

§ 790. - Shipowners' Liability (Sick and Injured Seamen) Convention, 24 ottobre 1936 n.55 (1).

(1) Entrata in vigore il 29 ottobre 1939. Ratificata dall' Italia il 22 ottobre 1952.

Art. 1. 1. This Convention applies to all persons employed on board any vessel, other than a ship of war, registered in a territory for which this Convention is in force and ordinarily engaged in maritime navigation.

2. Provided that any Member of the International Labour Organisation may in its national laws or regulations make such exceptions as it deems necessary in respect of—

- (a) persons employed on board,
 (i) vessels of public authorities when such vessels are not engaged in trade;
 (ii) coastwise fishing boats;
 (iii) boats of less than twenty-five tons gross tonnage;
 (iv) wooden ships of primitive build such as dhows and junks;
 (b) persons employed on board by an employer other than the shipowner;
 (c) persons employed solely in ports in repairing, cleaning, loading or unloading vessels;
 (d) members of the shipowner's family;
 (e) pilots.

Art. 2. 1. The shipowner shall be liable in respect of—

- (a) sickness and injury occurring between the date specified in the articles of agreement for reporting for duty and the termination of the engagement; (b) death resulting from such sickness or injury.

2. Provided that national laws or regulations may make exceptions in respect of—

- (a) injury incurred otherwise than in the service of the ship;
 (b) injury or sickness due to the wilful act, default or misbehaviour of the sick, injured or deceased person;
 (c) sickness or infirmity intentionally concealed when the engagement is entered into. 3. National laws or regulations may provide that the shipowner shall not be liable in respect of sickness, or death directly attributable to sickness, if at the time of engagement the person employed refused to be medically examined.

Art. 3. For the purpose of this Convention, medical care and maintenance at the expense of the shipowner comprises—

- (a) medical treatment and the supply of proper and sufficient medicines and therapeutical appliances; and
 (b) board and lodging.

Art. 4. 1. The shipowner shall be liable to defray the expense of medical care and maintenance until the sick or injured person has been cured, or until the sickness or incapacity has been declared of a permanent character.

2. Provided that national laws or regulations may limit the liability of the shipowner to defray the expense of medical care and maintenance to a period which shall not be less than sixteen weeks from the day of

the injury or the commencement of the sickness.

3. Provided also that, if there is in force in the territory in which the vessel is registered a scheme applying to seamen of compulsory sickness insurance, compulsory accident insurance or workmen's compensation for accidents, national laws or regulations may provide—

- (a) that a shipowner shall cease to be liable in respect of a sick or injured person from the time at which that person becomes entitled to medical benefits under the insurance or compensation scheme;
 (b) that the shipowner shall cease to be liable from the time prescribed by law for the grant of medical benefits under the insurance or compensation scheme to the beneficiaries of such schemes, even when the sick or injured person is not covered by the scheme in question, unless he is excluded from the scheme by reason of any restriction which affects particularly foreign workers or workers not resident in the territory in which the vessel is registered.

Art. 5. 1. Where the sickness or injury results in incapacity for work the shipowner shall be liable—

- (a) to pay full wages as long as the sick or injured person remains on board;
 (b) if the sick or injured person has dependants, to pay wages in whole or in part as prescribed by national laws or regulations from the time when he is landed until he has been cured or the sickness or incapacity has been declared of a permanent character.

2. Provided that national laws or regulations may limit the liability of the shipowner to pay wages in whole or in part in respect of a person no longer on board to a period which shall not be less than sixteen weeks from the day of the injury or the commencement of the sickness.

3. Provided also that, if there is in force in the territory in which the vessel is registered a scheme applying to seamen of compulsory sickness insurance, compulsory accident insurance or workmen's compensation for accidents, national laws or regulations may provide—

- (a) that a shipowner shall cease to be liable in respect of a sick or injured person from the time at which that person becomes entitled to cash benefits under the insurance or compensation scheme;
 (b) that the shipowner shall cease to be liable from the time prescribed by law for the grant of cash benefits under the insurance or compensation scheme to the beneficiaries of such schemes, even when the sick or injured person is not covered by the scheme in question, unless he is excluded from the scheme by reason of any restriction which affects particularly foreign workers or workers not resident in the territory in which the vessel is registered.

Art. 6. 1. The shipowner shall be liable to defray the expense of repatriating every sick or injured person who is landed during the voyage in consequence of sickness or injury.

2. The port to which the sick or injured person is to be returned shall be—

- (a) the port at which he was engaged; or
 (b) the port at which the voyage commenced; or

(c) a port in his own country or the country to which he belongs; or

(d) another port agreed upon by him and the master or shipowner, with the approval of the competent authority.

3. The expense of repatriation shall include all charges for the transportation, accommodation and food of the sick or injured person during the journey and his maintenance up to the time fixed for his departure.

4. If the sick or injured person is capable of work, the shipowner may discharge his liability to repatriate him by providing him with suitable employment on board a vessel proceeding to one of the destinations mentioned in paragraph 2 of this Article.

Art. 7. 1. The shipowner shall be liable to defray burial expenses in case of death occurring on board, or in case of death occurring on shore if at the time of his death the deceased person was entitled to medical care and maintenance at the shipowner's expense.

2. National laws or regulations may provide that burial expenses paid by the shipowner shall be reimbursed by an insurance institution in cases in which funeral benefit is payable in respect of the deceased person under laws or regulations relating to social insurance or workmen's compensation.

Art. 8. National laws or regulations shall require the shipowner or his representative to take measures for safeguarding property left on board by sick, injured or deceased persons to whom this Convention applies.

Art. 9. National laws or regulations shall make provision for securing the rapid and inexpensive settlement of disputes concerning the liability of the shipowner under this Convention.

Art. 10. The shipowner may be exempted from liability under Articles 4, 6 and 7 of this Convention in so far as such liability is assumed by the public authorities.

Art. 11. This Convention and national laws or regulations relating to benefits under this Convention shall be so interpreted and enforced as to ensure equality of treatment to all seamen irrespective of nationality, domicile or race.

Art. 12. Nothing in this Convention shall affect any law, award, custom or agreement between shipowners and seamen which ensures more favourable conditions than those provided by this Convention.

Art. 13. 1. In respect of the territories referred to in article 35 of the Constitution of the International Labour Organisation, each Member of the Organisation which ratifies this Convention shall append to its ratification a declaration stating—

a) the territories in respect of which it undertakes to apply the provisions of the Convention without modification;

b) the territories in respect of which it undertakes to apply the provisions of the Convention subject to

modifications, together with details of the said modifications;

c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

d) the territories in respect of which it reserves its decision.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

Art. 14. The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Art. 15. 1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Art. 16. As soon as the ratifications of two Members of the International Labour Organisation have been registered, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organisation.

Art. 17. 1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an Act communicated to the Director-General of the International Labour Office for registration. Such denunciation should not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Art. 18. At the expiration of each period of ten years after the coming into force of this Convention, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall consider the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Art. 19. 1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

- a)* the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;
- b)* as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Art. 20. The English and French texts of this Convention shall both be authentic.