

Maritime Labour Convention, 2006 - It's Importance and Impact on the Shipping Industry

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ABSTRACT

Maritime Industry is unique in nature. It is having its own special machinery, separate from all other shore based industries. The adoption of International Labour Standards, rather than national or regional standards is of great importance to shipping since it is a truly global industry. The industry can not function efficiently if the regulations which apply to ships changed each time they enter ports in different countries and seafarers should be entitled to enjoy the same basic employment rights whatever the flag of the ship on which they serve. Hence, it was necessary to make international labour conventions by International Labour Organisation (ILO).

ILO has adopted since 1920 over 68 maritime labour standards and a specific organisational system for seafarers. Later, it was felt that the very large number of the existing maritime Conventions, many of which are very detailed, made it difficult for governments to ratify and to enforce all of the standards. Many of the standards were out of date and did not reflect contemporary working and living conditions on board ships. In addition, there was a need to develop a more effective enforcement and compliance system that would help to eliminate substandard ships and that would work within the well-established international system for enforcement of the international standards for ship safety and security and environmental protection that have been adopted by IMO.

Accordingly, the associations of the ship owners and the seafarers took up the issue through IMO to ILO and several joint discussions were held since 2001 to consolidate the existing 68 maritime instruments into a single convention with modifications where felt necessary and this resulted in the adoption of "Consolidated Maritime Labour Convention" or simply called as the "Maritime Labour Convention" by ILO on 26-2-2006.

This article gives an overview of the above Convention, its importance and impact on the shipping industry.

KEY WORDS: International Labour Organisation (ILO), Maritime Labour Standards - Maritime Conventions- - Sea Farers - Ship Owners

1. INTRODUCTION

Maritime Industry is unique in nature. It is having its own special machinery, separate from all other shore based industries. The adoption of International Labour Standards, rather than national or regional standards is of great importance to shipping since it is a truly global industry. The industry can not function efficiently if the regulations which apply to ships changed each time they enter ports in different countries and seafarers should be entitled to enjoy the same basic employment rights whatever the flag of the ship on which they serve. The above was the reason for the adoption of International Labour conventions. Naturally, all the conventions have to come from International Labour Organisation (**ILO**). A summary in brief of the latest Maritime Labour Convention is dealt within this article.

2. WHAT IS ILO?

ILO is a specialised agency of the United Nations, which was founded in 1919, under the League of Nations and established as the first specialised agency of the UN in 1946. ILO seeks the promotion of social justice, internationally recognised human and labour rights as well as the improvement of working conditions around the world. The ILO formulates International Labour Standards in the form of Conventions and Recommendations. The ILO's office which is located in Geneva is a permanent secretariat of the ILO and focal point for the overall activities of the organisation.

3. MARITIME LABOUR STANDARDS

In view of the unique character of seafaring profession, the ILO has adopted since 1920 over 68 maritime labour standards and a specific organisational system for seafarers. These standards cover a multitude of questions including minimum age of entry to employment, recruitment and placement, medical examination, articles of agreement, repatriation and paid holidays, social

security, hours of work and rest periods, crew accommodation, identity documents, occupational safety and health, welfare at sea and in ports, continuity of employment, vocational training and certificates of competency.

4. NEED FOR CHANGING THE EXISTING SYSTEM OF MULTI STANDARDS

It was felt that the very large number of the existing Maritime Conventions, many of which are very detailed, made it difficult for governments to ratify and to enforce all of the standards. Many of the standards were out of date and did not reflect contemporary working and living conditions on board ships. In addition, there was a need to develop a more effective enforcement and compliance system that would help to eliminate substandard ships and that would work within the well-established international system for enforcement of the international standards

for ship safety and security and environmental protection that have been adopted by International Maritime Organisation (IMO).

5. WHAT IS THE RESULT?

The associations of the ship owners and the seafarers took up the issue through IMO to ILO and several joint discussions were held since 2001 to consolidate the existing 68 maritime instruments (conventions and recommendations), adopted by ILO since 1920 into a single convention that uses a new format with some updating, where necessary, to reflect modern conditions and language and this resulted in the adoption of “Consolidated Maritime Labour Convention” or simply called as the “Maritime Labour Convention” by ILO on 26-2-2006.

6. ILO ADOPTS NEW CONSOLIDATED MARITIME CONVENTION

The consolidated maritime convention, 2006 adopted by ILO is a ground breaking, comprehensive global legal instrument concerning maritime labour standards for the ship owners, sea farers and maritime nations. The new convention will not only address the need for decent working conditions for the world’s more than 1.2 million seafarers, but also provides the impetus and sup-port for similar innovative and balance approaches in other sectors. The Maritime Labour Convention, 2006, once it enters into force, will be the **“fourth pillar” of the international regulatory regime for quality shipping**, complementing the key Conventions of the International Maritime Organization (IMO) such as the SOLAS, 1974, STCW 78/95, MARPOL 73/78.

7. WHEN THE CONVENTION WILL COME INTO FORCE AND WHAT HAPPENS DURING THE TRANSITION PERIOD?

The convention will enter 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 33 percent. Thereafter, this convention shall come into force for any member 12 months after the date on which its ratification has been registered. Countries that ratify the Maritime Labour Convention, 2006 will no longer be bound by the existing conventions when the new convention comes into force for them. Countries that do not ratify the new convention will remain bound by the existing conventions they have ratified, but those conventions will be closed to further ratification.

8. APPLICATION OF THE CONVENTION

The Convention applies to all ships (and to the seafarers on those ships) whether publicly or privately owned that are ordinarily engaged in commercial activities.

The Convention 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

engaged in fishing; ships of traditional build such as dhows and junks; warships or naval auxiliaries.

9. DETAILS OF THE MLC, 2006

The Convention comprises three different but related parts: the Articles, the Regulations and the Code. The Articles and Regulations set out the core rights and principles and the basic obligations of Members ratifying the Convention.

The Code contains the details for the implementation of the Regulations. It comprises Part A (mandatory Standards) and Part B (non-mandatory Guidelines). The Regulations and the Code are organised into general areas under five Titles as shown below:

Title 1: Minimum requirements for seafarers to work on a ship

Title 2: Conditions of employment

Title 3: Accommodation, recreational facilities, food and catering

Title 4: Health protection, medical care, welfare and social security protection

Title 5: Compliance and enforcement

Each Title contains groups of provisions relating to a particular right or principle (or enforcement measure in Title 5), with connected numbering.

TITLE 1. Minimum requirements for seafarers to work on a ship

Regulation 1.1 – Minimum age - To ensure that no underage persons work on a ship

Regulation 1.2 – Medical certificate - To ensure that all seafarers are medically fit to perform their duties at sea

Regulation 1.3 - Training and qualifications- To ensure that seafarers are trained or qualified to carry out their duties on board ship

Regulation 1.4 - Recruitment and placement - To ensure that seafarers have access to an efficient and well-regulated seafarer recruitment and placement system

TITLE 2. Conditions of employment

Regulation 2.1- Seafarers' employment agreements-To ensure that seafarers have a fair employment agreement

Regulation 2.2 - Wages - To ensure that seafarers are paid for their services

Regulation 2.3 - Hours of work and hours of rest- To ensure that seafarers have regulated hours of work or hours of rest

Regulation 2.4 - Entitlement to leave- To ensure that seafarers have adequate leave

Regulation 2.5 - Repatriation- To ensure that seafarers are able to return home

Regulation 2.6 - Seafarer compensation for the ship's loss or foundering- To ensure that seafarers are compensated when a ship is lost or has foundered

Regulation 2.7- Manning levels- To ensure that seafarers work on board ships with sufficient personnel for the safe, efficient and secure operation of the ship

Regulation 2.8 - Career and skill development and opportunities for seafarers' employment- To promote career and skill development and employment opportunities for seafarers

TITLE 3. Accommodation, recreational facilities, food and catering

Regulation 3.1 – Accommodation and recreational facilities- To ensure that seafarers have decent accommodation and recreational facilities on board

Regulation 3.2 – Food and catering- To ensure that seafarers have access to good quality food and drinking water provided under regulated hygienic conditions

TITLE 4. Health protection, medical care, welfare and social security protection

Regulation 4.1- Medical care on board ship and ashore-To protect the health of seafarers and ensure their prompt access to medical care onboard ship and ashore

Regulation 4.2- Ship owners' liability-To ensure that seafarers are protected from the financial consequences of sickness, injury or death occurring in connection with their employment

Regulation 4.3- Health and safety protection and accident prevention-To ensure that seafarers' work environment on board ships promotes occupational safety and health

Regulation 4.4- Access to shore-based welfare facilities-To ensure that seafarers working on board a ship have access to shore-based facilities and services to secure their health and well-being

Regulation 4.5- Social security-To ensure that measures are taken with a view to providing seafarers with access to social security protection.

TITLE 5. Compliance and enforcement

Regulation 5.1 – Flag State responsibilities- To ensure that each Member implements its responsibilities under this Convention with respect to ships that fly its flag

Regulation 5.1.1 – General principles

Regulation 5.1.2 – Authorisation of recognised organisations

Regulation 5.1.3 – Maritime labour certificate and declaration of maritime labour compliance

Regulation 5.1.4 – Inspection and enforcement

Regulation 5.1.5 – On-board complaint procedures

Regulation 5.1.6 – Marine casualties

Regulation 5.2 – Port State responsibilities- To enable each Member to implement its responsibilities under this Convention regarding international cooperation in the implementation and enforcement of the Convention standards on foreign ships

Regulation 5.2.1 – Inspections in port

Regulation 5.2.2 – Onshore seafarer complaint-handling procedures

Regulation 5.3 – Labour-supplying responsibilities-To ensure that each Member implements its responsibilities under this Convention as pertaining to seafarer recruitment and placement and the social protection of its seafarers

Appendix A5-I

Appendix A5-II

Appendix A5-III

Appendix B5-I – EXAMPLE of a national Declaration

10. THE UNDERLYING PRINCIPLES OF THE CONVENTION

The Convention has the following 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.

11. ARTICLES OF THE CONVENTION

The Articles of the Convention are the following:

Article I - General Obligations

Article II - Definitions and Scope of Applications

Article III - Fundamental Rights and Principles

Article IV - Seafarers Employment and Social rights

Article V - Implementation and Enforcement Responsibilities

Article VI - Regulations and PART A and B of the Code

Article VII - Consultation with Ship owners' and Seafarers' Organisations

Article VIII - Entry into Force

Article IX - Denunciation

Article X - Effect of Entry into Force

Article XI - Depository Functions

Article XII - ----do ----

Article XIII - Special Tripartite Committee

Article XIV - Amendment of the Convention

Article XV - Amendment to the Code

Article XVI - Authoritative Languages

12. MANDATORY CERTIFICATION OF SHIPS AS PER MLC

For ships of 500 GT or over that are engaged in international voyages or ships of 500 GT or over that fly the flag of one country and operate from a port or between ports in another country, the MLC, 2006, contains a list of 14 areas (given under Para 13) that are subject to a mandatory certification system. The documents that are issued by the flag State, or by a Recognised Organisation (RO) on its behalf, if so authorised, are the Maritime Labour Certificate and a Declaration of Maritime Labour Compliance (DMLC).

The DMLC has two parts. Part I is filled out by the flag State and refers to the relevant national requirements that are to be certified as having been complied with. Part II is prepared by the ship owner and outlines the measures that the ship owner has put in place to ensure ongoing compliance on the ship with these flag State requirements.

Each Member shall require ships that fly its flag to carry and maintain a maritime labour certificate certifying that the working and living conditions of seafarers on the ship, including measures for ongoing compliance to be included in the declaration of maritime labour compliance referred to in this Regulation, have been inspected and meet the requirements of national laws or regulations or other measures implementing this Convention. Each Member shall require ships that fly its flag to carry and maintain a declaration of maritime labour compliance stating the national requirements implementing this.

Convention for the working and living conditions for seafarers and setting out the measures adopted by the ship-owner to ensure compliance with the requirements on the ship or ships concerned. The Maritime Labour Certificate and the Declaration of Maritime Labour Compliance shall conform to the model prescribed by the Code.

13. FOURTEEN AREAS TO BE INSPECTED AND APPROVED BY THE FLAG STATE - APPENDIX A5-I

The following minimum **14** areas are to be inspected and approved by the flag state / RO before certification and during subsequent inspections.

1. Minimum age (Regulation 1.1)
2. Medical certification (Regulation 1.2)
3. Qualifications of seafarers (Regulation 1.3)
4. Seafarers' employment agreements (Regulation 2.1)
5. Use of any licensed or certified or regulated private recruitment and placement service (Regulation 1.4)
6. Hours of work or rest (Regulation 2.3)
7. Manning levels for the ship (Regulation 2.7)
8. Accommodation (Regulation 3.1)
9. On-board recreational facilities (Regulation 3.1)
10. Food and catering (Regulation 3.2)
11. Health and safety and accident prevention (Regulation 4.3)
12. On-board medical care (Regulation 4.1)
13. On-board complaint procedures (Regulation 5.1.5)
14. Payment of wages (Regulation 2.2)

14. SEAFARERS PRIVILEGES /BENEFITS

Every seafarer has the right to fair terms of employment and has a right to get the job agreement copy. Also, he shall be given a document containing a record of his employment

onboard the ship. He is assured of his wages paid to him for his services on board as per the agreement and complying with the requirements of the convention.

The hours of work and hours of rest of a seafarer are regulated as per the standard. He is entitled for annual leave with pay on the basis of a minimum of 2.5 calendar days per month of employment. He is ensured that he works onboard without fatigue as proper manning levels are enforced by the Administration.

Seafarer has a right to be repatriated to home at no cost to him in the circumstances and under the conditions specified in the code. The Seafarer has a right to decent working conditions onboard ship and is entitled to adequate compensation in the case of injury, loss or unemployment arising from the ship's loss or foundering. The Standard ensures that the seafarer has decent accommodation and recreational facilities onboard and that he has access to good quality food and drinking water provided under regulated hygienic conditions.

The standard shall help the Seafarer to strengthen his competency, qualifications and employment opportunities. He is ensured of the health protection and medical care, including essential dental care while working onboard, free of charge. The standard gives the seafarer the right to visit a qualified medical officer or dentist without delay in ports of call, where practicable. His health protection services are not limited to treatment of sick or injured seafarers but include measures of a preventive character such as health promotion and health education programmes. He is protected from the financial consequences of sickness, injury or death occurring in connection with his employment (This regulation does not affect any other legal remedies he may seek). He is ensured that his work environment onboard ship promotes occupational safety and health.

He would also be given onboard adequate training on the subject occupational health and safety and measures to improve them (Noise and Vibration are also covered under this).

He is ensured that he has access to shore-based facilities and services to secure his health and well-being. Welfare facilities are available to 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.

He is ensured that social security protection measures are provided to him and, to the extent provided for in its national law, to his dependents. The branches considered to achieve progressively comprehensive social security protection 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 ship owners' liability, and under other titles of this Convention.

15. SHIP OWNERS RESPONSIBILITIES AND LIABILITIES

Ship owners have to ensure that they are recruiting only seafarers of 16 years and older and they are properly qualified and certified for the required jobs onboard and medically fit as per the standard. Ship owners have to ensure that all their ships properly manned as per the standard.

Ship owners shall ensure that all the sea-farers are properly paid their monthly wages as detailed out in the standard. They also have to grant paid annual leave to their seafarers as per the rules. In addition, they have to adequately compensate the seafarers in the case of loss, injury or unemployment arising from the ship's loss or foundering.

Ship owners have to make arrangements at their cost for the repatriation of their seafarers to their homes as per the agreement terms and in line with the standard. Ship owners have to ensure that the seafarers are protected from the financial consequences of sickness, injury or death occurring in connection with their employment with them. They have to ensure that the seafarers work environment on board ships promotes occupational safety and health. They have to provide Personal Protective Equipments (PPE) or other accident prevention safeguards to the seafarers and ensure that the seafarers are complying with all the safety procedures required for the type of ships they work.

Ship owners have to provide free medical care, health improvement /protection measures and social security protection to their seafarers complying with the terms of employment agreement and as per the terms of the standard. Ship owners have to ensure that all their ships except those which are otherwise exempted by the convention are fully complying with the convention. Those that own or operate ships of 500 gross tonnage and above, engaged in international voyages or voyages between foreign ports, are required to develop and carry out plans for ensuring that the applicable national laws, regulations or other measures to implement the Convention are actually being complied with.

They have to declare their compliance with the standard by duly certifying the Part II of the DMLC and get their ships certified by their Flag state Authorities and always keep onboard the Maritime Labour Certificate issued to them along with a copy of the DMLC.

Both the MLC and the DMLC have to be kept updated by getting done the intermediate and the renewal inspections. The masters of these ships are then responsible for carrying out the ship owners' stated plans, and for keeping proper records to evidence implementation of the requirements of the Convention.

16. FLAG STATE RESPONSIBILITIES:

The flag State (or recognised organization on its behalf) will review the ship owners' plans and verify and certify that they are actually in place and being implemented. Flag States will also be

expected to ensure that national laws and regulations implementing the Convention's standards are respected on smaller ships that are not covered by the certification system.

Flag states after carrying out thorough inspection as laid out in the convention and on satisfaction issue MLCs and Part I of DMLCs to all ships of 500 gross tonnage and above, engaged in international voyages or voyages between foreign ports. Flag state also conducts intermediate inspections for the verification of the continued compliance and renewal inspections for issuing the renewal certificates.

Flag state may issue a MLC on an interim basis for a period not exceeding six months to new ships on delivery, when a ship changes its flag or when ship owner assumes responsibility for the operation of a ship which is new to that ship-owner.

Flag state shall appoint sufficient number of competent inspectors for the inspection of the ships which fly their flags to verify that they are complying with the requirements of the standards. They shall maintain records of inspections and shall publish an annual report on inspection activities.

Adequate penalties and other corrective measures for breaches of the requirements of this Convention (including seafarers' rights) and for obstructing inspectors in the performance of their duties shall be provided for and effectively enforced by the Flag state.

Flag state is responsible for responding to seafarers complaints and is also responsible to requests for information about its ships from Port State Control Authorities. Flag states shall require that ships that fly its flag have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of this Convention (including seafarers' rights) and shall also prohibit and penalise any kind of victimisation of a seafarer for filing a complaint. Flag state representatives shall carry out PSC inspections onboard foreign ships for the verification of the compliance of the convention and may detain the ships if found possessing major deficiencies.

Flag state shall ensure that seafarers on ships calling at a port in their jurisdiction who allege a breach of the requirements of this convention, including seafarers' rights have the right to report such a complaint in order to facilitate a prompt and practical means of redress.

Flag state shall establish an effective inspection and monitoring system for enforcing its labour-supplying responsibilities and for taking legal proceedings for breaches of licensing and other operational requirements under this Convention.

17. ACTIONS TO BE TAKEN IF DEFICIENCIES ARE IDENTIFIED

The following actions are taken if deficiencies are identified:

Give appropriate advice; List, with appropriate timescales, the deficiencies to be rectified, for example, before departure; within 14 days; or before the issue of a Maritime Labour Certificate; Prevent the ship from leaving port until necessary actions are taken; Impose any penalties or other corrective measures available under national law; In the case of ships that are certified: withdraw the Maritime Labour Certificate or refuse to endorse the Maritime Labour Certificate following an intermediate inspection or refuse to renew the certificate.