

# The Maritime Labour Convention, 2006

## ***Update & the Articles***

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# Update -the MLC,2006 Action Plan

- September 2006 the Office adopted a five – year *Action Plan to achieve rapid and widespread ratification and effective implementation of the Maritime Labour Convention, 2006*
- The *Action Plan* has two primary goals:
  - to promote the rapid ratification of the MLC, 2006, especially in countries that did not play an active part in its preparation, in order to bring it into force; and
  - to arrange for countries that are not yet in a position to implement the MLC,2006 to have the necessary legal or technical assistance to move forward.

# Update: Moving forward

- The 94th ILC also adopted 17 Resolutions to help countries move forward. The Action Plan also includes activities to respond to these Resolutions.
- Two key Resolutions called for International Tripartite Experts meetings (held in September 2008) to adopt:
  - *Guidelines for Flag State Inspections Under the Maritime Labour Convention, 2006*
  - *Guidelines for Port State Control Officers Carrying Out Inspections Under the Maritime Labour Convention, 2006*

## Update: Moving forward

- ILO Training Centre (Turin Italy)- “Train the Trainers” (Training of trainers and maritime inspectors on the application of the Maritime Labour Convention, 2006) course was developed with the assistance of the Italian Government and the United Kingdom
- first two week course took place September 14 to 25, 2009
- second course is scheduled for December 2009 with more courses planned for 2010

## Update: Meeting targets-2009

- November 2009 –Tonnage element for entry into force is achieved with ratification by 5 major maritime countries (Liberia, the Republic of Marshall Islands, Bahamas, the Republic of Panama and Norway).
- together these flag States have international jurisdiction with respect to standards for working and living conditions for seafarers on more than 44% (based on gross tonnage) of the world's shipping fleet.
- 25 more ratifications ( at least 30 needed) must be obtained to bring the MLC,2006 into force by 2011. This seems likely with the decisions taken in the EU.

# Update: Moving forward - Meeting targets

- It is essential to achieving the objectives of the Convention that countries from **all regions**, particularly key port States and countries from whom the majority of the worlds seafarers are drawn, also ratify.
- Even more importantly all countries that have ratified, particularly flag States, need to effectively implement their responsibilities under the MLC,2006

# MLC, 2006- observations on implementation experiences and challenges

- implementation experiences for States
  - some are primarily flag States with international fleets;
  - others are primarily port States
  - others have large domestic fleets with smaller ships
  - others are primarily concerned with maritime labour supply issues
  - some have very specific concerns on the application in the context of some sub-sectors such as cruise ships or commercial yachting
- these interests often co-exist however, there are at least one or two aspects or interests that are strongest and implementation must be tailored to the specific interests of the country concerned

# MLC, 2006- observations on implementation experiences and challenges

- the MLC,2006 is intentionally comprehensive in its coverage
- questions of definition and the scope of application including any exclusion or flexibility and the method (consultation) of exercising national flexibility was thoroughly debated over the more than 5 years before decisions were taken by the international tripartite meetings
- there is significant flexibility and many tools for tailoring application of the Convention available within the framework of the MLC,2006
- essential first step to solving difficulties of application is identification of the specific areas or issues so that solutions can be considered
- in addition, possible convening of a preparatory Article XIII committee to assist in advance of entry into force.

# MLC,2006 – Basic structure

- The Convention adopts an approach similar to the IMO's STCW Convention with three different but related parts,
  - Articles,
  - Regulations
  - a two- part Code (Part A mandatory Standards, Part B non-mandatory Guidelines)
- There is an important "Explanatory Note" found after the Articles which is intended to provide further information and assistance, especially to Governments about the relationship between the parts of the Code.

# MLC, 2006 – Explanatory Note

- **Explanatory Note**
  - is not part of the Convention
  - is intended to assist governments to undertake the application of the Convention
  - explains, in a practical way, with an example, the relationship between the Regulations and Part A (mandatory Standards) and Part B (Guidelines) of the Code
  - this relationship is also stated as a legal obligation in Article IV, paragraphs 1 and 2, of the Convention

# MLC, 2006– The Articles

- *Preamble* – helps explain the context and aspirations of the Convention
- The Convention has 16 (XVI) *Articles* dealing with issues such as: definitions, scope of application of the Convention, coming into force, and amendments to the Convention
- The Articles provide the overall legal framework (“umbrella”) for Member obligations, which are then set out the detailed provisions found, first, in the Regulations and then the related Code, Part A (Standards) and Part B (Guidelines)
- The Articles (and the Regulations) can only be changed by the General Conference in the framework of article 19 of the Constitution

# MLC, 2006– The Articles

- **Article I General obligations**
  - the general obligations of “Each Member” that has ratified the Convention to give effect to the Convention and to **cooperate** with each other for the purpose of ensuring the effective implementation and enforcement of this Convention

# MLC, 2006 – The Articles

- Article II contains definitions and sets out the main provisions affecting the scope of application of the Convention
- *1 (e)* defines the “**requirements of this Convention**” to make it clear that this term only refers to the mandatory provisions of the Convention, (those set out in the Articles, Regulations and Part A of the Code):
  - reflects the “understanding” set out in the Explanatory Note and in Article VI.
  - linked to Regulation 5.2.1, paras 1 and 3 (port State control inspections).
  - Article VI, paragraph 2 requires that Members give “due consideration” to implementing their responsibilities in the manner provided for in Part B of the Code

# MLC, 2006 – The Articles

- **Article II – Definition and scope of application**

- Art II, para 1 (f) "*seafarer*" is a comprehensive definition and reflects the greater awareness of the range of people employed at sea
- some national flexibility is provided for in paragraph 3 (in the "event of doubt as to categories" ) which would relate to the exclusion of categories of workers from the entire Convention. A Resolution proposed by the social partners was adopted by the Conference to provide guidance to national authorities on this matter
- additional flexibility relating to full and partial exclusions or questions of application is also provided, based on the determinations made in connection with "ships" under Article II, paragraphs 1(i),(4) (5) (6).

# MLC, 2006– The Articles

- Article II, paragraph 1(i) defines "*ships*"
  - application of the Convention to all ships as defined by the Convention
  - *Art II, para 4* provides the legal foundation with the phrase "Except as expressly provided otherwise, this Convention applies to all ships..." It expressly excludes fishing vessels, ships of traditional build and warships
  - *Art II, para 5* provides for a national level determination "in the event of doubt" with respect to "a ship" or "particular category of ships"

## MLC,2006 – The Articles

- *Art II, para 6* provides some additional national flexibility allowing some detailed provisions of the Code to be not applied to ships that are otherwise covered (“to the extent that the subject matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures”). This flexibility on international voyages is limited to ships 200 GT and below that do not go international voyages.
- Determinations made with respect to scope of application must be based on consultation with shipowners’ and seafarers’ organizations concerned or, if they do not exist in the Member, in accordance with Article VII (See Article XIII special tripartite committee).
- Determinations as to scope made under Article II are to be reported to the Director-General of the ILO.

# MLC, 2006– The Articles

- “**shipowner**” is defined in Art II, paragraph 1 (*j*)
- definition is based on the definition in Convention No. 179 and is similar to the definition of a “company” adopted by the IMO in SOLAS (in the ISM Code) and in the STCW
- definition reflects the principle that shipowners are the responsible employers under the Convention with respect to all seafarers on board their ships, irrespective the employment or ship management contractual arrangements; Is identified as the shipowner on the Declaration of Maritime Labour Compliance and Seafarers’ Employment Agreement
- shipowners would still have the right to recover the costs involved from others who may also have responsibility for the employment of a particular seafarer

# MLC, 2006– The Articles

- **Article III Fundamental rights and principles**
  - ❖ freedom of association
  - ❖ elimination of forced labour
  - ❖ elimination of child labour
  - ❖ elimination of discrimination
- the obligation of a ratifying Member under Article III is to “satisfy itself” that those fundamental rights are reflected in the relevant legislation
- Article III does not, however, require that a Member apply the provisions of the Conventions embodying those fundamental rights (which are referenced in the *Preamble*) unless they have ratified those Conventions

# MLC, 2006 – The Articles

- **Article IV Seafarers' employment and social rights**

- Article IV the “seafarers’ bill of rights;” provision - states that all seafarers are entitled 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
- these general rights are then set out in detail in the Titles (in the Regulations and Code provisions) of the Convention

# MLC, 2006 – The Articles

- **Article IV Seafarers' employment and social rights**
- paragraph 5 makes it clear that the "seafarers employment and social rights" set out in paragraphs 1-4, are to be fully implemented, "in accordance with the requirements of this Convention" - that is - in accordance with the relevant provisions of the Articles, Regulations and Part A of the Code.
  - "unless specified otherwise in the Convention" *means that implementation may be achieved through*
    - *national laws or regulations,*
    - *applicable collective bargaining agreements*
    - *other measures*
    - *practice*

# MLC, 2006 – The Articles

- **Article V Implementation and enforcement responsibilities**
  - provides the legal foundation for the provisions on **compliance** and **enforcement** in **Title 5** of the Convention
  - obligations are drawn from the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and the Labour Inspection Seafarers) Convention, 1996 (No. 178), both of which are consolidated by this Convention
  - **paragraphs 2 and 6** require each Member to **effectively exercise its jurisdiction** and encourage the adoption of a systematic approach to compliance and enforcement of the legal standards
  - **paragraph 4**, based on Article 4, Convention No. 147, provides the foundation for voluntary (“may”) inspections of a ship flying a Member’s flag when that ship is in another Member’s port (port state control measures) to help ensure ongoing compliance with the requirements of the Convention

# MLC, 2006 – The Articles

## Article V

- paragraph 5 draws upon Convention No. 179 and sets out the **complementary responsibilities** of Members from which the world's seafaring workforce are drawn
- requires Members to "effectively exercise ... jurisdiction and control" over **seafarer recruitment and placement services**, *if* these are established in its territory and lays the foundation for the requirements in Title 1 of the Convention) that private sector services must be licensed or certified or regulated in some way and for the obligations under Title 5, Regulation 5.3
- paragraph 6 sets out a requirement that each Member enforce its laws with sufficient sanctions or other corrective measures, consistent with international law, to discourage violations of the requirements of the Convention.

# MLC, 2006 – The Articles

## Article V

- **paragraph 7** establishes the principle of “no more favourable treatment”, a principle that is also found in the key IMO conventions
  - essentially it requires a ratifying Member to apply Convention standards to a foreign ship in its ports (if it chooses to inspect the ship), even if the flag State of the ship has not ratified the Convention
  - this may provide an incentive for ratification of the Convention and help to secure a level playing field with respect to employment rights

## MLC, 2006 – The Articles

- **Article VI Regulations and Parts A and B of the Code**
  - during the development of the Convention an important tripartite agreement was reached on the treatment to be given to Part B of the Code (the non mandatory Guidelines), paving the way for the shift of many of the detailed requirements in existing Conventions from the Standards in Part A of the Code to the Guidelines in Part B of the Code (This is clarified in the Explanatory Note)
  - *paragraphs 3 and 4* set out another element of flexibility, the concept of “substantially equivalent” national implementation of the Convention requirements.
  - It can apply where a Member (country) concludes that it is “...not in a position to implement the rights and principles in the manner set out in Part A of the Code...”

# MLC, 2006 – The Articles

- **Article VI Regulations and Parts A and B of the Code**
  - **paragraph 4**, which reflects extensive discussion, provides a definition of “substantially equivalent”
  - a national provision (laws and regulations or other measures e.g., collective agreement or other measures) implementing the rights and principles of the Convention in a manner different from that set out in Part A of the Code would be considered as “substantially equivalent” if the Member concerned “satisfies itself” that:
    - the relevant legislation or other implementing measure “is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned”, and
    - “gives effect to the provision or provisions of Part A of the Code concerned”
  - under **paragraph 3**, the concept of substantial equivalence may be resorted to “unless expressly provided otherwise in this Convention” (its application has been **excluded with respect to the Standards in Title 5**)

# MLC, 2006 – The Articles

- **Article VIII Entry into force**

- much higher than usual ratification level (for ILO Conventions) with a new formula designed to assure greater actual impact
- paragraph 3 *"This Convention shall come into force 12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of at least 33 per cent.*
- most obligations apply to flag States, that is, the State which has the ship's tonnage listed as part of its national tonnage

# MLC, 2006 – The Articles

- **Article X Effect of entry into force**
  - lists the existing Conventions which will be **revised** by the new Convention when it comes into force
  - includes all existing maritime labour Conventions except Conventions Nos. 15, 71, 108 and 185, which are not considered as covered in the present text of the Convention. (Convention 15 is an anomaly as its provisions are no longer relevant to practices in the sector )
  - **Recommendations**, as well as the listed Conventions, that have not yet entered into force can, in due course, be withdrawn by decision of the International Labour Conference taken in accordance with article 45bis of its Standing Orders

# MLC, 2006 – The Articles

- **Article XIII Special Tripartite Committee**
  - invites the ILO Governing Body to establish a special tripartite committee, charged with generally reviewing the working of the new Convention
  - the Committee is given specific functions with respect to the accelerated or simplified amendment procedure for the Code (Article XV)
  - consists of **representatives of Governments that have ratified the new Convention and of Shipowner and Seafarer representatives** chosen by the Governing Body in consultation with the JMC
  - Subject to ILO Governing Body approval at its November 2009 session, a preparatory advisory body may be established to meet in 2010 before the 30<sup>th</sup> ratification is registered

# MLC, 2006 – The Articles

## Article XIV Amendment of the Convention (all parts - Articles, Regulations or Code)

- sets out the procedures, in the framework of **article 19 of the Constitution**, for amendment of the Convention as a whole, involving an **express ratification** procedure
- procedure would build upon existing practice but also be an innovation for the ILO as it adopts a new concept called “**deemed acceptance**” (paragraph 4) for entry into force.
- the **legal effect of amendment procedure** will be the same as that of the procedures used in the ILO for the revision or modification of instruments,
- there is one important exception: there will be no separate revising Convention or Protocol; there will be a single amended Convention.
- the **timing of entry into force** for the amended Convention for particular Members is complex. It is addressed in **paragraphs 4 – 9**

# MLC, 2006 – The Articles

- **Article XV Amendments to the Code**

- Article XV introduces one of the most important innovations of the new Convention
- allows for the amendment of certain provisions (the **Code**) through an **accelerated amendment** or **tacit acceptance** procedure rather than express ratification
- developed to enable easier updating of the more technical details in maritime labour standards, one of the original objectives of the consolidation exercise
- a similar approach to more rapid amendment of the technical parts of a Convention was adopted by the Conference for the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) and is also found in IMO Conventions, such as SOLAS
- the procedure has been adapted to the special features of the International Labour Organization, in particular, the idea that revision of a Convention is a matter for the Organization as a whole rather than only for the Members that have ratified it

# MLC, 2006 – The Articles

- **Article XV Amendments to the Code**

- paragraph 1 maintains the constitutional right of the Governing Body to place an item on the Conference's agenda for the amendment of provisions of the Code under the traditional procedures in Article XIV
- it involves a six- step process set out in paras 2 – 10
- involves the newly established Article XIII Special Tripartite Committee



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