention 2006, maritime labour regulation, seafarer

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1. INTRODUCTION

The Maritime Labour Convention (MLC), adopted by International Labour Conference (ILC), 94th (Maritime) Session in 2006, entered into force in August 2013. The MLC has been ratified by 80 countries representing 91 per cent of the world's gross tonnage in shipping.¹

Although the new convention significantly affects the business of all stakeholders in shipping (i.e. ship management companies, insurance companies, classification companies, state administrations, and governments) the MLC standards first of all affect seafarers' rights arising from employment on board ship. The MLC has been designed to become a global instrument known as the "fourth pillar" of the international regulatory regime for quality shipping, complementing the key conventions of the International Maritime Organization (IMO): The International Convention for the Safety of Life at Sea (SOLAS), 1974, the International Convention on Standards of Training, Certification and Watchkeeping (STCW), 1978, as amended, and the International Convention for the Prevention of Pollution from Ships (MARPOL), 73/78. The MLC consolidates and updates more than 60 international maritime labour instruments (Conventions and Recommendations) adopted by the ILC since 1920.² Accordingly, there is well-founded ground to cite the MLC as a seafarers' bill of rights.³

The term "seafarer" is one of the key terms in the new maritime labour regulation and is important for assignment of seafarers' rights as stated in the MLC for those employed on board ship. However the meaning of this term is not without ambiguity. The definition of the term "seafarer" can be regarded as controversial⁴ and was intensely discussed throughout the development of the draft MLC text, as well after adoption and entry into force of the MLC. The same can be said of the term "shipowner", analysis of which, however, falls out of the scope of this article.⁵

International legislation such as conventions is the vehicle to achieve international uniformity in maritime legislation.⁶ The effectiveness of international regulation is based on uniform implementation domestically. A clear and uniform understanding of the key terms is essential for effective implementation and application of the MLC. Research on the concept of *seafarer* is vital at the moment, when many countries are still working on implementation of MLC standards in national law.

The article presents an analysis of the *seafarer* concept under the new international maritime labour regulation – the MLC – from the legal-linguistic perspective. The main object of research of legal terminology is relations between a legal concept and a legal

¹ The MLC ratifications list is available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO::P11300_INSTRUMENT_ID:312331 Last visited 6 January 2017.

² 94th (Maritime) Session of the International Labour Conference, Geneva, 7-23 February, 2006. Reports and documents submitted to the ILC, 94th (Maritime) Session, 2006. Report I(1A). Adoption of an instrument to consolidate maritime labour standards, p. 4. This and other the MLC preparatory reports and documents are available at: http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_153447/lang--en/index.htm Last visited on 6 January 2017.

³ *ibid*, p. 5.

⁴ M.L. McConnell, D. Devlin, Cl. Doumbia-Henry, *The Maritime Labour Convention, 2006 : a legal primer to an emerging international regime*, Leiden, Martinus Nijhoff Publishers, 2011, p. 180.

⁵ The author's article on the MLC concept of *shipowner* "The concept of the shipowner under the new maritime labour regulation: does the shipowner own the ship?" has been submitted for publishing to the WMU Journal of Maritime Affairs.

⁶ Proshanto K. Mukherjee, *Maritime legislation*, Malmo, WMU Publications, 2002, p. 144.

term.⁷ The article contains a comparative review of the term “seafarer” and the concept of *seafarer* in international maritime labour law applicable before the MLC and in regulation codified by the MLC. Next, the article presents an analysis of the concept of *seafarer* implemented in the national law of five countries: Denmark, Finland, Germany, Norway, and the United Kingdom (UK). These countries are parties to the MLC⁸ and have adopted national regulation necessary for implementation of the MLC. All these countries have a considerable number of ships under their flags representing an important percentage of the world’s tonnage of ships.⁹ Finally, the article addresses the relation of the concept of *seafarer* to ship arrest regulation, thus emphasizing that a change in the concept of *seafarer* in maritime labour law can have an effect on shipping law generally.

2. CONCEPTUAL ANALYSIS OF THE TERM “SEAFARER”

2.1. GENERAL OVERVIEW OF ANALYSIS AND METHODS

The legal meaning of a legal term in its textual context does not always appear plainly. When a word and concept with an established core of meaning goes beyond its ordinary use the result is ambiguity and inconsistency.¹⁰ The direction towards a concept of a term is given by the definition, of which the functions are:

- 1) to determine the limits of a concept, that is to say: to distinguish the content of words, ideas, things from the content of cognate words, ideas and things,
- 2) to stipulate a new meaning of the word or
- 3) to give precision to some vague everyday meaning.¹¹

In order to explain how an infinite number of words, phrases, and sentences can be meaningful, semanticists apply the principle of compositionality, i.e. the semantic meaning of any unit of language is determined by the semantic meanings of its parts along with the way they are put together.¹² However the content of a legal provision is wider than the semantic (linguistic) meaning of the words and sentences of legal text and cannot be discovered without regard to the text author’s intention. Semantic content is merely a tool that we use to convey and ascertain communicative content.¹³

⁷ G. Tessuto, “Legal concepts and terminography: Analysis and application”, in V. K. Bhatia, Ch. C. Candlin, P. E. Allori (eds), *Language, Culture and the Law: The Formulation of Legal Concepts Across Systems and Cultures*, Peter Lang, 2008, p. 283.

⁸ *Supra* note 1.

⁹ Review of Maritime Transport 2015, UNCTAD/RMT/2015. p. 36. Available at: http://unctad.org/en/PublicationsLibrary/rmt2015_en.pdf. Last visited 6 January 2017.

¹⁰ *Supra* note 7, p. 286.

¹¹ J. van der Staak, “Standard structures: basic concepts used as frames to explain words in legal discourse”, in J. Engberg, A. Trosborg (eds), *Linguists and lawyers – issues we confront: Arbeiten zu Sprache un Recht*, Tostedt, Attikon-Verlag, 1997, p. 92.

¹² P. Portner, “Meaning”, in Fasold, R., Connor-Linton, J. (eds), *An introduction to language and linguistics*, Cambridge, Cambridge University Press, 2006, p. 141.

¹³ M. Greenberg, “Legislation as communication? Legal interpretation and the study of linguistic communication”, in A. Marmor, Sc. Soames (eds), *Philosophical foundations of language in the law*, Oxford, Oxford University Press, 2011, p. 225.

In accordance with Article 31 of the Vienna Convention on the Law of Treaties 1969¹⁴ the general rule of interpretation of treaties is that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. Any other agreement or instrument related to the treaty, or practice in the application of the treaty, as well as preparatory work for the treaty and the circumstances of its conclusion can be used in order to find the meaning of the terms of the treaty.¹⁵

The word "seafarer" is commonly employed in everyday language. Legislation does have the power to define a term for the purposes of legislation by assigning a special meaning for the term in legal language.¹⁶ The term "seafarer" is the technical designation of a concept belonging to the conceptual system of a language for special purposes.¹⁷ This chapter aims to describe the relations between the legal term "seafarer" and its concept. The research in this chapter contains a linguistic analysis of the term "seafarer" in textual context as it is defined by international maritime labour law and by the MLC. Next, the legislative intention of the MLC drafters in respect of the term in the light of the object and purpose of the MLC is presented in order to establish a concept of *seafarer* which may go beyond the ordinary meaning of the term.

2.2. DEFINITION OF "SEAFARER" GENERALLY AND IN INTERNATIONAL MARITIME LABOUR LAW

The term "seafarer" can be defined as "shipboard crew personnel involving Ships' Officers and seamen/ratings".¹⁸ Black's law dictionary defines "seaman" as follows:

Under the Jones Act and the Longshore and Harbour Workers' Compensation Act, a person who is attached to a navigating vessel as an employee below the rank of officer and contributes to the function of the vessel or the accomplishment of its mission. (...) Also termed *crew member, mariner, member of a crew.* (...) The traditional seaman is a member of the crew of a merchant vessel. However, vessels are not limited in their function to the transportation of goods over water. The performance by a vessel of some other mission, such as operating as a cruise ship, necessitates the presence aboard ship of employees who do not `man, reef and steer` the vessel Exploration for oil and gas on navigable waters has led to further expansion of the concept of a `seaman`.¹⁹

In accordance with the other law dictionary a "seaman" is:

a person who by national law or regulation is deemed competent to perform any duty which may be required of a member of the crew serving in the deck department.²⁰

The terms "seaman", "mariner", and "member of the crew" are used as equivalent terms to the term "seafarer".²¹

¹⁴ Vienna Convention on the Law of Treaties 1969. Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf> Last visited on 6 January 2017.

¹⁵ Article 31 and 32, Vienna Convention on the Law of Treaties 1969.

¹⁶ R. Harris, Ch. Hutton, *Definition in Theory and Practice. Language, Lexicography and the Law.* London, Continuum, 2007, p. 153.

¹⁷ H.E.S. Mattila, *Comparative Legal Linguistics*, Farnham, Surrey, England, Ashgate, 2013, p. 108.

¹⁸ A.E. Branch, D. Branch (eds), *Dictionary of shipping. International business trade terms and abbreviations*, London, Witherby, 2005, p. 301.

¹⁹ B.A. Garner (ed.), *Black's law dictionary*, St. Paul, Minn, West, 2009, p. 1468.

²⁰ J.R. Fox, *Dictionary of international and comparative law*, New York, Ocean Publications, 2003, p. 294.

²¹ *Supra* note 19, p. 426.

Crew includes the Master, officers and ratings on a vessel.²² However in accordance with other sources the crew are members of ship's company below the rank of a ship's officer.²³ A crew member is a person assigned by a carrier to serve on a ship, aircraft, barge or truck and listed as such.²⁴

The term "seafarer" is defined in many international labour conventions²⁵ currently in force which were reconsidered during the MLC drafting process and many of them were revised by the MLC.²⁶ The oldest conventions use the term "seaman", which is considered to be an equivalent term to the term "seafarer". So under Article 1 (1) of the Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8) the term "seaman" includes all persons employed on any vessel engaged in maritime navigation. Then under Article 2 (b) of the Seamen's Articles of Agreement Convention, 1926 (No. 22):

the term seaman includes every person employed or engaged in any capacity on board any vessel and entered on the ship's articles. It excludes masters, pilots, cadets and pupils on training ships and duly indentured apprentices, naval ratings, and other persons in the permanent service of a Government.²⁷

The term "seafarer" is used by later conventions²⁸ which define the term "seafarer" as any person who is employed in any capacity on board a seagoing ship to which the conventions apply. Article I (1) (d) of the Recruitment and Placement of Seafarers Convention, 1996 (No. 179) contains a slightly different definition:

the term **seafarer** means any person who fulfils the conditions to be employed or engaged in any capacity on board a seagoing ship.

Some conventions prescribe additional conditions to be used in deciding who is a seafarer. Under Article 1 (7) (d) of the Labour Inspection (Seafarers) Convention, 1996 (No. 178), in the event of any doubt as to whether any categories of persons are to be regarded as seafarers, the question shall be determined by the central coordinating authority after consulting the organizations of shipowners and seafarers concerned. Some ILO conventions leave determination of the seafarers' group to the consideration of the member states by national laws or regulations or collective agreements.²⁹ Some conventions expressly exclude specific categories of people from the category of seafarer.³⁰

A summary of "seafarer" legal definitions in existing maritime conventions is given by the Tripartite Subgroup of the High-level Tripartite Working Group on Maritime Labour Standards (STWGMLS) (second meeting) on 24-28 June, 2002 in its report on duplicative or contradictory text in the existing maritime instruments of the ILO (39 maritime Conventions, a Protocol and 28 Recommendations):

²² *Supra* note 18, p. 83.

²³ R.H. Brown, *Witherby's encyclopedic dictionary of marine insurance: incorporating dictionary of marine insurance terms and clauses*, London, Witherby, 2005, p. 151.

²⁴ *Supra* note 18, p. 83.

²⁵ The ILO conventions mentioned in this chapter are available at: <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/seafarers/lang--en/index.htm> Last visited on 6 January 2017.

²⁶ Article X, MLC.

²⁷ The same definition is contained in the Repatriation of Seamen Convention, 1926 (No. 23).

²⁸ Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164), Repatriation of Seafarers Convention (Revised), 1987 (No. 166) and Labour Inspection (Seafarers) Convention, 1996 (No. 178).

²⁹ Continuity of Employment (Seafarers) Convention, 1976 (No. 145), Article 1 (2); Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), Article 2 (d).

³⁰ Paid Vacations (Seafarers) Convention, 1946 (No. 72), Article 2 (1); Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), Article 3.

Sixteen Conventions define "seafarer" (seaman), with three pairs of them – Conventions Nos. 22 and 23, 70 and 71, and 164 and 166 – providing the same definition. Therefore, there are 13 different definitions of "seafarer" in the maritime Conventions of the ILO. The various definitions of "seafarer" serve the different goals and scope of the individual Conventions, and vary widely. The variety of the definition relates essentially to the range of exclusion of vessels on board which seafarers are employed.³¹

Although the definitions of "seafarer" under different existing labour conventions are slightly different the main criterion for a person to be considered as a seafarer is their work on board a ship to which the convention applies. Additionally sometimes other criteria are mentioned (e.g., work in the deck department, entered in the ship's articles). The content of many ILO conventions primarily speaks to the employment situation of personnel involved in some way in the operation of the ship – the "crew".³²

2.3. CONCEPT OF *SEAFARER* UNDER THE MLC

2.3.1. TERM AND DEFINITION

The definition of "seafarer" is given by the MLC Article II (1) (f) which states that:

seafarer means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies.

Additionally it is emphasized by Article II (2) of the MLC that the convention applies to all seafarers, except as expressly provided otherwise.

The linguistic meaning of the definition is clear. The words "employed", "engaged" and "works" are synonyms as they have the same semantic meaning.

It follows from the definition that work on board a ship to which the convention applies is a key element for a person to be regarded as a seafarer. Under Article II (1) (i) of the MLC a ship means "a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply." The MLC applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, except ships engaged in fishing or in similar pursuits, ships of traditional build, warships and naval auxiliaries.³³ In the event of doubt on the applicability of the MLC to a particular category of ships the question should be determined by the member state's authority in consultation with shipowners' and seafarers' organizations.³⁴ Additionally Article II (6) of the MLC allows the member states to exempt particular categories of ships from application of certain provisions of the MLC Code. It is clear that the MLC applies to cargo and passenger ships navigating on international voyages. However, application of MLC requirements to specific categories of ships such as larger yachts engaged in commercial activities, FPSOs (floating, production, storage and offloading units), MODU(s) (mobile offshore drilling units) could be disputable as some of these means of navigation are not always legally considered to be ships and application of all MLC provisions to them could be impossible in practice.

³¹ STWGMLS (first meeting), 24-28 June 2002. Duplicative or contradictory text in existing maritime instruments. ILO Doc. No. STWGMLS/2002/4, p. 1-2.

³² Preparatory Technical Maritime Conference ILO, 13-24 September 2004. Consolidated maritime labour Convention - Commentary to the recommended draft. ILO Doc. No. PTMC/04/2, p. 8.

³³ Article II (4), MLC.

³⁴ Article II (5), MLC.

Although the wording of the definition is clear it is also very wide. The definition covers not only categories of persons traditionally associated with the seafarer's profession such as master, engineer, first mate, officer, and bosun but also all persons that may be involved for some period in work on board ship: for example, the personnel of cruise ships (e.g., cleaning personnel, guest entertainers, casino personnel, kitchen staff, fitness instructors), cadets, harbour pilots and port workers, ship inspectors, superintendents and repair technicians, armed security personnel on a ship, and so on. Many of these categories raise doubts whether they can be regarded as seafarers in relation to the seafarers' rights ensured by the MLC – the right to have a written SEA with the shipowner, the right to receive wages paid by the shipowner and other payments due under the SEA, the right to repatriation, and the like.

It is also recognized by the MLC drafters that there may be doubts whether a particular category or categories of persons who may perform work on board a ship is covered by the MLC or not. In the event of doubt as to whether any categories of persons are regarded as seafarers for the purpose of the MLC, Article II (3) of the MLC offers some flexibility for the member states to determine in consultation with shipowners' and seafarers' organizations.

Accordingly, the linguistic meaning of the term "seafarer" contained in the MLC is not sufficient to make a clear designation of persons covered by the MLC. A comprehensive interpretation of the term "seafarer" also requires review of the legislative intention of the MLC drafters.

2.3.2. LEGISLATIVE INTENTION

The legislative intention as regards the definition of "seafarer" is reflected by the general purpose of the MLC, namely to secure the right of all seafarers to decent employment.³⁵ In no case can adoption of the MLC affect any existing legal regulation which ensures more favourable provisions compared to the MLC by decreasing seafarers' rights.³⁶

The definition of "seafarer" was the subject of extended discussion throughout development of the proposed MLC text. Initially, the distinction between "real" seafarers (masters, officers and ratings) and other persons employed on board was discussed by the STWGMLS (second meeting) on **3-7 February, 2003**.³⁷ As mentioned above, international labour conventions such as Nos. 164, 166, 178 and 179 define seafarers to include any person working or employed on board in any capacity. Others simply leave the matter of definition to national law.³⁸ However, the content of many ILO conventions primarily speaks to the employment situation of personnel involved in some way in the operation of the ship – the "crew".³⁹ A number of people working on board ships, particularly passenger ships, may not fall within this category (such as aestheticians, sports instructors and entertainers). The employment situation and protection available to these maritime industry workers is less

³⁵ Preamble (7), MLC; Article 1 (1), MLC; See also STWGMLS (first meeting) 24-28 June, 2002. An analysis of the essential aspects of decent work in the maritime context. ILO Doc. No. STWGMLS/2002/5, p. 6.

³⁶ Preamble (11), MLC.

³⁷ STWGMLS (second meeting) 3-7 February, 2003. Final report. ILO Doc. No. STWGMLS/2003/8, p. 4, 8-10.

³⁸ See Convention No. 108.

³⁹ Placing of Seamen Convention, 1920 (No. 9), Article 1; Continuity of Employment (Seafarers) Convention, 1976 (No. 145), Article 1 (2).

clear.⁴⁰ The seafarer spokesperson pointed out that the key issue was to ensure that everyone on the vessel was covered by the MLC and should be treated on a similar basis as “in this profession, anyone on a ship (e.g., catering crews, engineers, riding gangs) considered themselves a seafarer”.⁴¹

At its meeting in February 2003, the STWGMLS did not reach a consensus on which workers should be considered as “seafarers” covered by the MLC. It agreed, however, on a working definition, which was used in the first draft of the MLC (Article II (1) (f)):

“seafarer” means any person who is employed or is engaged or works in any capacity on board a vessel to which this Convention applies.⁴²

This definition basically corresponds to the definition in the ILO conventions cited above and covers all maritime workers. At the same time, the provision “except where expressly provided otherwise, this Convention applies to all seafarers”⁴³ was added to allow some standards to apply only to specified groups.

The discussion referred to above suggests that the issue required further consideration by the High-level Tripartite Working Group on Maritime Labour Standards (HLTWG) (Third meeting) on **30 June – 4 July, 2003**. It was considered that the point of departure for the working definition could be all-inclusive, but allowing exclusions or limitations of scope when it is considered that a particular provision should only apply to the crew of a ship, for example. Another possibility would be to separate the different categories of persons involved, right from the start, restricting the term seafarer to the master or an officer or rating, and having other definitions such as “other employed persons on board” and “self-employed persons on board”.⁴⁴ In order to address a concern raised by some members of the STWGMLS that personnel temporarily executing a task on board a ship might be inadvertently included under the MLC regime, the working definition proposed in the STWGMLS was modified to exclude personnel such as dockworkers in the first draft by the HLTWG (Third meeting).⁴⁵ Some government members and shipowners expressed the view to keep the definition of seafarer for consideration at a later stage. This was objected to by the seafarers group, who wanted to know to whom the rights that were being negotiated for inclusion in the convention would apply. Then it was agreed to return to the definition of seafarer given in the report of the STWGMLS.⁴⁶

The starting point for discussion of the Fourth meeting of HLTWG held on **19-23 January, 2004** was the following definition:

the term seafarer means any person who is employed or engaged or works in any capacity on board a seagoing ship to which this Convention applies; (working definition, modified C.185, modified C.180 + C.164; C.166; C.178 + C.179 + C.73A2/1).⁴⁷

Additionally some national-level flexibility was inserted in Article II (3) of the MLC to allow member states in the event of doubt the question whether a category of persons can be

⁴⁰ HLTWG (Third meeting), 30 June – 4 July, 2003. Consolidated maritime labour Convention (First draft) Commentary. ILO Doc. No. TWGMLS/2003/1, p. 3.

⁴¹ *Supra* note 37, p. 8-10.

⁴² *Supra* note 40, p. 3, paragraph 4.

⁴³ *Supra* note 37, p. 11, 35.

⁴⁴ *Supra* note 40, p. 3.

⁴⁵ *Supra* note 40, p. 3.

⁴⁶ *Supra* note 40. Final report. ILO Doc. No. TWGMLS/2003/10, p. 8-9.

⁴⁷ HLTWG (Fourth meeting), 19-23 January, 2004. Consolidated maritime labour Convention (Preliminary second draft). ILO Doc. No. TWGMLS/2004/2. Article 2 (1) (f).

regarded as seafarers to be determined after consultation with shipowners' and seafarers' organizations.⁴⁸ As regards having different definitions of "seafarer" where certain substantive provisions are not applicable to all "seafarers" as comprehensively defined, it was suggested that a limitation of the scope of application of the provisions concerned (for example, "seafarers responsible for the safe operation and navigation of the ship") should be made rather than by having different definitions of "seafarer".⁴⁹

The definition remained unchanged in the recommended draft of the consolidated MLC draft for the Preparatory Technical Maritime Conference on **13-24 September, 2004**.⁵⁰ The conference reconsidered the situation with people working on board ships, particularly passenger ships, who may not fall within the category of seafarers engaged in the safe operation of the ship (such as aestheticians, sports instructors and entertainers) and whose employment situation and protection available is less clear. The conference expressed the hope that concerns about ensuring decent work for all workers on board ship could be met by the definition offered, which covers all seafarers and a provision which allows for some national flexibility.⁵¹

At the Tripartite Intersessional Meeting on the Follow-up to the Preparatory Technical Maritime Conference, Geneva, **21-27 April 2005**, the Shipowners' group again expressed concern about the definition of "seafarer" and the MLC application to particular categories of persons performing work on a ship such as repair or service personnel sent out by yards, equipment suppliers or other specialists, pilots, dockers and longshoremen, who should not be defined as seafarers even if they perform repairs during a ship's voyage.⁵² The proposal submitted by the shipowners was to replace the words "on board a ship" with the words "within the shipboard organization" so the definition would state that "the term seafarer means any person who is employed or engaged or works in any capacity within the shipboard organization to which this Convention applies."⁵³ The proposal was not accepted.⁵⁴

Article II (2) (f) of the draft convention submitted to the ILC, 94th (Maritime) Session, **7-23 February, 2006**, contained the following definition of "seafarer":

seafarer means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies; (working definition, modified C.185, modified C.180 + C.164; C.166; C.178 + C.179 + C.73A2/1).⁵⁵

The definition of "seafarer" and application of the MLC to specific categories of people were also discussed during the final session on adoption of the MLC. It was decided to leave the definition unchanged.⁵⁶ From the discussion it follows that the intention of the MLC drafters was to apply the convention also to persons working on board passenger ships for extended

⁴⁸ *Ibid*, Article II (3).

⁴⁹ *Supra* note 47, Consolidated maritime labour Convention (Preliminary second draft) Commentary. ILO Doc. No. TWGMLS/2004/1, p. 3.

⁵⁰ *Supra* note 32, Consolidated maritime labour Convention - recommended draft, ILO Doc. No. PTMC/04/1. Article 2 (1) (i) and (3).

⁵¹ *Supra* note 32, p. 7-8.

⁵² Tripartite Intersessional Meeting on the Follow-up to the Preparatory Technical Maritime Conference, 21-27 April 2005. Paper submitted by the Shipowners' group. Paragraph 9.

⁵³ *Ibid*, Compendium of proposed amendments to the draft consolidated maritime labour Convention, 2006. ILO Doc. No. PTMC/2005/2, p. 7.

⁵⁴ *Supra* note 52, Final Report. ILO Doc. No. PTMC/2005/23, p. 44 (paragraph 350).

⁵⁵ *Supra* note 2, Report I(1B). Proposed consolidated maritime labour Convention.

⁵⁶ *Supra* note 2, Report to the Committee to the Whole, p. 7/8-7/10 (paragraphs 35-54).

periods, such as cabin stewards, sport instructors, and beauticians, even if they were not engaged in the safe operation of the ship.⁵⁷

Taking into account the extended discussions on the “seafarer” definition and considering the need for clarity over application of the MLC to specific categories, as well as the need to provide uniformity in the application of the rights and obligations provided by the Convention, the General Conference of the ILO at its 94th (Maritime) Session on 22 February 2006 adopted Resolution VII *Resolution concerning information on occupational groups*.⁵⁸ The resolution provides member states with guidelines which can be taken into account in deciding to grant seafarer status to a specific occupational group or not. The resolution only assists the interpretation of Article II (I) (f) of the MLC and the final decision is up to the member states. In granting seafarer status the following issues should be considered:

- (i) the duration of a person’s stay on board;
- (ii) the frequency of periods of work spent on board;
- (iii) the location of a person’s principal place of work;
- (iv) the purpose of a person’s work on board;
- (v) the protection that would normally be available to the persons concerned with regard to their labour and social conditions to ensure they are comparable to that provided for under the Convention.

The Resolution does not offer strict guidelines as regards the application of seafarer status to specific categories of persons. However there is a suggestion that persons who might not be determined to be seafarers include harbour pilots and port workers, as well as certain specialist staff such as guest entertainers, ship inspectors, superintendents and repair technicians. Repair and maintenance squads and specialist ship staff engaged to work at sea on particular ships may well be regarded as seafarers.

To summarize, it can be concluded that the wording of the MLC definition of “seafarer” is not new in international maritime labour regulation. The definition of the term “seafarer” in the MLC is based on the definitions in previous ILO conventions and some of them define the term “seafarer” in the same wording as the MLC does.

Although the wording of the legal definition of this term has not changed significantly in the MLC, there are nevertheless important changes in the *seafarer* concept. The content of many maritime labour conventions adopted before the MLC primarily speak to the employment situation of personnel involved in some way in the operation of the ship as the “crew”. A number of people working on board ships, particularly passenger ships, did not fall within this category and accordingly were not considered as seafarers under previous maritime labour regulation.⁵⁹ Therefore essentially there was concern as to the impact of the MLC on the cruise ship sector. But at the end of the discussions there was a clear legislative intention to apply MLC standards also to persons working on board passenger ships in a capacity other than related to the operation of the ship.⁶⁰ Accordingly, the *seafarer* concept

⁵⁷ *Supra* note 2, Report to the Committee to the Whole, p. 7/8-7/10, p. 7/10 (paragraph 42).

⁵⁸ Resolution VII *Resolution concerning information on occupational groups* adopted by the 94th (Maritime) Session of the ILC, Geneva, 7-23 February, 2006. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_088130.pdf Last visited on 6 January 2017.

⁵⁹ *Supra* note 2, Report I(1A). Adoption of an instrument to consolidate maritime labour standards, p. 15 (Note 3 (Article II (5))).

⁶⁰ MLC 2006. Frequently asked questions. Fourth (revised) edition, 2015, published by ILO, p. 22. Available at http://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/faq/WCMS_238010/lang--en/index.htm Last visited on 6 January 2017.

in the MLC is wider compared to the previous international regulation as the MLC *seafarer* concept also covers persons employed in the cruise and passenger ship industry who are working on board for a considerable period but do not perform tasks that are normally regarded as maritime. The application of the MLC to cruise ship personnel cannot be read explicitly from the MLC text but it is reflected in the MLC preparatory reports. Also according to the national law of the countries mentioned below this category of persons is regarded as seafarers. However, some countries made an exemption as regards guest entertainers who usually stay on board a ship for very short periods. Additionally, other specific categories of persons whose duties on a ship are not necessarily related to the operation of the ship may be covered in accordance with the decision of the member states by the new *seafarer* concept.

3. NATIONAL IMPLEMENTATION OF THE CONCEPT OF *SEAFARER*

International enforcement of the MLC regulation requires its implementation in the national law of member states. Legal concepts are intrinsically bound up with national legal systems and the principles on which they are formulated, as well being subject to the moral values and traditions of the country concerned at a particular point of time.⁶¹

The wording of the MLC definition is very general and accordingly ambiguous. The wording alone does not reveal fully the concept of the term "seafarer". Under Article II (3) the MLC grants considerable freedom for member states, in the event of doubt, to determine in consultation with shipowners' and seafarers' organizations whether a specific category of persons are regarded as seafarers for the purpose of the MLC.

Accordingly the implementation of the MLC in national law cannot be provided by simply copying the text of the MLC definition into national law without careful consideration of the true concept.

This section aims to research how the MLC concept of *seafarer* is implemented in the national law of five countries – Denmark, Finland, Germany, Norway, and the UK.

3.1. DENMARK

The relevant legal act in Denmark is the Act on seafarers' conditions of employment, etc. (the Seafarers' Conditions of Employment Act)⁶² which repealed the Merchant Shipping (Master's and Seamen's) Act (*sømandsloven*), no. 229 of 7 June 1952. Conclusion of a written contract with a seafarer on conditions of employment is regulated by Order no. 238 of 7 March 2013 on the employer's obligation to conclude a written contract with the

⁶¹ *Supra* note 7, p. 286.

⁶² Consolidated act on seafarers' conditions of employment, etc. (Consolidated act no. 73 of 17 January 2014 issued by the DMA). Available at: <http://www.dma.dk/Vaekst/Rammevilkaar/Legislation/Acts/Consolidated%20act%20on%20seafarers%27%20conditions%20of%20employment%2c%20etc.pdf> Last visited on 6 January 2017.

seafarer on the conditions of employment.⁶³ Additionally, a standard form of employment agreement between seafarer and owner/master⁶⁴ was considered below.

Under Section 1 (1) of the Seafarers' Conditions of Employment Act:

the term "seafarer" shall apply to all persons, apart from the master, employed, engaged or working on board a Danish ship who do not exclusively work on board while the ship is in port.

For the master, Section 49 of the Seafarers' Conditions of Employment Act applies where the provisions applicable to the master are listed. Although the definition does not cover the master it follows from Danish law that the master has all rights attributed to seafarers by the MLC.

As explained by the Danish Maritime Authority (DMA)⁶⁵ the term "seafarer" in Denmark is to be construed to cover persons who are employed by a shipowner to perform ship service on board a ship at sea. Ship service is understood as work performed by persons taking part in the ship's operation and maintenance as well as the provisioning of those on board. Ship's doctors, nurses, persons carrying out repair and maintenance of ships, cleaning personnel and catering and restaurant personnel, special ship employees engaged to work at sea on board a ship and repair and painting teams accompanying the ship to carry out ship work such as painting or other maintenance are always covered by the term "seafarer". It is relevant whether the person works on board a ship with functions related to the ship and where this work is done, i.e. either at sea or in port. Persons who are working on board a ship only while it is in port (surveyors from public authorities or classification societies, pilots) are not seafarers. Following consultations of shipowner and seafarer organizations the DMA may take a decision on application of the Seafarers' Conditions of Employment Act to specific categories of persons.⁶⁶

Additionally the term "employee" is used throughout the Seafarers' Conditions of Employment Act and Order no. 238 as an equivalent term to refer to a person employed on board a ship, for example, in Section 5 Subsection 1 of Order no.238:

All employees commencing service on board a ship shall, before the ship's departure, procure a copy of the employment contract for the master, who shall keep it on board for as long as the employee serves on board. The seafarer's signature shall be evident from the copy.

It is stated by the DMA that the terms "seaman" and "seafarer" are used randomly in Danish maritime regulation as equivalent terms.⁶⁷ However the term "seaman" is not used in the new maritime labour regulation mentioned above.

⁶³ Order on the employer's obligation to conclude a written contract with the seafarer on the conditions of employment (Order no. 238 of 7 March 2013 issued by the DMA). Available at: <http://www.dma.dk/Vaekst/Rammevilkaar/Legislation/Orders/Order%20on%20the%20employer%27s%20obligation%20to%20conclude%20a%20written%20contract%20with%20the%20seafarer%20on%20the%20conditions%20of%20employment.pdf> Last visited on 6 January 2017.

⁶⁴ Standard form of Employment Agreement between Seafarer and Owner/Master. Available at: <http://www.soefartsstyrelsen.dk/Documents/Blanketter/hyrekontrakt.pdf> . Last visited on 6 January 2017.

⁶⁵ See information on the website of the DMA: <http://www.dma.dk/SoefarendeBemanding/AnsaettelsesforholdMLC/Ansaettelsesforhold/Sider/HvemErSoefarende.aspx> . Last visited on 6 January 2017.

⁶⁶ Section 1 (2), Act no. 73.

⁶⁷ See publication by the Danish Maritime Authority "The Seaman's Rights and Duties" (2001). Available at: http://www.dma.dk/SoefarendeBemanding/Documents/pligt_og_ret_pjece_sept09.pdf . Last visited on 6 January 2017.

3.2. FINLAND

The main legal act implementing the MLC in Finland is the Seafarers' Employment Contracts Act (Act no. 756/2011).⁶⁸ Section 1 (1) of Act no. 756/2011 states that the Act applies to contracts (employment contracts) entered into by an employee agreeing personally to perform work for an employer under the employer's direction and supervision in return for pay or some other remuneration on board a Finnish ship or temporarily in some other location appointed by the employer. Section 2 (1) of Act no. 756/2011 lists exemptions to which categories of employment contracts the Act does not apply:

- 1) work is undertaken only when the ship is in port;
- 2) temporary inspection, such as maintenance or piloting work;
- 3) work is carried out using timber floating equipment, with the exception of transportation equipment used for timber floating;
- 4) work is undertaken on board ships of the Finnish Defence Forces or Border Guard;
or
- 5) contracts governed by separate provisions of law.

However certain provisions of Act no. 756/2011 apply also to the excluded categories of persons.⁶⁹

Section 1 of the Seamen's Annual Holidays Act (433/1984)⁷⁰ states:

This Act shall apply, with the exceptions stated below, to work done in accordance with an agreement by a worker for an employer, subject to the latter's direction and supervision, for pay or other remuneration, on a Finnish ship or, by order of the employer, temporarily elsewhere.

This Act shall not apply to work that:

- 1) is done by a person who receives only a share of the profit as pay,
- 2) is done by the employer's spouse or children, or
- 3) is done on timber floating equipment, with the exception of transport equipment used for timber floating.

Nor shall this Act be applied to work to be viewed as merely temporary inspection, maintenance, pilotage or other comparable work or that is done without accompanying the ship and only when it is moored at a quay or at safe anchorage, if said work comes under the Annual Holidays Act (162/2005).

The Seamen's Working Hours Act (296/1976)⁷¹ applies to a Finnish vessel used in international transport, subject to the exceptions of work performed by:

- 1) the master of a vessel on board in which two or more persons are employed in addition to the master, with the exception of what is provided in sections 9a, 10 and 19a;
- 2) the chief engineer or first mate, if their work is not divided into watches, with the exception of what is provided in sections 9a, 10 and 19a;
- 3) the chief officer of a passenger vessel catering department employing at least 15 persons in addition to the said officer;

⁶⁸ Seafarers' Employment Contracts Act (756/2011) (as amended by several acts, including No. 921/2012). Available at: <http://tem.fi/en/labour-legislation2>. Last visited on 6 January 2017.

⁶⁹ Chapter 1 Section 2 (2), Act no. 756/2011.

⁷⁰ Seamen's annual holidays act (433/1984) (as amended by several acts, including No. 1071/2013). Available at: <http://tem.fi/en/labour-legislation2>. Last visited on 6 January 2017.

⁷¹ Seamen's Working Hours Act (296/1976) (as amended by several acts, including No. 1070/2013). Available at: <http://tem.fi/en/labour-legislation2>. Last visited on 6 January 2017.

- 4) a member of the employer's family, in so far as no other persons are also permanently employed on board the vessel;
 - 5) a person receiving wages solely in the form of a share in the profits;
 - 6) a person working on board the vessel only while it is in port;
 - 7) a person doing merely temporary work in the service of the vessel;
 - 8) a medical practitioner who is employed solely for the purpose of caring for the sick;
- or
- 9) a person who is employed a) on board a State-owned vessel used for defensive or coastguard duties; or b) on board a fishing vessel, if the vessel is in fishing grounds, in this case, too, the provisions of section 9a on the minimum period of rest nevertheless apply to the work.

It can be concluded that mainly the general labour term "employee" is preferred by the Finnish legislator in the text of the maritime labour regulation implementing the MLC. The term "person" and "worker" is also used as can be seen from the examples above. However the traditional shipping term "seafarer" and "seaman" are left in some titles of maritime labour regulation acts (for example, the Seamen's Annual Holidays Act, the Seamen's Working Hours Act, the Seafarers' Employment Contracts Act).

3.3. GERMANY

In Germany, the core of the implementation of the MLC is the Maritime Labour Act⁷² which replaces the former Seamen's Act, adopted in 1957. Section 3 (1) of the Maritime Labour Act defines the term "seafarers":

Seafarers (...) shall be all persons working on board the ship, regardless of whether they are employed by the shipowner or by another person or are self-employed, including those employed for the purpose of their vocational training (crew members).

Germany, similarly to other countries considered in this chapter, used the rights granted by the MLC to decide on the application of seafarer status to specific categories of persons. Section 3 (3) of the Maritime Labour Act contains a long list of persons not to be considered as seafarers:

1. pilots, as well as persons carrying out advisory or inspection activities on behalf of the Federal Government, of a Federal State or of another public-law corporation on board,
2. persons who work on board on behalf of a shipyard or of a systems manufacturer as a rule for no longer than 96 hours in order to implement warranty or guarantee work or other work necessary on board or to give instructions to the crew,
3. persons who work on board as a rule for no longer than 96 hours in order to carry out repairs or maintenance work which is urgently needed and which cannot or may not be carried out by the crew members themselves,
4. shipowners' superintendents and cargo inspectors who, on the basis of the itinerary, are not to work on board for more than 72 hours as a rule,
5. artists who work on board for the entertainment of the passengers for no more than 72 hours,
6. scientists who work on board ships temporarily,
7. persons who are on a ship in order to carry out special activities from there in order to construct, alter or operate structures, artificial islands or other systems at sea,
8. pupils at technical schools or students at universities or universities of applied sciences undergoing training at training facilities established in accordance with

⁷² The Maritime Labour Act (*Seearbeitsgesetz*) 21 February 2013. Available at: <http://www.deutsche-flagge.de/en/downloaden/crew/working-and%20living-on-board/legislative-texts/maritime-labour-act>. Last visited on 6 January 2017.

- Federal State law and undergoing practical training and sea-service experience on a ship for this purpose,
9. pupils who are serving a practical training on board within provisions of Federal State law,
 10. pupils who, through the mediation of the German Shipowners' Association, are granted an insight into the practice of seafaring professions during the school holidays on a contractual basis without such persons working on board,
 11. helmsmen on the Kiel Canal, and
 12. security staff of private security companies licensed in accordance with the Trade Regulation Code (*Gewerbeordnung*).

However, some provisions of the Maritime Labour Act are also applicable to these persons.⁷³

The master is the crew member appointed by the shipowner to command the ship.⁷⁴ A specific category of crew members is service staff defined by Section 2 (9) the Maritime Labour Act:

service staff shall be crew members who work in food and catering, care, entertainment or nursing of other crew members or of passengers or who work in sales on the ship.

The separate definition for service staff is given with the purpose to prescribe specific provisions applicable only to this category of persons, not with the purpose of excluding them from the category of seafarers.

The term "crew member" and the term "seafarer" are both used as equivalent terms throughout the text of the Maritime Labour Act and model employment agreement for the German flag⁷⁵ to refer to a person employed on board a ship.

3.4. NORWAY

In Norway at the level of legal acts the MLC is implemented mainly through amendments to the Ship Safety and Security Act⁷⁶ and the new Act No. 102 relating to employment protection etc. for employees on board ships (Ship Labour Act)⁷⁷ which came into force on 20 August, 2013 by repealing Act. No 18, the Seamen's Act of 30 May, 1975.

The general rule is that the Ship Labour Act applies to any employee working on board a Norwegian ship.⁷⁸ The Act does not apply to persons who:

⁷³ Section 3 (2) and (4), Maritime Labour Act; Guidelines on the implementation of the Maritime Labour Convention on board German flagged ships (MLC – Guideline) published by the Ship Safety Division of the BG for transport and traffic (Dienststelle Schiffssicherheit of the BG Verkehr). Revision 3/2013, p. 3. Available at: <http://www.deutsche-flagge.de/en/downloaden/crew/working-and%20living-on-board/information-for-practice/mlc-guideline-german-flag-rev.3>. Last visited on 6 January 2017.

⁷⁴ Section 5 (1), The Maritime Labour Act.

⁷⁵ Model employment agreement for the German flag "Crew Member's Employment Agreement" available at: <http://www.deutsche-flagge.de/en/crew/seafarers-employment-agreements> . Last visited 6 January 2017.

⁷⁶ Act of 16 February 2007 No. 9 relating to Ship Safety and Security (The Ship Safety and Security Act) (with last changes of 9 May 2014). Available at: <https://www.sjofartsdir.no/en/shipping/legislation/laws/act-of-16-february-2007-no-9-relating-to-ship-safety-and-security/> Last visited on 6 January 2017.

⁷⁷ The Act of 21 June 2013 No. 102 relating to employment protection etc. for employees on board ships (Ship Labour Act) Available at: <http://www.sjofartsdir.no/en/legislation/#laws>. Last visited on 6 January 2017.

⁷⁸ Section 1-2 (1), The Ship Labour Act. See also Guidance Note on Norway's implementation of the Maritime Labour Convention, 2006, of 10 January, 2015. NMA, p. 4. Available at: <https://www.sjofartsdir.no/globalassets/sjofartsdirektoratet/fartoy-og-sjofolk--->

- a) only work on board while the ship or mobile offshore unit is in port;
- b) serve on Norwegian Armed Forces' vessels, except for civilian personnel on board ships chartered by the Norwegian Armed Forces;
- c) only carry out inspections on board;
- d) serve as pilots;
- e) are covered by the Working Environment Act and who perform work on board for a shorter period of time.⁷⁹

As regards cruise personnel in Norway, large parts of the cruise industry had always regarded most of their hotel and catering crew as seafarers.⁸⁰ It is stated in Circular no. RSV 4 – 2013, issued by the Norwegian Maritime Authority (NMA) that cleaning personnel whose main workplace is on board a ship and who perform cleaning during voyages are covered by the Ship Labour Act.⁸¹

For employees performing work which in its nature does not form part of the ship's ordinary operation, the Ship Labour Act applies in part.⁸² Such employees are guest entertainers on cruise ships.⁸³ The Ship Labour Act is also partly applicable for persons working on board mobile offshore units.⁸⁴ Circular no. RSV 4 – 2013 sets out factors which should be considered when deciding whether the Ship Labour Act will apply to a specific category of persons in relation to their work on board ship. Circular no. RSV 4 – 2013 provides a distinction between employees performing work which in its nature forms part of ordinary ship operation and which does not form part of the ship's ordinary operation. All persons who are assigned tasks in the ship's muster list should be considered to have tasks related to the operation of the ship. According to the NMA, employees performing work which in its nature does not form part of the ship's ordinary operation may be exempted from the application of the Ship Labour Act.⁸⁵

In respect of the use of terms it can be concluded that the term "employee" is mainly used in Norwegian law for reference to the persons employed on board a ship. Several terms are used by the Ship Safety and Security Act to refer to a person employed on board a ship – "seafarer", "employee", "person". The term "seafarer" is not defined, nor used at all by the Ship Labour Act. Instead the term "employee" is used. The terms "employee" and "person" are used by Regulation No. 990, not the term "seafarer". The term "employee" is mainly used in Regulations No. 1000 on employment agreement and pay statement, etc.⁸⁶ (The term "seafarer" is mentioned only once). In Regulations of 19 August 2013 No. 998 on the

[dokumenter/mlc/nor/nma-mlc-guidance-note-for-inspections-and-certification.pdf](#). Last visited on 6 January 2017.

⁷⁹ Section 1, Regulations of 19 August 2013 No. 990 concerning the scope of application of the Ship Labour Act. <http://www.sjofartsdir.no/en/legislation/#laws>. Last visited on 6 January 2017.

⁸⁰ T. Falkanger, L. Brautaset, and H.J. Bull, *Scandinavian maritime law - The Norwegian perspective*, Oslo, Universitetsforlaget, 2011, p. 149.

⁸¹ Circular no. RSV 4 – 2013. The scope of application of the Ship Labour Act adopted by NMA on 19 August 2013. Available at: <http://www.sjofartsdir.no/en/legislation/#laws>. Last visited on 6 January 2017. p. 3.

⁸² Section 2, Regulations of 19 August 2013 No. 990.

⁸³ Circular No RSV 4 – 2013, p. 5.

⁸⁴ Section 3, Regulations of 19 August 2013 No. 990.

⁸⁵ Circular No RSV 4 – 2013, p. 4.

⁸⁶ Regulations of 19 August 2013 No. 1000 on employment agreement and pay statement, etc. Available at: <http://www.sjofartsdir.no/en/legislation/#laws>. Last visited on 6 January 2017.

right to lodge complaints for persons working on board ship,⁸⁷ preference is given to the term “person”.

3.5. UK

For the purposes of this article, the main statutory instrument transposing the MLC into the national law of the UK, namely Statutory Instrument 2013/1785 Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 (S.I. 2013/1785),⁸⁸ is reconsidered below. S.I. 2013/1785 defines a seafarer as follows:

“seafarer” means any person, including a master, who is employed or engaged or works in any capacity on board a ship and whose normal place of work is on a ship.⁸⁹

The Maritime and Coastguard Agency (MCA) found it necessary to give clarification by Marine Guidance Note MGN 471 (M)⁹⁰ of this definition. The words “including a master” were added for the avoidance of doubt that a master is protected by the MLC as any other person working on board ship irrespective of the fact that the master is also the representative of the shipowner. Historically the master and pilots were excluded from the definition of “seaman” in the Merchant Shipping Act 1995, which goes back to 1854.⁹¹ The MCA explains that the application provisions in each implementing instrument set out which ships the regulations apply to, so the term “ship” does not need to be followed by “to which this Convention applies”. And finally the words “whose normal place of work is on a ship” were added because this is a key determining criterion in accordance with Resolution VII.⁹²

Additionally, Annex 1 to Marine Guidance Note MGN 471 (M) presents the UK interpretation on application of seafarer status to specific categories of persons. According to these guidelines the term “seafarer” definitely includes shopkeepers, resident entertainers and hairdressers who are employed by a franchise company to work on board, and cadets. It may also include self-employed persons who work on board ship on the business of the ship. Additionally, the practice of the High Court of Admiralty was to allow every person other than the master employed on board a ship to bring a suit. Apart from ordinary seamen, the following have been held to have been entitled to bring a claim for wages: a surgeon, a purser, a ship’s carpenter, a boatswain, a cook and steward, an apprentice, a stevedore, a store-keeper of a ship while in port.⁹³

The term “seafarer” will not cover:

- marine professionals such as harbour pilots, inspectors, or superintendents;
- scientists, researchers, divers, specialist offshore technicians;

⁸⁷ Regulations of 19 August 2013 No. 998 on the right to lodge complaints for persons working on board ship. Available at: <http://www.sjofartsdir.no/en/legislation/#laws>. Last visited on 6 January 2017.

⁸⁸ S.I. 2013/1785 Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013. Available at: <http://www.legislation.gov.uk/> Last visited on 6 January 2017.

⁸⁹ Section 2 (1), S.I. 2013/1785.

⁹⁰ Marine Guidance Note MGN 471 (M) Maritime Labour Convention, 2006: Definitions. Available at: <https://www.gov.uk/government/collections/marine-guidance-notice-mgns>. Last visited on 6 January 2017.

⁹¹ D. Greenberg, A. Millbrook, *Stroud’s judicial dictionary of words and phrases*, London, Sweet&Maxwell, 2000, Volume 3, p. 2380; S.C. Derrington, J.M. Turner, *The law and practice of admiralty matters*, Oxford, Oxford University Press, 2007, p. 71.

⁹² Section 2.3, MGN 471 (M).

⁹³ N. Meeson, J.A. Kimbell, *Admiralty jurisdiction and practice*, London, Informa, 2011, p. 66; D.C. Jackson, *Enforcement of Maritime Claims*, London, LLP, 2005, p. 45.

- fitters, guest lecturers and entertainers, repair technicians, surveyors or port workers, who are working on a seagoing ship on an occasional and short-term basis;
- privately Contracted Armed Security Personnel.⁹⁴

The question of application of the MLC to employees on Mobile Offshore Drilling Units (MODUs) depends on different circumstances and may be considered on a case by case basis.⁹⁵ By Annex 1 the MCA also offers a very detailed schematic decision tree as a guide in the complex process of application of seafarer status, which could be interesting as an example of the process of consideration of seafarer status for other countries.

The term "seaman" is used throughout the text of the Merchant Shipping Act 1995, but the statutory instrument implementing the MLC – S.I. 2013/1785 – uses the term "seafarer".

4. CHANGE IN THE CONCEPT OF SEAFARER IN MARITIME LABOUR REGULATION AND SHIP ARREST

Changes in key concepts in maritime labour law can have an effect on the ship arrest conceptual system as the concept of *seafarer* is also a key concept in ship arrest regulation.

Maritime law provides some protection for the seafarer in a situation of a ship arrest – pre-trial security for a wages claim – recognized by all maritime states.⁹⁶ Claims for seafarers' wages generally are recognized by national and international law as giving rise to a maritime lien.⁹⁷ The question of whether a person is entitled to a claim of highest priority and to be paid first out of income in the case of sale of an arrested ship depends on the legal status of that person, i.e. is the person a seafarer or not? Accordingly it can be concluded that the effect of MLC concepts extends beyond maritime labour regulation to other areas in shipping law. The purpose of this chapter is to consider the mentioned effect from the legal linguistic perspective instead of presenting a comprehensive analysis of the legal consequences of the mentioned changes to seafarers' right to exercise ship arrest for unpaid wages.

The arrest-of-ship procedure is very much unified by the International Convention Relating to the Arrest of Sea-Going Ships, 1952 (Arrest Convention 1952)⁹⁸ which is the main international regulation of ship arrest at the moment. The updated regulation of ship arrest is contained in the International Convention on Arrest of Ships, 1999 (Arrest

⁹⁴ Annex 1, MGN 471 (M).

⁹⁵ Annex 3 Application of the MLC to Mobile Offshore Drilling Units (MODUs), MGN 471 (M).

⁹⁶ D. Fitzpatrick, M. Anderson (eds), *Seafarers' rights*, Oxford, Oxford University Press, 2005, p.172, 211, 213.

⁹⁷ *Ibid*, p. 216; See also: D.C. Jackson, *Enforcement of Maritime Claims*, London, LLP, 2005, p. 12, 30, 261; N. Meeson, J.A. Kimbell, *Admiralty jurisdiction and practice*, London, Informa, 2011, p. 64; Fr. Berlingieri, *Berlingieri on arrest of ships. A commentary on the 1952 and 1999 Arrest Conventions*, London, Informa, 2011, p. 221; Article 4 of the International Convention on Maritime Liens and Mortgages, 1993. Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%202276/v2276.pdf>. Last visited 6 January 2017.

⁹⁸ International Convention Relating to the Arrest of Sea-Going Ships, 1952. Available on: <https://treaties.un.org/doc/Publication/UNTS/Volume%20439/volume-439-I-6330-English.pdf> Last visited on 6 January 2017.

Convention 1999).⁹⁹ Wages and other sums due to seafarers in respect of their employment on a ship are recognized as a maritime claim in accordance with the both conventions and accordingly a ship can be arrested for such claims and seafarers have the right to be paid first out of income from a ship's sale.

Arrest conventions do not contain a definition of "seafarer" but the categories of persons which can arrest a ship for maritime claims for wages are mentioned in the conventions. In accordance with Article I (m) of the Arrest Convention 1952, a claim arising for wages of masters, officers and crew is a maritime claim that gives the basis for ship arrest. Article 1 (o) of the Arrest Convention 1999 states:

Wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf.

Theoretically all persons regarded as seafarers for the purposes of maritime labour regulation should be entitled to all seafarers' rights in a ship arrest procedure. The status and rights of master and officers to enjoy full rights of seafarers under maritime labour law and in ship arrest cannot be in doubt. Traditionally the crew includes the master, officers and ratings on a vessel, i.e. persons employed on board a ship in respect of its operation and maintenance.¹⁰⁰ The concept of seafarer under the new maritime labour regulation also covers many categories of persons employed on a ship in some other capacity than in operation of a ship in its traditional meaning. The status of these persons is not always clearly defined under national law. As follows from the examples of national law considered above, sometimes these categories are exempted from application of the status of seafarer although at the same time several provisions apply to them. Accordingly, their status in the flag state may differ from their status in another country where a ship is arrested or a claim is brought to the court.

⁹⁹ International Convention on Arrest of Ships, 1999. Available at: http://unctad.org/en/PublicationsLibrary/aconf188d6_en.pdf . Last visited on 6 January 2017.

¹⁰⁰ R.H. Brown, *Witherby's encyclopedic dictionary of marine insurance: incorporating dictionary of marine insurance terms and clauses*, London, Witherby, 2005, p. 151; A.E. Branch, D. Branch (eds), *Dictionary of shipping. International business trade terms and abbreviations*, London, Witherby, 2005, p. 83.

5. CONCLUSIONS

The MLC term “seafarer” is a result of intense discussions at meetings leading up to adoption of the MLC. Because of the broad wording used in the MLC definition, the term generated serious disputes over the true meaning of the term “seafarer” under the MLC and critique of their vagueness. Vagueness in normative texts is a very important technique used by legislators in every legal system as some forms of regulation cannot be performed at all by the use of precise rules.¹⁰¹ Vagueness is valuable as a technique for achieving general regulation of a widely varying range of conduct. The arbitrariness of vagueness is that it leaves power to officials who may apply a standard capriciously, or to private persons who may use it for proposals contrary to the purpose of a standard. The corresponding value of vagueness is that it allows officials to apply a standard in a way that corresponds to its purpose, but without the arbitrariness of precision.¹⁰² The inclusive or broad definitions in the MLC were chosen by legislators intentionally to ensure uniform application of international standards.¹⁰³ Today after so many countries have ratified and implemented the MLC it can be concluded that this approach was successful for defining the concept of *seafarer* in national law.

Although the concept of *seafarer* is not expressly defined by the MLC, nevertheless it follows from the legislative intention of the MLC drafters, as well from national law, that there is a strong uniform understanding at the international level as to what is the core of this concept. The implementation of the concept in national law reveals some differences in respect of specific categories of persons. But these differences are within the limits allowed by the MLC concept. The MLC brings changes to the *seafarer* concept used in maritime labour law. It clearly follows that persons employed in some other capacity than related to navigation, i.e. employees on cruise ships and passenger ships, are regarded as seafarers according to the MLC. The status of this category of persons was not clear under previous maritime labour regulation. It is important that the member states can grant seafarer status to other categories of persons whose work is related to being on board a ship to the extent that it would also be fair and reasonable to grant seafarers’ rights prescribed by MLC to them. These rights could be seen as derogation from the uniformity of legal regulation. However in the author’s view this derogation is not substantial.

This research reveals development in maritime labour terminology in respect of legal terms used for identification of persons employed on board a ship. Because of the particular nature of maritime employment, seafarers historically were treated as a distinct group of workers with separate entitlements. In the old days the shipowner was involved in organization of ships’ operation in person and therefore the SEA was concluded between the shipowner and the seafarer. Both were considered essential and indispensable parties to the SEA. The specificity of seafarers’ employment was also reflected in maritime labour terminology. Typically the terms “shipowner”, “seaman”, and “seafarer” for the designation of the parties to the SEA were preferred to the terms of general labour law – “employer” and “employee”. Nowadays the shipowner usually delegates the management and operation of a

¹⁰¹ T. Endicott, “The value of vagueness”, in Marmor, A., Soames, Sc. (eds), *Philosophical foundations of language in the law*, Oxford, Oxford University Press, 2011, p. 29; V. Polese, St. D’Avanzo, “Linguistic and legal vagueness in EU Directives Harmonising Protection for Refugees and Displaced Persons”, in D.S.Giannoni, S.Frade, (eds), *Researching Language and the Law. Textual features and Translation Issues*, Bern, Peter Lang, 2010, p. 89.

¹⁰² *Ibid*, T. Endicott, p. 28.

¹⁰³ *Supra* note 2, p. 15, Note 3 (Article II), paragraph one.

ship to other persons. Additionally, crew management responsibilities in relation to crew recruitment and employment are usually delegated to some other person who acts as employer on behalf of the shipowner. Although formally the SEA is between the shipowner and the seafarer, in practice all employers' rights and responsibilities are exercised by the other person, not the shipowner, and a seafarer in relation to his employment is dealing with another person – the employer. The shipping terms ("shipowner" and "seafarer") are still used by the MLC. However, national legislators additionally to the shipping terms have also used the terminology of general labour law ("employer" and "employee") in national law implementing the MLC and considered in the present research. Accordingly, the specificity of maritime labour law has decreased. Additionally, in respect of assigned rights the MLC aims to provide seafarers with rights as comparable as possible to those generally available to workers ashore.¹⁰⁴

The concept of *seafarer* in maritime labour law is linked to other areas of shipping law. Accordingly changes in maritime labour law can have an effect, for example, on ship arrest regulation. A seafarer's claim for unpaid wages is a type of maritime claim which lends rights to a ship arrest. Depending on whether a person is a MLC seafarer or not, that person can take advantage of seafarer's rights under the MLC and also in the ship arrest procedure.

Finally, it can be concluded that starting with the shipping term "seaman", which is not used in modern maritime labour law, and ending with the term "employer" the maritime labour law reflects developments in shipping and international law, as well in society in general.

¹⁰⁴ See: Regulation 4.1., paragraph 4, MLC.