

The Maritime Labour Convention, 2006: An ILO landmark Convention

by Cleopatra Doumbia-Henry

With serious economic difficulties confronting so many countries and workers in all regions, as Director of the International Labour Standards Department of the International Labour Office, I welcome the opportunity to share some very good news.

On August 20, 2012 the Russian Federation and the Republic of the Philippines were, respectively, the 29th and 30th countries to have their ratifications of the Maritime Labour Convention, 2006 (MLC, 2006), registered. The ratification by these two countries is significant as the 30th ratification, when combined with ratifications by countries representing over 33 per cent of the world's ships (based on gross tonnage), means that this innovative ILO Convention will enter into force (become binding as international law) for these 30 countries. With these 30 countries, the MLC, 2006 already covers almost 60 per cent of the world fleet in terms of gross tonnage of ships. Therefore, when the MLC, 2006 enters into force on 20 August 2013 it will establish minimum international standards for working and living conditions for seafarers working on more than 60 per cent of the world's fleet of ships. Many more ratifications in all regions are expected over the next year or two.

What is the MLC 2006 and why is it relevant to other sectors?

More than 100 pages long, the MLC, 2006 is a comprehensive international Convention adopted in 2006 by the International Labour Conference of the ILO. It brings together and replaces 37 existing ILO maritime labour Conventions and related Recommendations adopted since 1920. The MLC, 2006 establishes minimum international requirements for almost every aspect of seafarers' working and living conditions including, minimum age, medical fitness, training, conditions of employment including rights regarding wages, paid annual leave, repatriation, hours of work and rest, standards for onboard accommodation and recreational facilities, food and catering, health protection, medical care, occupational safety and health, access to shore-based welfare facilities and social security protection. It also contains important standards for the regulation of the private recruitment and placement services, or manning agencies, as they are also sometimes called. Concerning the important issue of wages, the MLC, 2006 requires that wages must be paid at no greater than monthly intervals and payment of wages is one of the items that must be certified and is subject to inspection by port States that ratify the Convention at which ships call. The Convention also provides for a mechanism for setting and keeping under regular review the minimum basic wage through the ILO Joint Maritime Commission, an ILO permanent bipartite body representing Shipowners and Seafarers. This is the only sector of eco-

nomonic activity with such a mechanism at the global level.

The MLC, 2006 is expressly designed as a single coherent instrument - a "one stop shop". The drafters of this Convention - the representatives of Seafarers, Shipowners and Governments who adopted it at the ILO - wanted a major new instrument that would secure the widest possible acceptability among governments, shipowners and seafarers committed to the principles of decent work.

Under the MLC, 2006 every seafarer has the right to:

- a safe and secure workplace that complies with safety standards
- fair terms of employment
- decent working and living conditions on board ship
- health protection, medical care, welfare measures and other forms of social protection.

They also wanted to avoid creating a "paper tiger", that is, yet another international law that was not implemented or enforced. As a result of this concern the MLC, 2006 contains a strong enforcement system to help ensure protection of seafarers' rights and compliance with the standards in this Convention world wide - that is, no matter where the ship voyages.

One new element that this Convention brings to the ILO is that of national certification: each State is tasked not only with ensuring that ships flying its flag meet and will continue to meet the "decent work" requirements set out in the Convention, but also with *certifying* that those ships comply with the requirements for seafarers' working and living conditions. This certification - a Maritime Labour Certificate and the Declaration of Maritime Labour Compliance (Parts I and II) - will facilitate the inspection of those ships; especially during port State control (PSC). PSC is a mechanism, perhaps unique to the maritime sector, whereby foreign ships can be inspected for compliance with standards in many different Conventions (particularly those of the International Maritime Organisation (IMO) dealing with preventing pollution and ship safety and security) and perhaps, even detained, if there are problems found onboard when in ports of countries other than the flag State. This is a very important form of international cooperation and is the subject of detailed guidance at the regional level through Memoranda of Understanding (MOUs). This

procedure is now well recognised in international law as a way to address the problem that the ships often operate outside the jurisdiction of the country that has primary legal responsibility for regulating conditions on the ship – the “flag State”.

The MLC, 2006 places great reliance on the PSC system, as well as on a system for seafarers’ complaints and reporting, to catch failures to meet the standards of the Convention. This means that a ship calling at the port of a country that has ratified the Convention could be subject to inspection based on complaints lodged or for other reasons provided for in the Convention. In connection with PSC, the Convention also contains a “no more favourable treatment” clause, which means that ships flying the flag of countries that have not ratified the MLC, 2006 will be subject to the same inspections as those flying the flag of a country that has ratified it. This will help to ensure that there are no incentives to not ratifying and implementing the MLC, 2006 on board ships. The maritime labour inspection and certification system is an important step forward by the ILO in taking concrete and specific action to address the very serious problems that arise because of international ownership of ships and the inability of some countries to ensure that their ships meet international standards for quality shipping.

But perhaps the most important aspect of the MLC, 2006 is that it is the product of an agreement (called the Geneva Accord) in 2001 between the international representatives of seafarers and shipowners in the ILO where they called on the ILO to develop a Convention to address the many problems in this sector, problems that are largely related to what is now called “globalisation”. Many of the innovative solutions developed in this Convention are, in fact, the outcome of joint proposals from the Shipowners’ and Seafarers’ organisations. Since 2001 they have remained resolute in their desire to find a way to provide decent work for seafarers and at the same time help ensure a level playing field for shipowners. This has meant that at the national level there has been an increased level of tripartite consultation and commitment to implementing the Convention. In fact two countries (Republic of the Marshall Islands, the fourth largest flag State and Palau) joined the ILO specifically to allow it to ratify the MLC, 2006 while others now encourage the development of national level Shipowners’ and Seafarers’ organisations where none exist. The fact that many countries with a substantial merchant fleet under their jurisdiction have already signed the Convention shows the common interests of Governments, Shipowners’ and Seafarers’ organisations to provide a comprehensive regulatory framework for working conditions in one of the most globalised industries. The momentum for ratification and implementation is truly gaining ground as the clock is ticking for non-ratifying States with a maritime interest which will be subject to the “no more favourable treatment” clause of the Convention in ports at which their ships call.

It is also significant to note that many countries have already adopted legislation and regulations implementing the Convention, while many others are taking active steps to do so. This response has been truly remarkable, if not unprecedented, when one considers the scope and size of this Convention.

The MLC, 2006 pioneers new ways of regulating working conditions in globalised industries. Some aspects of this innovative Convention are specific to the maritime sector, but it contains many solutions that could be useful for other sectors. Some of the lessons that could be drawn relate to the process that resulted in the adoption of the MLC, 2006 making it a truly owned instrument. We should ensure that future instruments have tripartite ownership and thus the importance of intensive and extensive social dialogue to achieve consensus. Other elements that could be considered include the following:

- how best to combine in future ILO instruments the principle of firmness on the formulation of rights while providing flexibility in terms of the means of implementation, in particular through collective bargaining;
- strengthening the labour inspection regime to ensure greater compliance looking to the certification system which the MLC, 2006 has put in place;
- the inclusion of a complaints mechanism for the resolution of disputes;
- provision made within the Convention itself to ensure that it could be kept up to date with the developments in the industry;
- entry into force of amendments to the Convention through a tacit acceptance procedure (no ratification is required: a member State must explicitly indicate that it does not want to be bound by an amendment) except in specified circumstances;
- and a Convention whose name or number will never change as it will only be amended.

Some of the solutions that the MLC, 2006 contains could be useful to address the basic regulatory problems of accountability/ employer responsibility posed by globalisation and employers and workers operating under the laws of more than one jurisdiction. In my view the MLC, 2006 shows us that, even in these difficult times, it is possible to make progress using labour standards in order to achieve better protection for workers’ rights and fair competition among employers on a global scale.

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More information can be obtained on the ILO’s MLC, 2006 website at: <http://www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm>