UiO : Faculty of Law
University of Oslo

Ratification and implementation of the Maritime Labour Convention by Brazil:

Legal certainty for seafarers and shipowners

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1. Introduction

1.1. Presentation

Brazil, a State with a coastline measuring almost 7.500 kilometres (including several important ports along the coast) and a merchant fleet of more than 3 million gross tonnage[1], has ratified a total of 98 International Labour Organization (ILO) conventions, out of which 79 are in force, 23 conventions have been denounced and 4 abrogated[2].

Considering that Brazil, aligned with most of the other relevant nations with a maritime tradition, has ratified the Maritime Labour Convention 2006, as amended (MLC, 2006), which will enter into force nationally on the 7th May 2021, thus becoming the 97th member State of the International Labour Organization to have ratified the convention, the present work aims to address under the Brazilian and the international legal perspective the main aspects of the ratification and implementation of the Convention by Brazil[3].

It is important to keep in mind that some points analysed and exposed in this paper, even though the research is entirely based on legal texts, may not overpass the limits of expectations since the MLC, 2006 has not entered into force yet in Brazil. However, the significance of the ratification of the MLC, 2006 by Brazil, regarding its commitment to promote decent work, as aimed by the International Labour Organization, cannot be questioned in itself.

1.2. Methodology

The research primarily involves a bibliographic approach, presenting and analysing the text of the MLC, 2006, ILO reports and guidelines, and the Brazilian labour legislation

[1]Information published by the International Labour Organization on its web page, accessed 13 August 2020: https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_744604/lang--en/index.htm
[2]Information published by the International Labour Organization on its web page, accessed 13 August 2020: https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102571
[3]Information published by the International Labour Organization on its web page, accessed 13 August 2020: https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_744604/lang--en/index.htm

(laws and regulations applicable to seafarers), and it is based on the qualitative method of legal research.

However, considering that at the time this paper is being written the MLC, 2006 has not entered into force in Brazil yet – which will occur in May 2021 – as already mentioned, there is no specific legal literature comprising the scope intended by the author. Thus, the national legal framework that precedes the entry into force of the MLC, 2006 will be the foundation of the work, serving as a parameter for the comparative analysis described below. Nevertheless, law books on the Maritime Labour Convention, 2006 and on the Brazilian labour law are also sources of information, as well as online resources (web pages and bibliographic databases).

1.3. Objective and structure

The main objective of this paper is to set forth the significance of the ratification of the Maritime Labour Convention, 2006 by Brazil, focusing on the current national legal and regulatory frameworks that cover the maritime labour relations in comparison with the minimum standards established by the ILO Conventions, especially by the MLC, 2006.

In this respect, the inference from the analysis of the sources listed above will constitute the basis to determine: whether the current national legal framework, in particular the labour rights guaranteed to Brazilian seafarers, is aligned with the standards of the MLC, 2006; whether there are benefits granted to seafarers or rights and duties imposed on shipowners following the ratification of the MLC, 2006.

The structure of this paper is composed of 7 chapters. The present chapter, Chapter 1, is introductory and presents the methodology of the study adopted by the author and the objective of the work.

Chapter 2 is an overview of the MLC, 2006, where its objectives, innovative aspects in relation to previous conventions addressed to seafarers and relevant definitions contained in its text are exposed and briefly commented.

Chapter 3 introduces a summary of the Brazilian labour legislation applicable to seafarers, starting from general and specific rights granted by the Brazilian Constitution[4], then the analysis of some particular articles of the Consolidated Labour Law (CLT)[5], specific rules and regulations on maritime law, and general principles of labour law observed and applied at the national level.

A comparison between the current Brazilian labour legislation and the minimum standards established by the MLC, 2006 is presented in Chapter 4. Each title of the MLC, 2006 and the corresponding national provisions, when they exist, are set side by side, allowing to point out the level of protection granted by the Brazilian labour legislation when compared with the new standards introduced by the MLC, 2006 and to identify probable gaps or shortcomings within the national legal framework that may need to be addressed in the implementation process.

After that, in Chapter 5, rights provided by the Brazilian labour legislation to all employees that do not encounter a similar or equivalent provision among the minimum standards set by the MLC, 2006 are exposed and commented.

Chapter 6 contains the analysis of the law project *BR do Mar,* which has as subject the cabotage navigation – still in the process of voting and approval by the Chamber of Deputies – and its correlation with the ratification of the MLC, 2006 by Brazil. In this same Chapter, a claim commonly brought before the labour courts by Brazilian seafarers against their employees, when employed on board ships that do not fly the Brazilian flag, apart from what it is legally established by the rules of international private law[6] adopted by Brazil – that for seafarers the law of the State under whose flag the ship flies applies to their employment agreements – and is not dealt with by the Brazilian labour courts and the Superior Labour Court in a uniform way, will be introduced and analysed under the principles of the Maritime Labour Convention.

[4]BRASIL. *Constituição da República Federativa do Brasil* [Constitution of the Federative Republic of Brazil] of 5 October 1988.
[5]BRASIL. *Consolidação das Leis do Trabalho* [Consolidated Labour Laws], Decree-law n. 3.452 of 1 May 1943.
[6]In accordance with the Decree n. 18.871 of 13 August 1929, which promulgated the Havana Private International Law Convention (the Bustamante Code), the work performed on board ships shall be regulated by the law of the flag State.

Lastly, Chapter 7 brings the conclusions arising from this work, whether the entry into force of the MLC, 2006 will, in fact, have any impact on the maritime employment agreements in Brazil and how seafarers and shipowners will benefit from it.

2. The Maritime Labour Convention (MLC, 2006): Overview

The Maritime Labour Convention (MLC, 2006) was adopted by the 94th (Maritime) Session of the International Labour Conference (ILC) on the 23rd February 2006. It entered into force on the 20th August of 2013, and Brazil is the 97th country that has ratified it.

The MLC, 2006, often described as a charter for decent work or a "bill of rights" for the world´s maritime workers, "consolidates and updates the majority (68 out of 72) of the ILO´s maritime (37) Conventions and Recommendations adopted since 1920. This in itself is a major step forward in assisting countries to improve working and living conditions on ships operating under their flags – ships, for which they have international responsibility"[7].

As expressed in the wording of its preamble, the MLC, 2006 represents the desire *"to create a single, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour Conventions"*. For this purpose, among other relevant matters, the aim to promote decent conditions of work, which is the core mandate of the International Labour Organization, and the seafarers' need for special protection were carefully taken into consideration in its elaboration.

Furthermore, the MLC, 2006 is also based on the goal of helping shipowners to achieve fair competition, improving the application of the system so those interested in providing decent work do not have to bear an unnecessary burden in ensuring protection. This goal is often described as creating a "level playing field" among employers by addressing the unfair competition resulting from shipowners and flag States condoning or failing to regulate poor or substandard working conditions[8].

[7] *Compendium of maritime labour instruments: Maritime Labour Convention, 2006, Seafarers´ Identity Documents (Revised) Convention, 2003, Work in Fishing Convention and Recommendation, 2007* (Geneva, International Labour Office, 2015) Preface, page VII.

[8] Moira L. McConnell, Dominick Devlin and Cleopatra. Doumbia-Henry, *The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime* (Leiden: Martinus Nijhoff, 2011), page 35.

In this sense, as correctly summarized by M.L. McConnell, *"the MLC, 2006 is intended to establish decent work for seafarers and a level-playing field for shipowners. In that equation, despite the clear attempts to provide national flexibility, the two are inseparable and are predicated on the idea of some uniformity in implementation and related inspections. This is also central to the idea, new for an ILO convention, of certifying labour standards in the maritime sector"*[9].

In the Office Report for the 94th International Labour Conference, it is plainly expressed that the MLC, 2006 *"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: the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, 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. About its content, it is said that covers a comprehensive set of global standards, based on those provided for in existing maritime labour instruments*[10]".

In order to give a better understanding of the provisions of the MLC, 2006 and to provide more practical guidance and assistance to governments in implementing the Convention, bearing in mind that the most accurate interpretation of a norm is that given by those who elaborated it, documents and papers were produced, and handbooks were published by the ILO – which are not considered legally binding instruments[11].

[9]Moira L. McConnell, "The Maritime Labour Convention, 2006 — reflections on Challenges for Flag State Implementation", *WMU Journal of Maritime Affairs* 10, n. 2 (2011): page 132, doi: 10.1007/s13437-011-0012-z.
[10]ILO. Report I (1A). Adoption of an instrument to consolidate maritime labour standards. Geneva, 2005.
[11]Some of these documents and papers are: Guidelines for flag State inspections under the Maritime Labour Convention, 2006; the Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006; Guidelines on the training of ships' cooks; Guidelines for implementing the occupational safety and health provisions of the Maritime Labour Convention, 2006; Handbook: Guidance on implementing the Maritime Labour Convention, 2006 – Model National Provisions; Handbook: Guidance on implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers (2012), all available at ILO web page.

For the purpose of the Convention, the intended meaning of relevant terms is presented in Article II of the MLC, 2006. In this article, the term seafarer is designated as "*any person who is employed or engaged or works in any capacity on board a ship, to which the Convention applies*"[12]. The definition of the term ship is presented as "*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*"[13]. Still according to the mentioned article, "*shipowner means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner"[14].* Thus, it is clearly determined who are the subjects to whom the provisions of the Convention are intended for.

Having delimited whom the Convention is intended for, it is also essential to have in mind those that are excluded from its scope. In this sense, considering, in particular, the definition given to ships, as cited above, the MLC, 2006 does not apply to: ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply; ships not ordinarily engaged in commercial activities; ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks; warships or naval auxiliaries[15].

In respect to its structure and content, the MLC, 2006 "comprises three different but related parts: the Articles, the Regulations and the Code (Parts A and B)". The Articles and Regulations set out the core rights and principles and the basic obligations of Members ratifying the Convention. The Code contains the more technical details for the implementation of the Regulation. The Articles come first, followed by the Regulations and Code provisions, which are integrated and organized into general areas of concern under five Titles: 1. Minimum requirements for seafarers to work on

[12]ILO. Maritime Labour Convention, 2006, Article II, paragraph 1 (f).
[13]*ibid*, paragraph 1 (i).
[14]*ibid*, paragraph 1 (j).
[15]*Handbook: Guidance on implementing the Maritime Labour Convention, 2006 – Model national provisions* (Geneva, International Labour Organization, 2012), page 4.

a ship; 2. Conditions of employment; 3. Accommodation, recreational facilities, food and catering; 4. Health protection, medical care, welfare and social security protection; 5. Compliance and enforcement[16].

The 37 maritime labour Conventions enumerated by Article X of the MLC, 2006 are consolidated and will be gradually phased out as the States that are now party to these Conventions ratify the MLC, 2006. However, the MLC, 2006 will coexist with the obligations under the international maritime labour Conventions that it consolidates until it is ratified by all the States that have ratified those Conventions[17].

Among the innovations introduced by the MLC, 2006 are the certification of ships for compliance with the requirements of the Convention and the possibility of applying these standards to the ships of non-ratifying States. The certification is both an obligation and a benefit for the ships that are required to carry the certification, the benefit in the prima facie evidence of compliance that certification provides in the context of Port State control[18], and it is oriented to the goal of bringing labour and social conditions in line with the more general maritime regulatory regime for the IMO conventions[19].

Moreover, Article V, paragraph 7, of the MLC, 2006, known as the *"no more favourable treatment clause"*, establishes that "*(e)ach Member shall implement its responsibilities under this Convention in such a way as to ensure that the ships that fly the flag of any State that has not ratified this Convention do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it*". Thereby, the requirements of the Convention are imposed on ships of non-ratifying States, ensuring a level-playing field in the context of port State control. "This should not, however, mean that ships flying the flags of non-ratifying countries are treated more harshly, rather it means that they are treated the same as ship of a ratifying State"[20]

[16]*Report I (1A). Adoption of an instrument to consolidate maritime labour standards* (Geneva, International Labour Organization, 2005), page 11.
[17]*Maritime Labour Convention, 2006. Frequently Asked Questions* (Geneva, International Labour Organization, 2015) page 13.
[18]Moira L. McConnell, Dominick Devlin and Cleopatra. Doumbia-Henry, *The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime* (Leiden: Martinus Nijhoff, 2011), page 80.
[19]*ibid*, page 477.
[20]*ibid*, page 213.

Given all of the mentioned above, it is possible to conclude that the MLC, 2006 proves to be a global instrument that has the potential to harmonize the labour practices in the maritime context and give a more modern feature to relevant principles for the promotion of decent work, as aimed by the ILO.

3. Brazilian maritime labour legislation: Overview

The national legal provisions addressed to labour relations and working environment on board ships, such as occupational safety and health conditions at work, as it occurs with the general Brazilian maritime legislation, are not consolidated in a single legal document. Therefore, for the study and understanding of the Brazilian legal framework that covers this area, it is necessary to go through diverse legal texts, laws and regulations of different natures and hierarchy, observing, in addition, the principles of law that govern the subject.

From a broad perspective, the Brazilian labour legislation in general, including the laws and regulations directly and indirectly applicable to seafarers, which are appropriately considered a special category of workers by the law[21], provides rights and legal protection that are more beneficial to workers than the minimum requirements established by the International Labour Organization, as will be shown below.

Furthermore, following the purposes of the International Labour Organization to promote decent work, Brazil has ratified and promulgated a substantial number of labour conventions, among which are those specifically addressed to seafarers. In this sense, it is worth mentioning that in November 2019 it was signed in Brazil a decree that consolidates all the normative acts issued by the Federal Executive Branch that promulgated ILO Conventions and Recommendations ratified by Brazil throughout the last decades. Most importantly, the decree expressly determines that all the ILO conventions referred to in its text shall be fully implemented and observed[22].

Considering the current legislation in force in Brazil, the main legal provisions that directly apply to maritime labour agreements are provided for by Article 7 of the

[21]The Brazilian labour legislation (article 511, §3, of the Consolidated Labour Laws) defines the term "special category of workers" as a category composed by workers who perform distinct professions or functions by virtue of a special professional statute or as a result of unique living conditions. The maritime work falls within the scope of this definition because it is considered work of permanent risk, where the worker is confined on a vessel and, in the case of long-distance navigation, spends a long period of time away from home and family life.
[22]BRASIL. Decree n. 10.088 of 5 November 2019.

Brazilian Constitution, the Consolidated Labour Laws[23] (with emphasis on Articles 150 to 152, 248 to 252[24]), the Law n. 9.537 of 11 December 1997 that provides for the safety of waterway traffic - inland and maritime - and the Regulatory Norm n. 30 of the Ministry of Labour and Employment[25].

Thereafter, the Brazilian Maritime Authority, represented by the Directorate of Ports and Coasts, has legislative competence to issue regulations of particular nature intended to specifically regulate subjects on maritime law that need to be complemented, having as main objectives the safeguarding of human life at sea, the safety of waterway traffic (inland and maritime) and the prevention of water pollution. These regulations are commonly known as NORMAM[26].

In the order above proposed, it is opportune to highlight that the Brazilian Constitution establishes and incorporates several individual and social labour rights and, innovatively, gives a new status to international human rights treaties and conventions at the national level, including those addressing labour standards, in addition to having absorbed, directly and indirectly, important principles and standards of various ILO Conventions[27].

Article 7 of the Brazilian Constitution, in the chapter specially addressed to social rights, among other social rights expressly listed, grants to seafarers: protection against arbitrary or unfair dismissal; unemployment benefit; Severance Indemnity Fund (*Fundo de Garantia Sobre Tempo de Serviço - FGTS*[28]); minimum wage; irreducibility of wages; thirteenth salary or Christmas bonus[29]; higher rate for the night working; wage

[23]BRASIL. *Consolidação das Leis do Trabalho* [Consolidated Labour Laws], Decree-law n. 5.452 of 1 May 1943.
[24]These two sets of articles are specifically addressed to seafarers that are employed on board national vessels, regulating paid annual leave (vacation) and establishing the maximum number of hours of work per day, respectively.
[25]According to the Law n. 13.844 of 18 June 2019, the Ministry of Labour and Employment, which was an autonomous and independent ministry, was incorporated by the Brazilian Ministry of Economy.
[26]NORMAM is an acronym for "*Normas da Autoridade Marítima"* [Brazilian Maritime Standards].
[27]Maurício Godinho Delgado, *Curso de Direito do Trabalho* [Labour Law Course] (Sao Paulo: LTr, 2017), page 64.
[28]The FGTS is a bank deposit designed to create savings for the worker, which can only be withdrawn in the cases specified by the law, mostly when the worker is unfairly dismissed. Furthermore, these deposits serve as a form of financing for housing purchase through the national housing financial system (Martins, *Direito do Trabalho*, page 443). As determined by the Federal Constitution, this benefit is regulated by the Law n. 8.036 of 11 May 1990.
[29]The constitutional right named Christmas bonus is instituted and regulated by the Law n. 4.090 of 13 July 1962.

protection; family allowance; working hours of 8 hours a day and 44 hours a week; paid weekly rest day; overtime pay rate at least 50% higher than the normal working hours rate of pay; paid annual leave ("vacation") with an increase of 1/3 of the regular salary; maternity leave; paternity leave; advance notice of dismissal; reduction of occupational risks; additional payment for hazardous work; retirement pension; recognition of collective bargaining agreements and covenants; indemnity for work accidents; prohibition of night work and hazardous work for workers under the age of 18; prohibition of work for children under the age of 16[30].

The Consolidated Labour Laws (CLT) is a combination of diverse legal provisions and texts on labour matters that at first were sparse and addressed only to specific professions, and due to a lack of systematization could leave some professions without legal protection. This legal instrument is more than a simple compilation of laws; it resembles a proper Code[31]. Its terms – that establish the legal standards for the individual and collective labour relations provided for therein – apply to seafarers in matters which are not regulated by specific legislation.

The form and mandatory content of the employment agreement, its characterization and events of termination; the legal definition of the terms employer and employee for labour purposes; provisions inherent to hours of work, paid annual leave (so-called "vacation"), remuneration/wages, as well as general and special provisions on occupational safety and health at work, are regulated by the CLT. Therefore, for example, with respect to the right of paid vacation, the general rules contained in Articles 129 to 149 of the CLT apply to seafarers, although they are also subject to the special provisions of Articles 150 to 152 of the CLT[32].

[30]Some of these rights listed here are specifically regulated by means of complementary law. However, given the extent intended for the present paper by the author, these laws will not be individually addressed.
[31]Amauri Mascaro Nascimento, *Curso de direito do trabalho: história e teoria geral do direito do trabalho: relações individuais e coletivas do trabalho* [Labour Law course: history and the general theory of labour law: individual and collective labour relations] (São Paulo: Saraiva, 2011), Page 103.
[32]Francisco Ferreira Jorge Neto and Jouberto de Quadros Pessoa Cavalcante, *Direito do trabalho* [Labour Law] (São Paulo: Atlas, 2019), Part IV, Chapter 22.12.

Moreover, the Law n. 9.537 of 11 December 1997, known as LESTA, provides for the safety of waterway transport traffic in waters under national jurisdiction[33], and is regulated by the Decree n. 2.596 of 18 May 1998. Considering its scope on maritime labour relations, in combination these two laws define seafarer (subject to the special maritime legislation), establish the criteria for a professional to be qualified as a seafarer, reinforce the need of a formal employment agreement, determine who is the shipowner's legal representative and the highest authority on board, among other specifications[34].

In accordance to the wording of the mentioned Decree, seafarers are defined as crew members that work on board vessels classified for navigation on the open seas, maritime support, port support and for inland navigation in channels, lagoons, bays, inlets and sheltered waters[35]. The LESTA presents the definition of shipowner as the person or legal entity (corporation) that makes use of the vessel for commercial purposes bearing the responsibility for it, carrying out or not the operation of the vessel[36]. It has to be pointed out that these definitions are not as comprehensive as those introduced by the MLC, 2006, mentioned in the previous Chapter. However, for the purposes of repatriation of seafarers, Brazil has updated these definitions in line with the definitions established by the ILO for these terms, as it will be explained in Chapter 4.

In addition to the above-mentioned, there is the Regulatory Norm n. 30 – Safety and Health in the Waterway Transportation Work - which has as main objective to protect and regulate safety and health conditions for water transportation workers[37]. The

[33]Brazilian jurisdictional waters, in accordance with the wording of NORMAM-04/DPC, Chapter 1, 0101, comprehend the inland waters and maritime spaces in which Brazil exercises jurisdiction, in some degree, over activities, people, facilities, vessels and natural resources, alive or not, found in the liquid mass, at the bottom or in the marine subsoil, for purposes of control and monitoring, within the limits of international and national laws. These maritime spaces comprehend the strip of two hundred nautical miles counted from the baselines, increased by the waters overlying the continental shelf´s extension beyond the two hundred nautical miles wherever it occurs.

[34]Article 8, I and II, of the Law n. 9.537 gives the master the authority and duty to comply with and enforce the legislation, rules and regulations on board the ship, as well as the international conventions and resolutions ratified by Brazil, and the procedures established for the safeguarding of human life, for the preservation of the environment and for the safety of navigation.

[35]BRASIL. Decree n. 2.596 of 18 May 1998, Annex, Article 1, I.

[36]BRASIL. Law n. 9.537 of 11th December 1997, Article 2, III.

[37]The term “aquaviário” translated as “water transportation worker” in this paper, in the context of Brazilian maritime law, relates to a broad professional category which comprises the seafarers. The Ministry of Labour

provisions contained in this regulation apply to workers employed on board commercial vessels that fly the Brazilian flag, as well as those that fly foreign flags engaged in the transport of goods or passengers, including vessels engaged in the provision of services.

Another aspect that deserves consideration is covered by the national legal literature and deals with the event of apparent opposition between ratified international instruments and internal heteronomous laws. In this case, two fundamental principles shall be observed, which are the principle of prohibition of retrogression and the principle of the most favourable rule. The first principle informs that international human rights, including labour standards, it can only imply advances at the internal level to which they are addressed, and cannot prevail if they mean a reduction in the protective standard in contrast with the existing internal legislation. The second one, informs that, in the comparison between international conventions or treaties and internal legislation on the same matter, the normative hierarchy is established by the criterion of the most favourable rule to the worker[38].

The same principles also apply in the case of the existence of two different sets of national rules dealing with the same matter, for example, a domestic law and a collective bargaining agreement. Thus, the principle of the "most favourable rule" is to be observed, so that the one that offers more advantages to the worker is to be applied to the specific case[39].

In the same way, it should be noted that the paragraph 8 of Article 19 of the Constitution of the International Labour Organization, as the aforementioned principle, establishes that *"(i)n no case shall the adoption of any Convention or Recommendations by the Conference, or the ratification of any Convention by any Member, be deemed to affect*

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and Employment, through the Secretary of Labour Inspection, in an effort to explain how the maritime sector is internally defined, affirms that "Brazil adopts a slightly distinct categorization: the concepts waterways and ports (rather than maritime) are used and encompass, in addition to the aforementioned categories (shipping, ports, fishery and inland waterways) the following: professional divers, support crew (non-seafaring workers which provide services for docked ships), docking and tugging crew, workers on oil rigs and shipyards)" (*The good practices of labour inspection in Brazil*, page 14).

[38]Maurício Godinho Delgado, *Curso de Direito do Trabalho* [Labour Law Course] (Sao Paulo: LTr, 2017), page 65.

[39]Amauri Mascaro Nascimento, *Curso de direito do trabalho: história e teoria geral do direito do trabalho: relações individuais e coletivas do trabalho* [Labour law course: history and general theory on labour law: individual and collective labour relations] (Sao Paulo: Saraiva, 2011), page 520.

any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation". Additionally, the principle contained in this paragraph is also recalled in the preamble of the MLC, 2006.

Therefore, it is certain that, as a rule, the suppression or reduction of workers' rights are contrary to the Brazilian labour legislation as well to the intrinsic objectives of the International Labour Organization.

Apart from the above exposed, in order to mention its importance, the so-called legal precedents issued by the Superior Labour Court, that express the majority interpretation on a specific legal topic, have also a relevant role in the national level, specifically in claims individually presented by workers before the labour courts. By way of illustration, it can be highlighted the precedent n. 9[40] that clarifies the limits between hours of work and hours of rest for work performed on board ships, establishing the necessary conditions for the correct recognition of overtime.

Despite the fact that the Maritime Labour Convention, 2006 has not yet entered into force in Brazil, it is possible to infer that, in general terms, the Brazilian labour legislation applicable to seafarers does not depart from the standards set by the MLC, 2006. More than this, it appears that the vast majority of the minimum standards established by the MLC, 2006 are already observed by Brazil, as it will be exposed in detail in the next Chapter.

Finally, it is worth mentioning that, at the time this paper is being written, a law project named *BR do Mar* awaits approval by the Brazilian Chamber of Deputies. A summary of the content of this law project is presented in Chapter 6, where its correlation with the ratification of the MLC, 2006 by Brazil is identified.

[40] *Súmula* [precedent] n. 96 – *MARÍTIMO* [seafarer] – Res. 121/2003, DJ 19, 20 e 21.11.2003: The permanence of the crew member on board the ship during the hours of rest, after the working hours, does not imply the presumption that the worker is available to the employer or exceeding the normal working hours so that the occurrence of such circumstances must be proved, given the special nature of the work. (translated from the original language, Portuguese, by the author of this paper).

4. MLC, 2006 x Brazilian labour legislation: Comparison

As highlighted by the Brazilian authorities in the explanatory statement given in the legislative process for the ratification of the MLC, 2006, its acceptance and entry into force will facilitate Brazil's relations with other countries of the maritime community and with other ILO members and represents a new commitment by the Brazilian government to promote decent work for all categories of workers, whether national or foreign.

The author of this work recognizes that, observing that Brazil has ratified a considerable number of ILO conventions throughout the years, the national legal framework directly and indirectly applicable to work performed on board ships is in compliance with the international minimum standards on maritime work. Thereby, this chapter will mainly focus on the present national labour legislation, its scope and level of protection, in contrast with the minimum standards set by the MLC, 2006.

For this purpose, the comparison here presented will observe the Titles of the MLC, 2006, in the sequence in which they are structured, and the standards contained therein, followed by the similar or equivalent provisions identified in the Brazilian legislation.

To begin with, Title 1 of the MLC, 2006 establishes the minimum requirements for seafarers to work on a ship in order to ensure that: 1) no under-age persons work on a ship; 2) all seafarers are medically fit to perform their duties at sea; 3) seafarers are trained or qualified to carry out their duties on board ship; 4) seafarers have access to an efficient and well-regulated seafarer recruitment and placement system.

In the stated order, in accordance with the Brazilian Constitution[41] and Article 403 of the CLT, any kind of work is expressly prohibited for children under the age of 16. Consequently, this prohibition also applies to work performed on board ships.

[41]Article 7, XXXIII, of the Brazilian Constitution: prohibition of night, dangerous or unhealthy work for children under the age of 18, and of any kind of work for children under the age of 16, excepted the work as an apprentice for children above the age of 14.

Moreover, in the same sense of this prohibition, it is a requirement to be over the age of 18 in order to attend the educational programmes regulated and offered by the Brazilian Maritime Authority that certify and qualify persons to work on board ships[42].

Equally important, the Brazilian Constitution absolutely prohibits night work and work considered dangerous or harmful to health for persons under the age of 18[43], aligned with the restriction set by the MLC, 2006 regarding night work and work where the health or safety of the worker is likely to be jeopardized for seafarers under the age of 18[44].

In reference to the medical certificates, first and foremost, it is opportune to highlight that Brazil has developed a consistent programme for occupational health medical control that is regulated by the Regulatory Norm n. 7 (NR n. 7)[45], and this programme applies to everyone who works as an employee in general, including seafarers. However, for work performed on board ships, the NR n. 7 is complemented by the Regulatory Norm n. 30 (NR n. 30), which establishes that shipowners have the duty to promote and preserve the health of their employees (seafarers). In respect of medical examination and issuance of medical certificate for seafarers, the standards established by the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) are to be observed, according to the wording of paragraph 30.5 of the NR n. 30.

In combination, these 2 regulations – NR n. 7 and NR n. 30 – determine that the medical examination shall be conducted prior to beginning work and stipulate the requirements for the issuance of a medical certificate and its period of validity[46], and also provide for the event that a medical certificate expires in the course of a journey[47].

[42]BRASIL. NORMAM-13/DPC, Ordinance n. 111/DPC of 16 December 2003.
[43]Article 7, XXXIII, of the Brazilian Constitution and Articles 404 and 405 of the Consolidated Labour Laws (CLT).
[44]Standard A1.1, paragraph 4, of the Maritime Labour Convention.
[45]BRASIL. Norma Regulamentadora [Regulatory Norm] n. 7, Ordinance MTb n. 3.214 of 8 June 1978. This regulation imposes on all employers and institutions that admit workers as employees the obligation to implement the occupational health control programme, aiming to promote and preserve the health of all workers.
[46]items 7.4.3.1 and 7.4.4.2 of the Regulatory Norm (NR) n. 7.
[47]item 30.5.3 of the Regulatory Norm (NR) n. 30.

Subsequentially, as mentioned in the previous Chapter, the Brazilian Maritime Authority that, through the so-called NORMAMs, regulates matters relating to the safeguarding of human life at sea, the waterway transport traffic (inland and maritime) and the prevention of water pollution, has also competence to qualify and certify seafarers to work on board ships, as provided by the Law n. 7.573 of 23 December 1986. For this purpose, the NORMAM-13/DPC establishes the mandatory requirements and conditions for the recognition as a certified water transportation worker (a professional category that comprises the seafarers), based on the STCW to which Brazil is a signatory.

For those who work on board ships but do not fall under the category of water transportation workers in the strict sense[48], the training for personal safety on board a ship, according to the Standards of Training, Certification and Watchkeeping, is regulated by the NORMAM-24/DPC and it is a mandatory requirement for working on board a ship.

With regard to recruitment and placement services, the agencies that operate the selection and recruitment of seafarers in Brazil are only intermediaries, so that, in general, seafarers' employment contracts are signed on board the ship by the worker and the shipowner, that is the person or legal entity that operates the ship. Furthermore, Brazil has not ratified the ILO Convention n. 179, for this reason, the current legislation does not provide specifically for a recruitment and placement system.

By all means, considering the topics pointed out above (minimum age, medical certificate, training and qualifications), the minimum requirements for seafarers to work on board ships determined by the current Brazilian legislation are in strict accordance with the minimum standards set the by MLC, 2006 on these aspects.

The conditions of employment are dealt with in Title 2 of the MLC, 2006, establishing the basic terms for the seafarer´s employment agreement for the purpose of ensuring that seafarers: (1) have a fair employment agreement; (2) are paid for their services;

[48] *See* note 37, at 13, explaining the term "water transportation worker".

(3) have regulated hours of work or hours of rest; (4) have adequate leave; (5) are able to return home; (6) are compensated when a ship is lost or has foundered; (7) work on board ships with sufficient personnel for the safe, efficient and secure operation of the ship; (8) and to promote career and skill development and employment opportunities for seafarers.

In this sequence, seafarers' employment agreements are governed by the general rules applicable to individual employment agreements provided for in Articles 442 to 510 of the CLT. The parties in the agreement – employee and employer – are entitled to freely stipulate the conditions of the agreement as long as the legal provisions for the protection of work are observed[49] (freedom of contract). As a rule, in Brazil employment agreements are made for an indefinite period, and the circumstances in which the agreement can be made for a definite period are duly delimited. In addition, the events of alteration, suspension, interruption and termination of the employment agreement are regulated in detail.

It is emphasized here that not all the requirements listed in the Standard A2.1 of the MLC, 2006 have a correspondent provision in the current Brazilian labour legislation in force. However, this does not mean that, with respect to employment agreements, the level of protection afforded by the Brazilian labour legislation is lower than the standards established by the MLC, 2006. On the contrary, it can be concluded that the protection granted by the national provisions is based on a well-structured legal framework, although not similar to the mentioned requirements.

In this sense, by way of example, it is highlighted the protection provided by the Brazilian labour legislation to employees in cases of unfair dismissal, which has no correspondent standard in the MLC, 2006, in the topic referring to seafarers' employment agreements. It follows from the Brazilian legislation that if the employment contract made for an indefinite period – which is the main rule, whereas contracts made for a definite period are an exception – is terminated without any justification provided by law, the employer must pay a fine calculated on the basis of 40% of the balance of the employee's *FGTS* account, which consists of monthly deposits made by the

[49]Article 444 of the Consolidated Labour Laws (CLT).

employer in the amount of 8% of the monthly remuneration, throughout the course of the entire employment contract, that becomes a compensation to the employee. In addition, if the employer does not give notice period (of at least 30 days) for the termination of the employment contract made for an indefinite period, the employee is entitled to receive the salary corresponding to the notice period. These rights also apply, albeit in a proportional manner, to cases of early termination of an employment contract made for a definite period.

Notwithstanding, regarding the format of the employment agreement, it is pointed out the existence of a material divergence between the requirement determined by the MLC, 2006 and the standards accepted by the CLT[50]. The MLC, 2006 requires that "the terms and conditions for employment of a seafarer shall be set out or referred to in a clear written legally enforceable agreement", on the other hand, the CLT accepts that the employment agreement is written or verbal.

It ought to be clarified that, in the Brazilian labour law, the form of the employment contract does not constitute an essential component for the validity of the agreement, which is the reason that verbal agreements are legally accepted. Nevertheless, every worker, when employed in any kind of work, has the legal obligation to hold a professional identity called employment and social security booklet[51] in which the employer shall register ("write down") the employee's hire date, remuneration/salary and any special conditions[52]. Thus, in the absence of a written contract, if the employer has registered the employment and social security booklet, the information recorded therein serves as proof or evidence about the employment relationship in the event of doubt or disagreement.

The minimum requirements on salaries are stipulated in Article 7, IV, V, VI and VII, of the Brazilian Constitution. In addition, the concept of minimum salary, the formula for its calculation and means of payment are stated in Articles 76 to 83 of the CLT.

[50]Article 443 of the Consolidated Labour Laws (CLT).
[51]*Carteira de Trabalho e Previdência Social* [employment and social security booklet] was previously named *Carteira Profissional* [professional booklet].
[52]Articles 13 to 56 of the Consolidated Labour Laws (CLT).

Furthermore, regarding the remuneration, which comprises the salary and other pay-related benefits, Articles 457 to 467 of the CLT provide for.

In a nutshell, the Brazilian labour legislation determines that the payment of wages cannot be stipulated for or made at an interval greater than one month; the date for the payment shall not exceed the fifth working day of the month following the month in which the work was performed. In addition, the employer is prohibited from arbitrarily making deductions from the employee's remuneration, except in cases of payment in advance and circumstances authorized by law or collective agreements. In the same sense as the principles contained in MLC, 2006, the CLT establishes that work of the same value must correspond to equivalent remuneration to workers employed in the same business establishment, without discrimination based upon gender, colour, nationality or age.

Definitely, the general requirements established by the Articles mentioned above are to be observed in any kind of employment agreement, nevertheless, considering the specific nuances of the seafarers' working conditions, the wage and other aspects related to it may be determined through a collective bargaining agreement. This alternative can guarantee the application of the standards of the MLC, 2006 that perhaps are not expressly covered by the domestic legislation. However, it should be noted that MLC, 2006 does not establish objective parameters such as minimum value or formula for calculating the wages, being generic in this aspect.

With accuracy and attention to the peculiarities of work performed on board ships, the CLT deals with the working hours of seafarers in a distinct topic, Articles 248 to 251. These articles stipulate, in essence, that the hours of work in a day shall not exceed 8 hours, either continuously or intermittently; that any time worked that goes beyond 8 hours of work is deemed to be overtime; the need of keeping on board a record of the seafarers daily hours of work; and the exceptional situations when possible excess of the normal hours of work does not constitute overtime.

As mentioned before, the national labour legislation applicable to seafarers is sparse. Therefore, the hours of rest are separately regulated by the NORMAM-01/DPC, which determines that the minimum hours of rest shall not be less than 10 hours in a 24-hour

period and 77 hours in any 7-day period. Furthermore, it also establishes that the schedule of service of the seafarers shall be posted in an accessible place and the seafarers shall receive a copy of the records of their daily hours of work and hours of rest, in accordance with the provisions of the MLC, 2006 on this subject.

Regarding the entitlement to leave, it is pointed out that the national rules that apply to seafarers in this aspect are in harmony with the minimum standards required by the ILO, given that Brazil has ratified the Seafarers' Annual Leave with Pay Convention (consolidated by the MLC, 2006). In general, the right to paid annual leave is granted by the Brazilian Constitution and specifically regulated by the CLT[53], ensuring the minimum of 30 days of leave with pay per 12 months of employment and a bonus calculated on the basis of 1/3 of the normal salary – this bonus is commonly called holiday bonus.

With regard to the right to be repatriated, it is opportune to keep in mind that Brazil has also ratified the ILO Convention n. 166. In accordance with the standards set by this convention, the Decree n. 6.968 of 29 September 2009 establishes that all seafarers employed on board a merchant ship registered in Brazil have the right to be repatriated, having the shipowner the duty to pay for the repatriation expenses. However, when the seafarer does not fall within the situations in which the shipowner is obliged to pay for the repatriation[54] or when the termination of the employment agreement was caused by the seafarer (e.g. fair dismissal), the latter has to reimburse the expenses incurred by the shipowner with the repatriation.

It is noted that the Brazilian legislation imposes on the shipowner the obligation to repatriate the seafarer in any situation that is necessary to return home (destination selected for repatriation), including the cases where the reason for the repatriation was

[53]Article 7, XVII of the Brazilian Constitution and Articles 150 to 152 of the CLT.

[54]Similarly to the Standard A2.5.1 and the Guideline B2.5.1 of MLC, 2006, the seafarers are entitled to repatriation: I) in the case of the seafarers' employment agreement expires or it is terminated while they are abroad; II) in the case of illness, casualties or other medical condition while the ship is abroad and the seafarer is fit to travel; III) in the event of shipwreck; IV) in the event of the shipowner abandons the ship or is not able to fulfil its legal or contractual obligations as an employer by reason of insolvency, sale of the ship, change of ship's registration, the arrest of the ship or any similar reason; V) in the event of the ship being bound for a war zone to which the seafarer does not consent to go; VI) and when the ship has been abroad after nine consecutive months since the boarding of the seafarer, without prejudice to what is established in a collective bargaining agreement.

motivated by the seafarer (e.g. misconduct or neglect). Therefore, this obligation is more comprehensive than the standards set by MLC, 2006 on repatriation.

As briefly mentioned in the previous Chapter, in determining the scope of the provisions on repatriation of seafarers, the Decree n. 6.968 of 29 September 2009 updated the definition of seafarers and shipowners, in line with the definitions provided by the MLC, 2006. Thus, seafarers are defined as any worker certified by the Brazilian Maritime Authority to work on board a ship on a professional basis or any person who is employed on board a ship engaged in commercial maritime navigation – thus, it is included in the definition those workers that are employed on board a ship but were not considered to fall under the category of work transportation workers in the strict sense. Furthermore, it is defined that shipowner is deemed to be the person or legal entity who has assumed the responsibility for the employment agreements of the seafarers[55].

The Standard A2.5.2 of the MLC, 2006 establishes the requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment. Similarly, article 3 of the Decree n. 6.968 of 29 September 2009, mentioned above, provides that, in the event of a seafarer is deemed to be abandoned[56], the Brazilian Ministry of Foreign Affairs shall arrange for the repatriation of the seafarer. Besides that, the national authorities abroad (embassies and consulates) shall provide assistance in order to ensure the necessary maintenance and security of the seafarer deemed abandoned. The costs incurred in repatriating seafarers in this situation shall be reimbursed by the shipowner - or who has assumed the responsibility for the employment agreement of the seafarer deemed abandoned - to the Brazilian Federal Government.

Thereafter, the MLC, 2006 distinguishes between the entitlement to compensation in cases of injury, loss or unemployment arising from a ship's loss or foundering and in cases of injury, loss or unemployment arising out of other circumstances. However,

[55]Article 1, §1, of the Decree n. 6.968 of 29 September 2009.

[56]This provision applies when the shipowner fails to repatriate the seafarer whose employment agreement has expired or has been terminated while the vessel is abroad; in the event of illness or injury; in the event of shipwreck; in the event of the shipowner abandons the vessel or fails to fulfil his legal and contractual obligations as an employer.

the author of this work is of the opinion that, in the national context, according to the wording of Article 2 of the CLT[57], it is the shipowner who shall bear the risk of the economic activity so that the cases of injury, loss or unemployment arising from a ship's loss or foundering fall within the scope of the general legislation on social security and shipowner's liability.

The NORMAM-01/DPC dictates that all ships that fly the Brazilian flag, except military ships and pleasure crafts, must be manned by a safety crew, which combines a minimum number of crew members and the qualification of the seafarers for the safe operation of the ship. The fulfilment of the requirements imposed by this regulation grants the certification that the ship is considered to be safely manned, according to the Brazilian navigation regulation and IMO principles of safe manning[58].

In relation to career and skill development, the NORMAM-30/DPC presents standards for training and education of seafarers, considering the need to adapt the individual skills required from seafarers to the constant technological evolution. In addition to the qualification and certification of seafarers, this regulation provides for programmes aimed at career improvement, updating, adaptation, among others. The NORMAM-30/DPC also enables ship companies, through the educational institutes that offer the mentioned training, select candidates from the courses and training for seafarers to participate in internships programmes on board ships.

Given the above, it appears that the Brazilian labour legislation does not deviate from the standards on conditions of employment presented at Title 2 of the MLC, 2006, despite some discrepancies, as the material divergence pointed out above regarding the form of the employment agreement (the MLC, 2006 establishes that the

[57]Article 2 of the CLT, among other things, establishes that the employer bears the risk of the economic activity.
[58]Following the principles of IMO Resolution A.1047(27), the NORMAM-01/DPC provides that in determining the safety crew is to be observed the capability to maintain safe navigational, engineering and radio watches in accordance with regulation VIII/2 of the 1978 Convention and also maintain general surveillance of the ship; moor and unmoor the ship; manage the safety functions of the ship when employed in a stationary or near-stationary mode at sea; perform operations, as appropriate, for the prevention of damage to the marine environment; maintain the safety arrangements and the cleanliness of all accessible spaces to minimize the risk of fire; provide for medical care on board ship; ensure safe carriage of cargo during transit; inspect and maintain, as appropriate, the structural integrity of the ship; maintain position and heading (dynamic positioning).

employment agreement shall be written, on the other hand, the Brazilian legislation allows the agreement to be verbal).

Regarding the entitlement to compensation in cases of injury, loss or unemployment arising from a ship's loss or foundering, it has to be noted that it is the author´s understanding that this event falls within the scope of the general legislation on social security and shipowner´s liability. Therefore, the existence of a gap or shortcoming in this item is not affirmed here. Nevertheless, it is noteworthy that the implementation of the mandatory provisions of the MLC, 2006 may be accomplished through procedures that can be considered equivalent[59], not necessarily similar.

Title 3 of the MLC, 2006 provides for the minimum standards for accommodation, recreation facilities, food and catering, in order to ensure that seafarers have: 1) decent accommodation and recreational facilities on board, 2) access to good quality food and drinking water provided under regulated hygienic conditions.

The standards for accommodation and recreation are provided for the NR n. 30, paragraphs 30.7 and 30.8, respectively. Under the topic named "hygiene and comfort on board", in general terms, it is established that means of access, sleeping rooms and recreational facilities shall be such as to ensure adequate security, protection against weather and conditions of navigation, insulation from heat, cold, excessive noise or effluvia from other parts of the vessel. Regarding the recreation facilities, in a slightly way, it is only determined by the NR n. 30 that the facilities shall be provided with proper furniture.

As the MLC, 2006 determines that the competent authority shall pay particular attention to ensuring implementation of the minimum requirements relating to the size of rooms and other accommodation spaces, heating and ventilation, noise and vibration and other ambient factors, sanitary facilities, lighting, and hospital accommodation, the NR n. 30 also regulates these matters. However, the provisions on these topics are not as comprehensive and detailed, such as those presented by the MLC, 2006.

[59]Article VI, paragraph 3, of the MLC, 2006.

Regarding food and drinking water, the NR n. 30, paragraph 30.6, determines that ships shall carry on board food supply and drinking water, observing the number of seafarers on board, the duration of the voyage and possible emergency situations. It is specified that the meals must be varied and of nutritional value, appropriate to the type of activity and that ensures well-being on board.

Nevertheless, it is observed that the MLC, 2006, regarding food and drinking water, determines that it shall be taken into account the differing cultural and religious backgrounds. Hence, in this respect, the minimum standard is presented as "*food and drinking water supplies, having regard to the number of seafarers on board, their religious requirements and cultural practices as they pertain to food, and the duration and nature of the voyage, shall be suitable in respect of quantity, nutritional value, quality and variety*"[60]. It should be noted that, although the Brazilian Constitution establishes gender and race equality and guarantees religious freedom for all Brazilians and foreigners residing in the country, and this guarantee is considered to be an inviolable right, with regard to the provision of food on board ships, the NR n. 30, in an objective way, provides essentially for the quality of the meals and their nutritional value, determining that it should be sufficient for the number of seafarers on board the ship, but does not make any consideration regarding the cultural or religious origins of the crew, as the MLC, 2006 does.

In view of the above, with regard to the minimum standards for accommodation, recreation facilities, food and catering, it can be concluded that there are some gaps in the national legislation. Despite the fact that Brazil has ratified the ILO Conventions n. 92 and n. 133, it follows from the analysis of the national provisions and the minimum standards introduced by the MLC, 2006, that the NR n. 30 does not address all the requirements established by the MLC, 2006 on sleeping rooms, mess rooms, recreation facilities, minimum headroom and lighting. Certainly, these two Conventions, even though being ratified as mentioned, were not properly implemented by Brazil. Therefore, these items which are not provided by the current national

[60]Standard A3.2, paragraph 2, (a), of the MLC, 2006.

legislation or are not in accordance with the standards of the MLC, 2006 may have to be subject of a legislative process so that their implementation is fully achieved.

Opportunely, it has to be emphasized that the standards on accommodation (MLC, 2006, Regulation 3.1, paragraph 2) which relate to ship construction and equipment only apply to ships constructed on or after the date when the Convention comes into force for the Member concerned, recalling that the MLC, 2006 will enter into force in Brazil on the 7th May 2021, so it cannot be recognized any inadequacy in the national legal framework regarding this aspect.

Lastly, the Title 4 of the MLC, 2006 establishes the minimum standards for health protection, medical care, welfare and social security protection, providing for: 1) medical care on board ship and ashore; 2) shipowner's liability; 3) health and safety protection and accident prevention; 4) access to shore-based welfare facilities; 5) social security.

The already mentioned NORMAM-01/DPC[61] requires that ships that are engaged on voyages of more than 3 days' duration and have a crew of 12 or more seafarers shall have a health facility, that has to be suitably situated and ensure the adequate consultation of the ill or injured seafarer, and shall not be used for other than medical purposes.

At present, the national regulation corresponding to the standards set by the MLC, 2006 on medical care ashore is within the scope of the Brazilian social security, that grants to all workers in Brazil the right to free health and medical care[62]. Nevertheless, considering the peculiarities of the work performed on board a ship, in the event of illness or injury occurring on board when the ship is abroad, it is determined by the law that the shipowner has the duty to pay for all the costs of medical treatment until the seafarer´s health condition is considered adequate to return to the chosen point for repatriation[63].

[61]paragraphs 0424 and 0924 of the NORMAM-01/DPC.
[62]BRASIL. Decree n. 3.048 of 6 May 1999.
[63]Article 2, V, of the Decree n. 6.968 of 29 September 2009.

With regard to shipowner's liability, it should be noted that, in the Brazilian legislation, some provisions that correspond to the minimum standards established under the regulation regarding the shipowner's liability in the MLC, 2006 are associated with the scope of the national social security law.

Regulation 4.2 of the MLC, 2006 aims to ensure that seafarers are protected from the financial consequences of sickness, injury or death occurring in connection with their employment. In this aspect, the Brazilian Constitution[64] establishes that employers shall provide occupational accident insurance[65] and pay for it, without excluding the employer´s liability for compensation in the event of wilful misconduct or gross negligence.

With regard specifically to seafarers, in the event that the occupational accident occurs abroad, the Decree n. 6.968 of 23rd September 2009 imposes on shipowners the duty to pay wages and other pay-related benefits until the sick or injured seafarer has been repatriated to the destination selected for repatriation in the employment agreement and to cover the medical care expenses, when it is needed, until the seafarer is medically considered fit for travel again[66].

As mentioned in Chapter 3, health and safety protection and accident prevention are regulated by the NR n. 30. This regulation combined with the NR n. 01, the NR n. 04 and the NR n. 05 establishes a detailed onboard programme for the prevention of occupational accidents and injuries and promotion of occupational safety and health protection.

[64]Article 7, XXVIII, of the Brazilian Constitution.

[65]The occupational accident is the accident that occurs in connection with an employment agreement causing physical injury or functional limitation that results in death, temporary or permanent disability. This term has a broad scope and covers situations that go beyond its literal meaning. Therefore, sicknesses acquired due to special conditions in which the work is performed or triggered by them are considered to be an occupational accident. In the same sense, the following events, when they occur at the workplace and during working hours, are deemed to be equivalent to an occupational accident: act of aggression, sabotage or terrorism committed by a co-worker or a third party; physical offence, including the offence committed by a third party, due to a work-related dispute; wilful misconduct, negligent or reckless actions perpetrated by a co-worker or a third party; an action from a person deprived of reason; collapse, flood, fire and other incidental or consequential force majeure cases; illness arising from accidental contamination of the employee at work; the accident occurred, even outside the working hours, when the employee carries out services under the order or authority of the employer; the accident occurred on the employee's way from home to the workplace or vice versa.

[66]Article 2, III and V, of the Decree n. 6.968 of 29 September 2009.

In reference to shore-based welfare facilities, it is noteworthy that the Convention does not impose an obligation on the Member States to implement and provide welfare facilities for seafarers. The provisions of the MLC, 2006 are intended to regulate welfares facilities where they exist and do not establish specific obligations that go beyond encouraging and promoting the development of welfare facilities. According to the wording of Regulation 4.4, paragraph 1 and Standard A4.4, paragraph 1, respectively: "*(e)ach Member shall ensure that shore-based welfare facilities, where they exist, are easily accessible*" and "*(e)ach Member shall require, where welfare facilities exist on its territory, that they are available for the use of all seafarers, irrespective of nationality, race, colour, sex, religion, political opinion or social origin and irrespective of the flag State of the ship on which they are employed or engaged or work*".

The Brazilian social security is provided for and regulated by the Law n. 8213 of 24 July 1991. It is, as a rule, a contribution-based system and aims to ensure its beneficiaries (workers) and their dependants[67] indispensable means of maintenance in case of sickness or impossibility of working, unemployment, old age, imprisonment and death[68]. It is a public system controlled by the National Social Security Institute[69].

In view of the above, observing the minimum standards contained in Title 4 of the MLC, 2006 in contrast with the national legislation covering the same matter, it is necessary to take into account that some items presented by the Convention are within a system that was developed and consolidated over many years in Brazil, so any difference in this aspect is simply due to the peculiar characteristics of the Brazilian legal framework. Consequently, gaps or shortcomings cannot be pointed out at this point.

Title 5 of the MLC, 2006 addresses provisions and principles relating to compliance and enforcement of its regulations. In this aspect, specifically the implementation of

[67]According to the wording of the Social Security Law (Article 16, I, II and III), it is considered dependant on beneficiaries insured by the social security: the spouse (married and non-married), children not emancipated under the age of 21 or disabled, physically or mentally; the parents; sibling not emancipated under the age of 21 or disabled (physically or mentally).
[68]Article 1 of the Law n. 8213 of 24 July 1991.
[69]*Instituto Nacional de Seguridade Social* [National Social Security Institute] is an organ of the Brazilian Ministry of Social Security.

inspection measures, given that Brazil has ratified the ILO Convention n. 147 in 1991 and the Convention n. 178 in 2007, the entry into force of MLC, 2006 will essentially, with regard to inspection of ships, represent the modernization and consolidation of the current inspection rules, without causing significant changes in the system that is currently in place[70].

Apart from the above, in this Title, the MLC, 2006 introduces the certification of maritime labour conditions that through a certificate – maritime labour certificate – attests that the ship has been duly inspected and the requirements of the Convention relating to working and living conditions of the seafarers have been met[71]. Thus, for the reason that it is an innovation introduced by the MLC, 2006, there is no corresponding measure in the current maritime inspection system in Brazil.

The comparison presented in this Chapter leads to the conclusion that the Brazilian labour legislation applicable to seafarers does not depart from the standards set by the MLC, 2006, and that the vast majority of the minimum standards established by the MLC, 2006 is already covered by the current national legal framework.

The outcome of the analysis made so far is not limited to the conclusion that the Brazilian labour legislation is in line with minimum standards set by the MLC, 2006, it goes beyond, and in some aspects, there are rights granted to Brazilian workers (employees) that do not find any similar provision in the MLC, 2006, as it will be exposed in the next Chapter, being presented an attractive side of the Brazilian labour legislation.

[70]The *Agência Nacional de Transportes Aquaviários* [National Agency for Water Transportation] is an entity linked to the Ministry of Infrastructure and is responsible for regulating, supervising and monitoring the activities of waterway transport services.

[71]Regulation 5.1.1, paragraphs 2 and 4, of the MLC, 2006: "2. Each Member shall establish and effective system for the inspection and certification of maritime labour conditions, in accordance with Regulations 5.1.3 and 5.1.4 ensuring that the working and living conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in this Convention." "4. A maritime labour certificate, complemented by a declaration of maritime labour compliance, shall constitute prima facie evidence that the ship has been duly inspected by the Member whose flag it flies and that the requirements of this Convention relating to working and living conditions of the seafarers have been met to the extent so certified."

5. Brazilian labour legislation: More beneficial rights

From the comparison presented in the previous Chapter, it appears that, in general, the Brazilian labour legislation is in harmony with the minimum standards established by MLC, 2006. Nevertheless, it was also identified that, in some aspects, there are gaps in the national legal framework and divergences between this and the wording of the MLC, 2006.

However, it is worth noting that some rights granted by the Brazilian legislation to all Brazilian employees, including seafarers, do not have any equivalent or correspondent provision in the MLC, 2006. Thus, considering the actual benefit of these rights for the employees (in the context of this work, seafarers), the Brazilian labour legislation in this aspect presents itself at a higher level when in contrast with the MLC, 2006.

The first of these rights to be mentioned here is the constitutional right called Christmas' bonus or thirteenth salary[72]. This right consists in the extra payment of a one month's salary (equal to the December remuneration) to the employee in December. It is considered a mandatory social right and is non-negotiable, thus it cannot be subjected to a collective bargaining. The calculation of its amount is based on the employee's remuneration and corresponds to 1/12 of the remuneration for each month of work during a calendar year. The thirteenth salary or Christmas' bonus shall be paid until the 20th December of each year[73]. In the case of termination of the employment agreement, with the exception of the event of fair dismissal, the thirteenth salary shall be proportionally paid to the employee.

Another labour right granted to all employees in Brazil is the Government Severance Indemnity Fund for Employees[74]. This right is also of a constitutional nature and has a pecuniary feature. The Government Severance Indemnity Fund for Employees (FGTS) is mandatory and consists of monthly payments made by the employer, in a restricted

[72]BRASIL. Law n. 4.090 of 13 July 1962.
[73]Francisco Ferreira Jorge Neto and Joberto de Quadros Passos Cavalcante, *Direito do Trabalho* [Labour Law] (São Paulo: Atlas, 2019) Part IV, Chapter XVI, 16.7.2.2.
[74]*Fundo de Garantia Sobre Tempo de Serviço [Government Severance Indemnity Fund for Employees]* is provided by Article 7, III, of the Brazilian Constitution and by the Law n. 8.036 of 11 May 1990.

access bank account in the employee's name, which can be withdrawn by the employee only in the situations delimited by the law, constituting the global and undifferentiated set of deposits a social fund of a legally specified destination[75]. Its calculation is on the basis of 8% of the monthly remuneration, including the above-mentioned thirtieth salary.

The FGTS's legal nature, in a general sense, is compensation, although it can also be recognized as a salary laid up for future use in the event of, for example, termination of the employment agreement (unfair dismissal, including the cases arising from force majeure)[76].

The third right to be highlighted is the "holiday bonus" also provided by the Brazilian Constitution[77]. In addition to ensuring the minimum of 30 days of leave with pay per 12 months of employment, it imposes on the employer the duty of pay the employee a bonus calculated on the basis of 1/3 of the normal remuneration. It is commonly understood that, in practice, the employee on holiday has an increase in his regular expenses, which is the justification for the additional payment of 1/3 of the normal remuneration[78].

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[75]Mauricio Godinho Delgado, *Curso de direito do trabalho* [Labour law course] (São Paulo: LTr, 2017), page 1440.
[76]The wording of the law that regulates the FGTS has being modified recently (Law No. 13.932 of 2019) and the events for withdrawing the fund have been expanded. According to the new wording of the law, the amounts deposited in the worker's account can be withdrawn in the occurrence of the following events: unfair dismissal; termination of the employment contract by mutual agreement between employee and employer; dissolution of the company, closure of its branches or agencies, suppression of part of its activities, death of the individual employer; retirement granted by the Social Security; death of the worker (the account balance is paid to their dependents or successors); acquisition of a residential house through the housing financial system or the payment, total or partial, of the price for the its acquisition; when the worker remains for three years uninterrupted outside the FGTS regime; normal termination of a definite-term employment agreement; when the worker or any of his/her dependents is diagnosed with a malignant cancer; investment in shares of Mutual Privatization Funds, with a maximum use of 50% of the existing balance available in the account, and payment of shares in the FGTS Investment Fund; when the worker or any of his/her dependents is diagnosed with the HIV virus; when the worker or any of his/her dependents is diagnosed with a terminal illness; when the worker is the age of 70 or older; personal need, the urgency and seriousness of which results from a natural disaster, under the conditions specified in the law; when the disabled worker, by prescription, needs to acquire orthosis or prosthesis to promote accessibility and social inclusion; acquisition of real estate; annually, in the month of the worker's birthday; at any time, when the balance account is less than R$ 80.00 and there has been no movement for at least 1 year; when the worker or any of his dependents has a disease considered rare recognized by the Ministry of Health.
[77]Article 7, VIII, of the Brazilian Constitution.
[78]Amauri Mascaro Nascimento, *Curso de direito do trabalho: história e teoria geral do direito do trabalho: relações individuais e coletivas do trabalho* [Labour Law course: history and the general theory of labour law: individual and collective labour relations] (São Paulo: Saraiva, 2011), page 799.

In addition to these rights, it is noteworthy to mention that the minimum rate of pay for overtime work established by the current national labour legislation – at least 50% higher than the employee's regular rate of pay[79] – is above the minimum rate provided by the Guideline B2.2.2.2 of the MLC, 2006, which is 25%. Nevertheless, as mentioned in Chapter 2, the items contained in the guidelines of the Convention are not mandatory.

Moreover, the protection afforded by the Brazilian labour legislation in cases of unfair dismissal, as detailed explained in Chapter 4, does not find a correspondent standard in the MLC, 2006.

Considering the extent of the benefits granted to workers (employees) by the rights listed above, it can be concluded that the Brazilian labour legislation, a complex combination of laws and regulations of different hierarchies, offers high protection to workers, in all types of employment agreements, and imposes on the employer obligations of strict compliance.

In summary, the Brazilian legislation takes into account the disadvantaged situation of the employee in comparison with the employer, holder of the means of production, which is the reason that a substantial part of the labour rights, considered as social rights and provided for by the Brazilian Constitution, are non-negotiable and irrevocable. Furthermore, it is demonstrated that the law covers not only the contractual aspects of the labour relations, health and safety at work are also well regulated, and the national social security system provides adequate protection for the workers and their dependents.

Consequently, the entry into force of the MLC, 2006 will not bring significant changes or create more beneficial rights for the Brazilian seafarer employed on board ships that fly the Brazilian flag. However, as it will be explained below, it is expected that the entry into force of the MLC, 2006 will ensure that ships that fly foreign flags, when operating in Brazilian waters, comply with the minimum labour standards established by the Convention.

[79] Article 7, XVI, of the Brazilian Constitution.

6. Law project *Br do Mar.* Brazilian cabotage regime

At the time this paper is being written, the law project called *"BR do Mar"* submitted by the Federal Government – Brazilian executive branch – to the Chamber of Deputies awaits to be voted and eventually approved. This law project introduces an incentive programme for cabotage – navigation between Brazilian ports – and according to its wording, aims to expand the offer of cabotage transport services on the Brazilian coast, increasing competitiveness between companies and encouraging the development of the national ship industry[80].

Considering the scope of this work, in order to determine the pertinence of the object analysed in this Chapter (law project *BR do Mar)*, it is proposed the following question: what is the correlation between the ratification of the MLC, 2006 and the navigation between Brazilian ports (cabotage)? The answer is found in the reasoning behind the project that institutes the aforementioned programme: the increase in the number of foreign vessels operating in the national cabotage transport (controlled by companies constituted under Brazilian laws[81]) is essential to reduce the impact from the volatility of the international market on the domestic market, providing a regular and stable internal transport service with predictable prices[82].

In other words, it is a national project that aims to open the cabotage transport market in Brazil to ships registered in foreign countries, modifying the current legislation that allows vessels registered in foreign countries to operate in cabotage only in special events delimited by the law[83]. At present, ships that operate in cabotage shall fly the Brazilian flag, as a rule, not even being allowed the operation of ships built in a foreign country.

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[80]BRASIL. *Projeto de lei* [law project] *PL 4199/2020*, available at https://www.gov.br/infraestrutura/pt-br/brdomar

[81]This type of company is called "*Empresa Brasileira de Navegação*" [Brazilian Navigation Company], it is a legal entity constituted in accordance with the Brazilian law, whose object is the waterway transportation and which is authorized to operate by ANTAQ. Its capital can be entirely composed of capital of foreign origin. For more details on the subject, *see* https://www.gov.br/infraestrutura/pt-br/NEWSLETTERBRDOMAReng.pdf

[82]Technical note with the explanatory statement in favour of BR do Mar, available at https://www.gov.br/infraestrutura/pt-br/imagens/2020/09/NotaTcnicaBRdoMar.pdf

[83]BRASIL. Law n. 9.432 of 8 of January 1997.

In view of the above, considering that the Brazilian government foresees that such measure will create more work opportunities for the Brazilian seafarers, the ratification and implementation of the MLC, 2006 intend to provide legal certainty to Brazilian seafarers to be employed on board a foreign ship, regarding the compliance with the minimum labour standards (working conditions and safety at work), as affirmed by the Brazilian Infrastructure Ministry in the explanations of the law project *BR do Mar*.

In the same sense, it is supposed that the entry into force of the MLC, 2006 in Brazil will dispel the internal discussion about the law that must apply to the employment agreements of Brazilian seafarers employed on board ships that fly a foreign flag, in spite the MLC, 2006 does not expressly deal with this subject.

In this context, article 12 of the law project *BR do Mar* determines that the law of the flag State shall apply to the employment agreements of crew members who work on board a foreign vessel chartered in accordance with this law (law project), observing the international rules established by international organizations duly recognized, in reference to protection of working conditions, safety and the environment on board ships.

In Brazil, in legal claims brought before the labour courts by seafarers, it is common to discuss which law shall govern the Brazilian seafarers' employment agreement when the work is performed on board a ship that flies a foreign flag, whether the law of the flag State or the Brazilian labour law.

In these legal disputes, despite the fact the employment contract has been entered into under the terms of the law of the flag State, the seafarers claim for the application of the Brazilian labour law to their employment agreement for considering it more beneficial. It occurs that, in practice, there is no consensus in the decisions held by the labour courts in these claims. On the one hand, some courts consider that the rules of private international law, specifically the Bustamante Code, must prevail, so that the law of the flag State shall govern the seafarers' employment agreements. On the other hand, other courts that understand that, if the Brazilian labour law is more favourable

to the employee, this must be the law to be applied to the seafarers' employment agreement.

The judgments in which the courts decide for the application of the Brazilian labour law to the seafarers' employment agreements for work performed on board ships that fly foreign flags are grounded on the Law n. 7.064 of 6th December 1982[84], on the principle of the most favourable rule, already explained in Chapter 3, and on the principle of most significant relationship (the application of this last principle by the Brazilian labour courts is inspired by the U.S. courts[85]).

In order to illustrate this issue, two decisions held by the Brazilian Superior Labour Court (the highest court for labour matters) are presented below. These decisions were issued in cases where the application of the Brazilian labour legislation to employment agreements for work performed on board ship that flies a foreign flag is claimed. Although the object of the claims is similar, the decisions held by the Superior Labour Court are utterly divergent from each other.

The first one is the case *RR* 01829-57.2016.5.13.0005 (Superior Labour Court*, DEJT 01/02/2019*)[86]. It concerns a Brazilian seafarer employed on board a cruise ship registered under a foreign flag. The precontract was made in Brazil and the work was performed both in Brazilian waters and in international waters. The question brought before the labour court was the law applicable to the employment agreement. In this case, the Supreme Labour Court held:

[84]The Law n. 7.064 of 6 December 1982 provides for the situation in which Brazilian workers are hired to work abroad or transferred to work abroad. Article 3, II, of this law establishes that, if the Brazilian labour legislation is more favourable than the foreign legislation, as a whole or in a certain matter, the Brazilian law must be applied to the employment agreement.

[85]Carlos Henrique Bezerra Leite, *Curso de Direito do Trabalho* [Labour law course] (São Paulo: Saraiva, 2019), page 207.

[86]Heading: *Work on board a cruise ship registered under foreign flag. Precontract made in Brazil. Work performed in Brazilian waters and in international waters. Seafarers. Conflict of law. Applicable law. Law of the flag State (Bustamante Code).* Reference: RR-01829-57.2016.5.13.0005, 4th *Turma*, *Ministro* Alexandre Luiz Ramos, DEJT 01.12.2019, available at http://aplicacao4.tst.jus.br/consultaProcessual/consultaTstNumUnica.do?consulta=Consultar&conscsjt=&numeroTst=01829&digitoTst=57&anoTst=2016&orgaoTst=5&tribunalTst=13&varaTst=0005&submit=Consultar
(The judgement was translated from the original language, Portuguese, by the author of this paper)

"The international shipping industry, including cruise ships, has a global feature, both in terms of nationality of the ships (flag) and in terms of diversity of crew nationalities, requiring that seafarers have uniform protection when working on board the same vessel. The understanding of the application of the Brazilian legislation to Brazilian seafarers employed by foreign ships does not prevail in view of the reality of the economic activity developed by international ship companies, or else in each ship there would be as many governing laws as the number of nationalities of the crew members. All crew members must have the same contractual basis, either in terms of wages or in terms of rights. Granting Brazilian seafarers rights that are not provided for the employment contract would lead to a breach of isonomy and a subversion of the maritime authority, since the masters themselves could question their obligations under the law of their country, disrespecting the law of the flag State. Thereby, it is necessary to apply the law of the flag State to all crew members, as expressly prescribed in article 281 of the Private International Law Convention (Bustamante Code, ratified by Brazil and promulgated by the Decree n. 18.791/1929)

(…)

Thus, the Brazilian law does not apply to Brazilian workers employed on board a ship (1) because it is maritime work performed in a ship registered in another country; (2) because it is not an employee recruited in Brazil and transferred to work abroad; (3) because the principle of the most favourable rule is to be applied in the case of a normative antinomy in the existence of more than one legal rule applicable to the same factual situations, which does not happen in this case, as there is no conflict between rules, but a conflict of systems." (RR-1829-57.2016.5.13.0005, 4ª Turma, Relator Ministro Alexandre Luiz Ramos, DEJT 01/02/2019).

The second one is the case *RR* 10165-37.2016.5.09.0013 (Superior Labour Court, *DEJT 07/02/2020*)[87]. As the claim cited before, it concerns a Brazilian seafarer

[87]Heading: *International employment contract signed in Brazil. Work on board cruise ships in Brazilian and international waters. Applicable legislation.* Reference: RR 10165-37.2016.5.09.0013, 2nd *Turma*, *Ministro* José Roberto Freire Pimenta, DEJT 07.02.2020, available at

employed on board a cruise ship registered under a foreign flag. The work was performed both in Brazilian waters and in international waters. The question brought before the labour court was also the law applicable to the employment agreement. However, in this case the Supreme Labour Court held:

> "*In this case, the national jurisdiction cannot be excluded, in accordance with Article 651, §2, of the CLT, since the claimant is Brazilian and was hired in Brazil to work on board a foreign ship both in Brazilian and in international waters. (…) it is this Tribunal understanding that the Law n. 7.064/82 provides for the application of the Brazilian labour law to the worker that works abroad when this legislation is more favourable than the legislation of the State where the work is performed, as it follows from Article 3, II, of the Law n. 7.064/82. In this way, there is no obstacle to the application of the Brazilian legislation in whatever is most favourable to the claimant. It should be added that, although the International Law establishes that the law of the flag State shall be applied to work performed on the high seas, that is the law of the country in which the vessel is registered, this rule is not absolute, there are exceptions. In fact, due to the principle of the most significant relationship, it is possible to deviate from the rules of Private International Law when the employment relationship has a considerably stronger link with another legal system. This is the so-called 'escape valve' that allows the judge to decide which legislation should be applied to the specific case. In addition, the application of the Brazilian legislation to Brazilian employees, as it is more beneficial to them, does not violate the principle of isonomy. (…)" (RR-10165-37.2016.5.09.0013, 2ª Turma, Relator Ministro Jose Roberto Freire Pimenta, DEJT 07/02/2020).*

These two decisions held by the Superior Labour Court in cases dealing with the same matter demonstrate that, in practice, the law to be applied to the employment contract of a Brazilian seafarer employed on board a ship that flies a foreign flag is a

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http://aplicacao4.tst.jus.br/consultaProcessual/consultaTstNumUnica.do?consulta=Consultar&conscsjt=&numeroTst=10165&digitoTst=37&anoTst=2016&orgaoTst=5&tribunalTst=09&varaTst=0013&submit=Consultar
(The judgement was translated from the original language, Portuguese, by the author of this paper)

controversial subject in the Brazilian judicial sphere. As demonstrated, in the first case, the Court has recognized that the seafarer´s employment agreement shall be governed by the law of the Flag State, in compliance with the rules of Private International law (Bustamante Code). In the second case, the Court has determined the application of the Brazilian labour legislation to the seafarer's employment contract, as it is considered more beneficial to the worker, in disregard of the rules of Private International law.

Given the above, the Brazilian government expects that, with the entry into force of the MLC, 2006, legal cases on this subject will be restrained, which represents a way also to guarantee legal certainty to international shipowners, since these types of legal claim increase the shipowners operating expenses in Brazil. It is presumed that the legal issue presented above will become indisputable, so the employment agreements of Brazilian seafarers employed on board ships that fly foreign flags are to be governed by the law of the Flag State.

In this context, the Law project *BR do Mar* (article 9, I) establishes that, in order to operate in the national cabotage navigation, foreign ships (registered in a foreign country) shall be periodically inspected by the Brazilian authorities, in accordance with the "no more favourable treatment clause" (Article V, paragraph 7, of the MLC, 2006).

Certainly, at present, ships that fly foreign flags when calling Brazilian ports are subject to port state control. Therefore, in order to obtain authorization to operate in Brazilian jurisdictional waters, every vessel must comply with the requirements provided for in the international conventions ratified by Brazil, in accordance with NORMAM-04/DPC and NORMAM-08/DPC. Thus, article 9, I, of the Law project *BR do Mar* only reinforces the current system.

On that account, in addition to the foreseeable positive effects on international relations, the Brazilian government expects that internally, more specifically in cabotage, the entry into force of the MLC, 2006 in Brazil will ensure legal certainty to Brazilian seafarers employed on board ships flying foreign flags and to international shipowners that begin to operate in waters under Brazilian jurisdiction, following the project of law here described.

In this respect, it cannot be ignored that some flag States, especially in the cases of open registry[88], do not see the minimum standards only as a basis that should be respected, but as the extent of the protection to be legally granted. Thus, even if decent work conditions are provided, Brazilian seafarers employed on board ships registered under international flags may experience a reduction in their labour rights when compared to the national standards following the approval and entry into force of the Law project commented in this Chapter.

[88]Edward B Watt and Richard M F Coles, *Ship Registration: Law and Practice* (London: Informa Law from Routledge, 2009), page 46.

7. Conclusions

The ratification of the MLC, 2006 represents to Brazil a considerable step towards the harmonization of the maritime labour standards in the international scenario, as aimed by the International Labour Organization, having a positive impact in the relations established between Brazilian seafarers and international ship companies, and facilitating when Brazilian ships call to Ports of other States that also have ratified the Convention.

The conclusions presented here derive from the scenario that precedes the entry into force of MLC, 2006 in Brazil, so that the necessary measures to implement the innovations introduced by the Convention, as the certification system and the on-board complaint procedures, which will come at a later moment, are not covered in detail in this paper.

The comparison between the current Brazilian labour legislation and the minimum standards established by the MLC, 2006 clearly demonstrates that Brazilian seafarers, as a rule, have good working conditions provided by a well elaborated legal framework. It is also shown that most of the standards established by MLC, 2006 are already observed by Brazil, so that the implementation of the Convention will not abruptly impact the labour relations already established or change the current scenario.

Moreover, given the existence of rights provided by the Brazilian legislation to all Brazilian employees, including seafarers, that do not have any equivalent or correspondent provision in the MLC, 2006, as identified in Chapter 5, it can be concluded that the current Brazilian labour legislation is in a higher level when compared to the minimum standards established by the MLC, 2006. Nevertheless, in certain areas, the national legal framework has to be changed or adapted in order to align with the MLC, 2006.

Finally, it arises from the analysis of the law project *BR do Mar* that the Brazilian government expects that the entry into force of the MLC, 2006 in Brazil will ensure

greater legal certainty to Brazilian seafarers employed on board ships that fly foreign flags and to international shipowners that operate in waters under Brazilian jurisdiction.

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