

**Dear Mr. Chairman,**

**Ladies and Gentlemen,**

We would like to welcome you in Georgia and congratulate you on ILO Maritime Labour Convention 2006 (**MLC- 2006**) coming into force. Convention **MLC- 2006** together with IMO Conventions SOLAS, MARPOL, and STCW will become one of the basic instruments in the shipping industry.

We hope our meeting will be quite fruitful for the solution of some social problems in maritime transport sphere.

Our legal company has accumulated quite big experience on solution of many problems, connected with seafarers' employment contracts and we would like to share this experience with you. We hope this will be helpful.

There is a special character of seafarers' employment on maritime labour market of Georgia, and we are constantly facing the following problems:

- *Seafarers' employment and service onboard via direct contracts and contracts with shipowners' managing companies without involvement of national crewing agencies;*
- *Objective incapacity of many small shipowners to follow formal labour relationships with the seafarers employed;*
- *Not in all cases a seafarer's claim is subject to local courts jurisdiction;*
- *Objective unreadiness of national crewing companies to provide the Convention provisions implementation;*
- *Temporary unreadiness of our countries to implement fully the new Convention's requirements;*
- *Temporary unavailability of national insurance companies in this sector*

We would like to explain briefly each of the above mentioned problems and propose our opinion regarding solution of each problem.

- *Seafarers' employment and service onboard via direct contracts and contracts with shipowners' managing companies without involvement of national crewing agencies;*

Two forms of seafarer's employment have formed on our labour market: **employment via a national crewing company** and **direct employment without involvement of national crewing companies**. In the first case there are not any serious problems as a rule, and if any, they can be solved without difficulty. But the most serious and practically insoluble problems occur with the second form of employment.

In particular, such contracts usually exist quite formally and seafarers not always have the signed contracts in hands. In our practice in 90% cases a seafarer remembers about his contract after a problem has occurred or when the arrears of wages reach astronomic figures. And this usually happens when convenient time has passed and we have lost all possible means to influence a shipowner. In our practice we had many cases, when a seafarer had got his contract in his hands, but no other documents confirming his service onboard during the specified period or the documents are not sealed and signed by the vessel's Master. Some

seafarers come to us with claims and when we ask about the contract and other documents, they appear to stay onboard a vessel.

So a question comes, what we can do in such situations. In our opinion in such cases we should concentrate our efforts on better training of seafarers in terms of independent and timely monitoring of their employment relationships.

We should teach a seafarer the following:

- a) Do not embark the vessel until you have a contract in your hands;***
- b) Do not wait till the arrears of wages grow: if the shipowner does not pay for the first month – be on the alert, if the shipowner does not pay for the second month – raise the alarm, send a notice to the shipowner, if the shipowner does not pay for the third month – apply to the lawyers;***
- c) Always have a contract, statement of payments and crew list or any other service document in your hands, all signed and sealed;***
- d) Always strive to ensure that one of the parties to the contract is a national crewing company, as required by the Convention***

We should not remember the fact that in the law of most maritime countries there is a provision, which gives a Master the right, if necessary, to cover the voyage expenses by selling the shipowner's property (bunker, for instance) or to apply a maritime lien on the vessel or cargo. While implementing the Convention the States were supposed to insert the appropriate changes in their legislation, but nobody knows if and how it was done. In this regards we would recommend ILO and ITF to carry out the analysis of the States' maritime legislation taking into consideration the new amendments, adopted after the Convention has come into force, and then to issue the appropriate guidance to be distributed to all the Parties concerned (ILO and ITF have great legal resources at their disposal).

***- objective incapacity of many small shipowners to follow formal labour relationships with the seafarers employed;***

In practice, it is small shipowners that carry out 60 per cent of sea transportation (I mean, it is they that are the main employers on the market, but not large managing maritime companies, which can be counted on the fingers).

Most of the small shipowners are unable to implement their obligations due to many objective reasons. Most of them are small companies operating one or two vessels, and in the current conditions of freight market crisis the vessels are operated on the verge of their economic effectiveness. Low freight rates, high bunker prices, severe sanctions in ports (we have a lot of precedents, when severe sanctions levied due to other artificially created problems forced a shipowner to leave the vessel to its fate and tens of seafarers lost their job and left unpaid for their work), - all these factors negatively affect profits and as a result – shipowner's paying capacity and seafarers salary and there are no resources for the due supply of the vessel. However, it cannot justify such actions.

Unfortunately none of you can have a positive impact on the world economy, and trying to focus all the weight of the problem on small shipowners will not help, but only worsen the situation.

You should understand that abolition of small shipping company's means decreasing of potential labour market for seafarers. You should realize that a shipowner is your equal partner.

The question “what to do” we can answer by the recommendation – to achieve global balancing of small shipowners’ unjustified expenses. For instance, to require prohibition the practice of charging for the second Port State Control inspection of a vessel, to inform the local seafarers union representative each time when a vessel is being fined by local authorities, the seafarers union representative should consider carefully if the fines are reasonable and how they will affect the seafarers’ salary.

***- Not in all cases a seafarer’s claim is subject to local courts jurisdiction;***

We would recommend ILO to cooperate with BIMCO – the organization having all possibilities via charter-parties updating to include the shipowner’s obligation to pay the crew’s salary directly from the freight. Such provision in the charter-party (mainly GENCON) will provide a means of influencing shipowners and deem the cases of salary non-payment as shipping contract violation. And shipping contract violation is almost always the subject of jurisdiction of courts of port of loading/discharge.

***- Objective unreadiness of national crewing companies to provide the Convention provisions implementation;***

Most of national crewing companies are not competent in the issues of the new convention implementation yet. But it is not only about crewing companies. The competent authorities have not got enough experience and knowledge of the convention yet. What should be done? We suggest improving their training. For instance, international seafarers unions together with ILO could arrange special workshops (training courses). You could use IMO model, as IMO has got great experience in arranging trainings on IMO Conventions implementation for competent authorities.

Why not ILO and ITF (with their great financial resources) arranging similar training courses for crewing companies? (such trainings should be regional)

We would go further and recommend crewing companies to create the International Association of Crewing Companies of the Black Sea Region, as they are already full subjects of law and maritime labor market participants and have to solve this problem.

***- Temporary unreadiness of our countries to implement fully the new Convention’s requirements;***

We should honestly admit the fact that the most States being present here (except some) are young maritime countries and have not got formed maritime customs and traditions. We would not like to offend anybody and taking this opportunity we would present our sincere respect to maritime authorities of the young countries. But you can trust me – a person who personally participated in creation and adoption of the convention MLC 2006. And I say that the vast majority of countries have not had yet experience and full understanding of the mentioned convention. The convention is young and well done, but nobody knows how practically it will be implemented.

You must realize that this convention is equal in importance and globality to **SOLAS, MARPOL, STCW**, and all States had got problems with their implementation.

We will need plenty of efforts, patience and time to conceive and create conditions convention provisions implementation. The requirements of the convention must not be interpreted literally, as the Convention itself provides some flexible requirements:

**7. The Convention has three underlying purposes:**

**(a) to lay down, in its Articles and Regulations, a firm set of rights and principles;**

- (b) to allow, through the Code, a considerable degree of flexibility in the way Members implement those rights and principles; and**  
**(c) to ensure, through Title 5 that the rights and principles are properly complied with and enforced.**

In our view, a balanced, well-reasoned, comprehensive approach is required and this work should be carried out jointly with **ILO, IMO, ITF, and BIMCO**, National shipowners' associations and national or regional crewing companies associations and national seafarers unions.

***The problem of open registries;***

May we take this opportunity to present you our opinion regarding this issue – and our disagreement with the commonly used practice of negative attitude to open ships registration.

85-90 per cent of the world fleet is registered in the State with open registration – and this is an incontestable fact. And to prove this one can study the appropriate information of **UN, IMO, and UNCTAD**. In this list there are countries with a high level of implementation of the highest standards of the industry, and there are countries that have not yet reached such a level. Very often an invented postulate (made up by some non-competent persons) is used to discredit this sphere. They say that open registry States deliberately create favorable or privileged conditions for the vessels registered in their registry in the part of international conventions implementation or maritime law in general.

We can confidently state that this is not true because of the system of law that has developed in the maritime transport sector – IMO mechanism of “flag state control”, “port state control”, mechanism of “state voluntary audit” **DO NOT PROVIDE ANY CHANCE FOR PRIVILEGES IN NON-IMPLEMENTATION OF ANY IMO CONVENTIONS OR HIGH INDUSTRY STANDARDS**. There is only a problem of lack of human resources and a problem of stagnant thinking.

Only one problem was unsolved – seafarers labour conditions, BUT THIS PROBLEM HAS BECOME A SUBJECT OF NEW 2006 CONVENTIONS – MARITIME LABOUR CONVENTION, and new mechanism, as provided by Article 5 «**IMPLEMENTATION AND ENFORCEMENT RESPONSIBILITIES**» and «**TITLE 5. COMPLIANCE AND ENFORCEMENT**» of this Convention is supposed to solve this problem. But we should not expect fast and sufficient results. Due to temporary objective reasons we will watch a slow motion to a positive result. And again the reasons for such a forecast I can explain by a problem of lack of human resources and a problem of stagnant thinking.

We are deeply convinced that the national insurance companies can and should play a greater role in the issue of the convention provisions implementation, especially in the regards of the following requirements:

**«Standard A1.4 – Recruitment and placement**

**(vi) establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them» and;**

It's «**TITLE 4. HEALTH PROTECTION, MEDICAL CARE, WELFARE AND SOCIAL SECURITY PROTECTION**»;

**Standard A4.5 – Social security**

**1. The branches to be considered with a view to achieving progressively comprehensive social security protection under Regulation 4.5 are: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity**

**benefit and survivors' benefit, complementing the protection provided for under Regulations 4.1, on medical care, and 4.2, on shipowners' liability, and under other titles of this Convention.**

In order to facilitate and simplify further work we present our proposals as the following action plan:

**Proposals:**

- a) better training of seafarers in terms of independent and timely monitoring of their employment relationship;
- b) **ILO** and **ITF** are recommended to carry out as soon as possible the analysis of the States' maritime legislation taking into consideration the new amendments, adopted after the Convention has come into force and then to issue the appropriate guidance
- c) better training of crewing agencies staff in terms of independent and timely monitoring of their responsibilities and for experience exchange
- d) international seafarers unions are recommended to arrange together with ILO special seminars/trainings for crewing agencies staff;
- e) establishment of International Association of Crewing Companies of the Black Sea Region;
- f) to provide a considerable degree of flexibility in the way Members implement those rights and principles with participation of ILO, IMO, ITF, BIMCO, national shipowners associations and national or regional Crewing Companies Associations and national seafarers units;
- g) try to achieve global balancing of small shipowners' unjustified expenses for instance, to require prohibition the practice of payment for the second Port State Control inspection of a vessel, to inform the local seafarers union representative each time when a vessel is being fined by local authorities, the seafarers union representative should consider carefully if the fines are reasonable and how they will affect the seafarers' salary.
- h) In most cases the problems of implementation and performance of the Convention are caused by lack of human resources and stagnant thinking ;
- i) Great involvement of insurance companies in the process of the convention requirements implementation.

As a conclusion having desire to provide full protection of our seafarers rights, we urge the competent authorities of Georgia to join Maritime Labour Convention as soon as possible.

Thank you for your kind attention. We wish you all the success in your noble work.

**Valerian Imnaishvili**

*Master Mariner*

*Professor*

*Magister of International Maritime Law*

*Bachelor of shipping management*

*Author of Georgian maritime legislation (till 2011)*

*Head of delegations of Georgia at IMO (from 1993 till 2006)*

*Head of delegation of Georgia at the 1<sup>st</sup> International Conference on preparation and adoption of the text of new Maritime Labour Convention*

*From 1994 till 2010 appointed the positions of Head of Legal and Foreign Affairs, Flag State Implementation, Ships Registry Divisions, National Competent Person on Maritime Security*

*Partner of legal company "Marine Legal Adviser Co.Ltd."*