



Live broadcast training on the Maritime Labour Convention, 2006

Unit 1.2. Visits & Inspections, Human Element

Date: 24 and 25 June 2020

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1. Agenda

Wednesday 24 June 2020

Time*	Agenda Item	For
09:00 – 09:30	Live broadcasting technical settings	
09:30 – 10:15	<ul style="list-style-type: none"> ▪ Status overview of the MLC, 2006 ▪ Questions & answers 	Jaime Gonzalez Gil
10:15 – 11:15	<ul style="list-style-type: none"> ▪ Articles – Scope and definitions ▪ Questions & answers 	
11:15 – 11:30	Break	
11:30 – 12:45	<ul style="list-style-type: none"> ▪ Flag State challenges ▪ Substantial equivalence ▪ Areas of flexibility ▪ Hours of work and rest ▪ Minimum manning ▪ Questions & answers 	
12:45	End of first day	

*There will be a five-minute break after each topic

Thursday 25 June 2020

Time*	Agenda Item	For
09:00 – 10:15	<ul style="list-style-type: none"> ▪ Seafarers' Employment agreement – Repatriation – Periods of service – Entitlement to leave – Payment of wages ▪ Questions & answers 	Jaime Gonzalez Gil
10:15 – 11:15	<ul style="list-style-type: none"> ▪ Implementation and enforcement of 2014 Amendments – Financial security ▪ The 2016 Amendments ▪ Questions & answers 	Jaime Gonzalez Gil
11:15 – 11:30	Break	
11:30 – 12:30	<ul style="list-style-type: none"> ▪ Port State Control: Harmonization of MLC enforcement ▪ Questions & answers 	
12:30 – 12:50	On-line course evaluation and closure minutes	
12:50	End of training	

*There will be a five-minute break after each topic

2. Introduction

The MLC, 2006 entered into force on 20 August 2013 and has subsequently been modified through amendments adopted by the ILO in 2014, 2016 and 2018¹. Ninety-seven² ILO Members representing 91% of the global tonnage in maritime transport have to date ratified the Convention.

ILO Members which have ratified the MLC, 2006 have consequently been working on adopting national legislation to implement the provisions of the Convention.

In accordance with Article 22 of the ILO Constitution, each of the MLC-ratifying Members must submit an annual report to the International Labour Office describing the measures taken to give effect to the provisions of the Convention. These reports shall be in such form and contain the necessary information to objectively reflect the state of play within the country with regard to the implementation of the MLC, 2006. Said information would be examined by the ILO Committee of legal experts. Although these national reports, to a large extent, focus on implementation measures at national level, they may also contain information about compliance with the Convention as found out through various actions such as port State control. The provision of such information to the ILO by Members does not appear to be systematic.

An overall objective of the MLC, 2006 is to create a level playing field on maritime labour conditions at global level whilst providing the minimum standards of protection for seafarers' rights as well as their living and working conditions. This will require not only ratification by ILO Members but also that the Convention's provisions are implemented and enforced in a reasonably coherent way among the ratifying ILO Members. Unduly diverse compliance approaches among ILO Members may risk distorting the aimed level playing field and negatively affect seafarers.

Therefore, a comprehensive overview of compliance will be an important source of information conducive to a continuous process of revising the MLC, 2006 in a bid to keep it relevant and implementable. Without having a clear picture of its functions and possible shortcomings, discussions on future amendments may overlook the scale of those potential shortcomings and the effectiveness of the amendments under discussion.

The inherent tripartite structure governing the MLC, 2006 emphasises the importance of having the commitment not only by governments but also by shipowners and seafarers' organisations to firmly work with the common goal of ensuring seafarers' employment and social rights.

With that objective in mind, the European Maritime Safety Agency (EMSA), the European Commission (EC), the International Maritime Organization (IMO) and the International Labour Organization (ILO) moved towards a joint initiative to allow representatives of all parties to closely cooperate and exchange experiences gained after the entry into force of the Convention.

The International Workshop on the Maritime Labour Convention, 2006 was organised by EMSA in February 2020. It was not intended to mirror the already-established Special Tripartite Committee of the ILO, nor to be a forum for proposing changes in the text of the Convention. The workshop was planned to serve as a reflection exercise about what has already been done, what is being done and what should be done to continue providing seafarers with the special protection that they deserve.

Therefore, the workshop set the scenario for bringing stakeholders' views and comments together so that its outcome might also contribute to a common understanding of the Convention and promote ratification by those countries which are still in the process of incorporating it into their national legislation.

Notwithstanding that there are already policy mechanisms in place, at international, EU and national levels for ensuring compliance with the requirements of the Convention, increasing the cooperation and exchange of information between all maritime stakeholders is necessary.

¹ Expected date of entry into force: 26 December 2020

² By June 2020 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312331

The shipping industry needs not only trained and qualified seafarers but should also firmly pursue seafarers' rights with determination to make the career at sea attractive. Therefore, the workshop was a significant contribution in the process of ensuring that seafarers' rights should prevail as part of maritime safety now and in the coming years.

As part of its 5-year strategy, EMSA also looks ahead and will give value to the human element perspective of shipping by continuing to provide assistance to improve seafarers' living and working conditions.

Together with the European Commission, EMSA has also developed an effective and efficient programme of visits and inspections to EU and non-EU countries to verify the maritime education, training and certification systems in place. The expertise already gained in this area, together with the capabilities gained on the MLC, 2006 can be merged and consequently be offered to build the relevant capacity for those countries which are still working towards ratification and to reinforce the implementation by the ratifying countries.

The workshop was structured to cover the three main responsibilities stemming from the Convention, namely flag State, port State and labour-supplying State responsibilities and aimed at:

- Promoting ratification among ILO Member States;
- Identifying the main difficulties in the implementation of the Convention, taking into account its flexibility, as evident in its scope and definitions and the understanding of substantial equivalence;
- Sharing enforcement experiences with a view to promote harmonisation at a global level;
- Exploring ideas for activities which would need to be put in place to achieve the aimed harmonisation;
- Encouraging an exchange of views regarding the survey and certification process and the delegation to Recognised Organisations;
- Explaining the processes to address cases of abandonment of seafarers;
- Highlighting the progress and challenges brought by the amendments to the Code implementing regulations on repatriation and shipowners' liability;
- Understanding the forms in which financial security will have to be provided and the related shipowners' liability;
- Raising more awareness to the work undertaken by the ITF and how this is intended to complement the responsibilities of shipowners, flag States and port States and that it can serve to provide additional protection for seafarers;
- Identifying actions towards raising seafarers' awareness about their rights, in particular with regard to labour conditions and social security;
- Sharing experiences among ratifying Parties on the implementation of labour supplying responsibilities.

There was a common approach in relation to:

- The need to achieve uniformity and harmonisation in the implementation of the Convention by flag and port States;
- The importance of synchronising activities for enhancing cooperation among governments, shipowners and seafarers, in particular regarding exchange of information (i.e. PSC inspections, IMO/ILO joint database on reported incidents of abandonment of seafarers);
- The importance of highlighting and promoting those good practices by shipowners that ensure the protection of seafarers' rights;
- The benefits of establishing a cooperation framework (EC/EMSA-ILO-IMO) for technical assistance and capacity building to ensure worldwide compliance with the Convention;
- The importance of ensuring a level playing field and the respect of minimum standards in maritime labour by increasing the number of ratifications to the Convention;
- Better appraisal of the role of seafarers' organisations working towards complementing the work of flag and port States to achieve fair conditions of employment for seafarers.

The premise that steered the discussions during the workshop was that when dealing with IMO and ILO relevant instruments, it is important that all stakeholders are coordinated. Similarly, to IMO Conventions, the MLC, 2006 is a key element for shipping to continue moving towards sustainable growth and social responsibility. However, the

social aspect of the maritime sector is still a common challenge in ensuring worldwide compliance with ILO Conventions.

The MLC, 2006 must be perceived as *“the floor”* and not as *“a ceiling”*. The Convention will not achieve its goals without the cooperation between ILO, IMO flag States, port States and social partners. They all must work together towards inspiring further actions to achieve global ratification.

Furthermore, EU Institutions must also liaise with EU Maritime Administrations to better address the challenges of implementing the social aspects of shipping, in particular, seafarers’ rights and promotion of maritime professions.

The challenge is to obtain universal ratification, at least by those with maritime importance.

The role of the ILO Supervisory System to achieve worldwide compliance is of utmost importance. According to Article 22 of the ILO Constitution, 77 reports have already been reviewed by the ILO aiming at achieving a uniform and consistent implementation of the MLC, 2006. From that perspective, the efforts that Governments made to adopt laws and regulations to give effect to the Convention must be commended.

Effective implementation of the MLC, 2006 still faces challenging situations such as the abandonment of seafarers. IMO and ILO Secretariats jointly work to establish procedures for reporting incidents of abandonment of seafarers. To better ensure protection of seafarers against abandonment, a set of amendments were adopted in 2014³. Further amendments were subsequently adopted in 2016⁴ and 2018⁵ to protect seafarers against harassment and bullying on board and the wages for seafarers who were subject to captivity.

In order to give effect to those amendments, MLC-ratifying countries need to accept them; otherwise, flag States may appear to be fully in line with all requirements when in fact that is not the case.

The “no more favourable treatment” clause stating that ships must not be put at a disadvantage because their country has ratified the MLC, 2006, triggered new ratifications. Experience showed that even after ratification, governments encounter challenging situations when implementing some provisions of the Convention. Areas where further guidance might be provided include inter alia, the definition of a seafarer, minimum age not ensured by all countries, effective monitoring of recruitment and placement services, seafarer employment agreements, restrictions to the right of repatriation, social security, adequate manning, effective respect of hours of work and hours of rest, the right to shore leave and the maximum period of service on board.

Various ratifying and non-ratifying countries have requested technical assistance to overcome these challenges. The ILO acknowledged that such request could not always be accommodated. The ILO International Training Centre in Turin is well positioned to address such needs by helping to strengthen the capacity of those dealing with the implementation of the MLC, 2006. Together with the ILO, other institutions⁶ are contributing in this respect, providing support sought by a number of countries⁷.

³ https://www.ilo.org/ilc/ILCSessions/previous-sessions/103/reports/WCMS_248905/lang-en/index.htm

⁴ https://www.ilo.org/dyn/normlex/en/f?p=1000:51::NO:51:P51_CONTENT_REPOSITORY_ID:3303971

⁵ https://www.ilo.org/dyn/normlex/fr/f?p=1000:51::NO:51:P51_CONTENT_REPOSITORY_ID:3952971

⁶ EC/EMSA is providing assistance to countries under the Black and Caspian Sea and SafeMed projects

⁷ In particular countries from the Middle East, South America and Pacific Islands

3. Status overview of the MLC, 2006

	Date of adoption	Date of entry into force	Regulation	Standard	Guideline	Appendix
Maritime Labour Convention, 2006	23 February 2006	20 August 2013				
2014 Amendments	11 June 2014	18 January 2017	N/A	Standard A2.5.2 – Financial security	Guideline B2.5.3 – Financial security	Appendix A2-I Evidence of financial security under Regulation 2.5, paragraph 2
			N/A	Standard A4.2 – Shipowners' liability", replace "A4.2" by "A4.2.1"	Guideline B4.2 – Shipowners' liability", replace "B4.2" by "B4.2.1"	Appendix A4-I Evidence of financial security under Regulation 4.2
			N/A	Standard A4.2.2 – Treatment of contractual claims	Guideline B4.2.2 – Treatment of contractual claims	Appendix B4-I Model Receipt and Release Form referred to in Guideline B4.2.2
			Amendments relating to Appendices A5-I, A5-II and A5-III			
2016 Amendments	07 June 2016	08 January 2019	N/A	N/A	Guideline B4.3.1 – Provisions on occupational accidents, injuries and diseases	
			N/A	N/A	Guideline B4.3.6 – Investigations	
			N/A	Standard A5.1.3 – Maritime labour certificate and declaration of maritime labour compliance	N/A	Appendix A5-II Maritime Labour Certificate
2018 Amendments	05 June 2018	26 December 2020	N/A	Standard A2.1 – Seafarers' employment agreements		
			N/A	Standard A2.2 – Wages		
			N/A	N/A	Guideline B2.5.1 – Entitlement	

4. Articles - Scope and Definitions

Articles contain more general statements of principles, obligations and rights with the specific details set out in the Regulations and the Code. The Articles also contain provisions relating to the legal aspects of the operation and application of the Convention such as definitions and the status of Regulations and of Parts A and B of the Code.

4.1 Definition of Seafarer: Who is protected by the MLC, 2006?

The MLC, 2006 applies to “**seafarers**” as defined in its Article II, paragraph 1(f), that is, **all persons who are employed or are engaged or work in any capacity on board a ship to which the Convention applies.**

This definition includes not just the crew involved in navigating or operating the ship but also, for example, hotel personnel working on the ship.

There could be cases where it is not clear whether a category of workers is to be regarded as “seafarers” covered by the Convention. Article II, paragraph 3, addresses this situation. **In the event of doubt, the national competent authority must make a determination on the question** after consultation with the shipowners’ and seafarers’ organizations concerned. Information about any national determinations that have been made must be communicated to the Director-General of the ILO. National information that has been communicated by ratifying countries is available in the “MLC, database” on the ILO MLC, 2006 website.

The definition covers all workers including cabin and cleaning personnel, bar staff, waiters, entertainers, singers, kitchen staff, casino personnel and aestheticians. This conclusion is applicable **irrespective of whether the seafarers concerned have been recruited directly by a shipowner or are employed under a subcontracting arrangement.**

On the assumption that cadets are performing work on the ship, although under training, they would be considered as “seafarers”. However, this is not always the case.

Some examples of national determinations:

*Under the Merchant Marine Circular MMC-265 of the Panama Maritime Authority⁸ concerning Maritime Labour Convention, 2006 (MLC, 2006) - Occupational Groups (DEFINITIONS), of 21 January 2013, **the following persons or category of persons are not considered as seafarers:** - Port pilots - Port workers - Ship surveyors - Superintendents - Workers subject to the special working regime of the Panama Canal Authority - Technical staff operating offshore drilling platforms or MODU; except those individuals that because of their training and qualifications, are covered by the provisions of the STCW Convention. - Armed personnel - Scientists - Researchers - Divers - **Cadets** - Specialist off-shore technicians, and others whose work is not part of the routine operation of the ship - Any other person or category of persons as indicated by the Administration.*

*By Marine Notice MLC-001, Rev. 01/14, issued by the Liberian Maritime Authority⁹ concerning Implementation, Inspections and Certification under the Maritime Labour Convention (MLC), 2006, the Liberia Administration considers that **the following persons will not generally be considered as seafarers for the purpose of the MLC, 2006:** - Professional Pilots; - Port Workers; - Guest entertainers; - Ship Inspectors/Surveyors; - Ship Superintendents; - Repair and maintenance technicians; and - Temporary riding crew such as Suez Canal crew. **Cadets and Trainees enrolled in a maritime university and sent on board to complete the sea time required for graduation, may upon application and satisfactory review of their contractual or similar arrangements, be***

⁸ https://www.ilo.org/dyn/normlex/en/f?p=1000:80023::NO:80023:P80023_COUNTRY_ID:102792

⁹ https://www.ilo.org/dyn/normlex/en/f?p=1000:80023::NO:80023:P80023_COUNTRY_ID:102742

exempted from Regulations 1.4 (Recruitment and placement); 2.1 (Seafarers' employment agreements); 2.2 (Wages); 4.2 (Shipowners' liability); 4.5 (Social Security); and Standards A 2.4 (Entitlement to leave); and A 2.5.2(b) of the Convention.

Marshall Islands, under Marine Notice No. No. 2-011-33, Rev 1/16 of the Office of the Maritime Administrator concerning Maritime Labour Convention, 2006 Inspection and Certification Program, the Administration considers that the following are not seafarers: Privately Contracted Armed Security Personnel (PCASPs) are considered supernumeraries by the Administrator. Other supernumeraries not considered seafarers shall include harbour pilots; North Sea/Canal pilots; Amazon River pilots; short sail attendance of service engineer and repair technicians; ship inspectors; auditors; superintendents; as well as specialist staff such as scientists, researchers, guest entertainers, and lecturers. Riding gang members, tank cleaning crews and port workers are not considered seafarers. This would include someone who is not a documented seafarer and who does not perform watchstanding, automated engine room duty watch, or personnel safety functions; or cargo handling functions, including any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel); does not serve as part of the crew complement; and is not a member of the catering/mess crew. **Cadets are seafarers for which suitable accommodation onboard ships shall be made available while undergoing mandatory shipboard training. Cadets enrolled in a National or other training program that requires onboard experience may hold a training agreement in lieu of a seafarers employment agreement, so long as the training agreement provides contractual arrangements to ensure that a cadet has the substantially equivalent information and protections as afforded by a seafarers' employment agreement.**

Cruise ship personnel such as hotel staff, restaurant and galley staff, shopkeepers, resident entertainers, spa personnel, hairdressers, casino operators and others who are directly employed by the cruise operator or are employed by an outsourced franchise company are seafarers.

Personnel under the employ or contract of the charterer of a yacht are not considered seafarers and shall be the responsibility of the charterer. Nevertheless, such personnel must not be brought on board unless suitable accommodation and safety equipment can be provided. |

Industrial personnel engaged on vessels doing pipe laying, cables laying, ROV, surveys, subsea operations with construction crews; ranks such as riggers, riggers foreman, offshore construction managers, surveyors, divers, technicians, medics etc. who are working onboard the vessel for extended periods as part of the normal working complement, while not considered seafarers, and whether employed by the vessel operator or not, **will be expected to have at least the same level of social protection as the marine crew.**

Under Circular No. 2014-003 concerning Maritime Labour Convention 2006 Guidance, issued by the Department of Marine Services and Merchant Shipping (ADOMS) of the Government of Antigua and Barbuda, the term "seafarer" does not apply to persons whose work is not part of the routine business of the ship and whose principal place of business is ashore, for example, marine professionals such as harbour pilots, deep sea pilots, inspectors, superintendents, scientists, researchers, divers, specialist offshore technicians, and special purposes personnel. Not included in the definition of seafarer are those persons working on a ship on an occasional and short-term basis such as specialist fitters, guest lecturers, repair technicians, surveyors and port workers. Security personnel carried on a temporary basis are also not considered as seafarers. **German students undertaking their shipboard training and sea service period and who are enrolled at a German maritime training university and on board purely for the period of shipboard service necessary to achieve their first certificate of competency may be regarded as Not Seafarers. This agreement covers only those students covered by the German law on this subject and who are not paid a salary by the shipowner and who have a training contract with the maritime university. Similarly, German school pupils, who are occasionally carried on a ship for a short work familiarisation period as defined by German law, may be regarded as Not Seafarers.**

Under Circular No. 24/2012 of 8 June 2012 concerning Maritime Labour Convention 2006 – Ratification and Early Implementation by Cyprus, the Department of Shipping, under the Ministry of Communications and Works, the following categories of persons are not considered as Seafarers: Scientists, researchers, divers, specialist off-shore technicians, etc. whose work is not part of the routine operation of the ship; harbour pilots, inspectors, surveyors, auditors, superintendents etc. who although trained and qualified in maritime skills and perform key specialist functions, their work is not part of the routine operation of the ship; guest entertainers, repair technicians, port workers whose work is occasional and short-term with their principal place of employment being ashore; non-marine personnel, employed under outsourced service agreements, the terms of which determine the conditions under which the service provider will supply the necessary personnel.

*Under section 3 of the Maritime Labour Act (Seearbeitsgesetz – SeeArbG), the following shall not be deemed to be seafarers: pilots, as well as persons carrying out advisory or inspection activities on behalf of the Federation, of a Land or of another public-law corporation on board, persons who work on board on behalf of a shipyard or of a systems manufacturer **as a rule for no longer than 96 hours in order to implement warranty or guarantee work or other work necessary on board or to give instructions to the crew**, persons who work on board as a rule for no longer than 96 hours in order to carry out repairs or maintenance work which is urgently needed which cannot or may not be carried out by the crew members themselves, shipowners and cargo inspectors who, on the basis of the itinerary, are not to work on board for more than 72 hours as a rule, artistes who work on board for the entertainment of the passengers **for no more than 72 hours**, scientists who work on board ships temporarily, - persons who are on a ship in order to carry out special activities from there in order to construct, alter or operate structures, artificial islands or other systems at sea, **pupils at technical schools or students at universities or universities of applied sciences undergoing training at training facilities established in accordance with Land law and undergoing practical training and sea-service experience on a ship for this purpose**, - **pupils who are serving an internship on board within provisions of Land law**, - **pupils who, through the mediation of the German Shipowners' Association, are granted an insight into the practice of seafaring professions during the school holidays without such persons working on board on a contractual basis**, helmsmen on the Kiel Canal, and - security staff of private security companies licensed in accordance with the Trade Regulation Code.*

4.2 Definition of ship

The MLC, 2006 defines a ship in Article II, paragraph (1)(i) as “a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply”. **The MLC, 2006 applies to all ships** as so defined, whether publicly or privately owned, that are ordinarily engaged in commercial activities except:

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

The MLC, 2006 recognizes that there may be situations where there is doubt as to whether it applies to a ship or particular category of ships. In the event of doubt, the national competent authority must make a determination on the question after consultation with the shipowners' and seafarers' organizations concerned.

Pursuant to section 2.1 of the Guidance Note on Norway's implementation of the Maritime Labour Convention, 2006, issued by the Norwegian Maritime Authority in January 2015, mobile offshore units are not included because they are not certified as ships.

Unless a yacht is of traditional build or otherwise expressly excluded by the MLC, 2006 or does not come within the definition of a “ship” or is not ordinarily engaged in commercial activities, in principle, it is covered by the MLC, 2006.

Concerns exist about the compliance and enforcement on yachts under 500GT. For instance, the Caribbean MoU was concerned about cases of abandonment, payment of wages and repatriation reported on this category of yachts.

4.3 Who is the shipowner?

The MLC, 2006 defines a shipowner as “the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with the Convention ...”

This definition¹⁰ applies even if any other organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner. This comprehensive definition was adopted to reflect the idea that, irrespective of the particular commercial or other arrangements regarding a ship’s operations, there must be a single entity, “the shipowner”, that is responsible for seafarers’ living and working conditions. This idea is also reflected in the requirement that all seafarers’ employment agreements must be signed by the shipowner or a representative of the shipowner.

5. Flag State challenges - Substantial equivalence - Areas of flexibility

Flag States are still facing difficulties not only with the definitions and scope of the Convention but also considering whether there might be the need for more clarification as well as guidance on the application of substantial equivalences to implement Part A of the Code. Ambiguity in the implementation by flag States may also impact the enforcement of the Convention by port States.

Flexibility is inherent to the text of the Convention. The word “adequate” capitalize such ambiguity in the Code by being used in 56 instances. “All seafarers shall have access to an efficient, adequate and accountable system for finding employment on board ship...”, “the seafarer shall have an adequate compensatory rest period...”, “To ensure that seafarers have adequate leave...”, “adequate food, accommodation...”, “Seafarers are entitled to adequate compensation in the case of injury, loss or unemployment arising from the ship’s loss or foundering...”, “Every ship shall be manned by a crew that is adequate, in terms of size and qualifications, ...”, “Adequate rules shall be provided and effectively enforced by each Member in order to guarantee that inspectors have the status and conditions of service...”.

Similarly, the words “appropriate”, “equivalent” and “convenient” were used in 80, 14 and 7 instances respectively.

Therefore, it is important to involve all stakeholders to get a common understanding about the provisions of the Convention and establish a clearer definition of some Regulations and Standards, since the ambiguity causes different interpretations during the review of DMLC Part II and onboard surveys by surveyors (flag and RO surveyors). Some flag States have not provided shipowners with clear additional requirements and information related to expressions defined in the Convention that are vague. That is opening a room for different interpretations regarding the applicable standards within the shipping community, including ROs when approving drawings and certifying vessels.

Furthermore, flag surveyors do need more training and guidelines concerning the labour aspect inherent to the MLC, 2006.

¹⁰ FAQ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_238010.pdf

The main challenges for flag States can be:

- Identifying the main difficulties for implementation, taking into account the areas of flexibility inherent to the Convention (for instance, the definition of seafarers and the understanding of substantial equivalence);
- Sharing experiences with regard to the survey and certification process and the delegation to Recognised Organisations;
- Understanding the impact of different criteria applied by flag States in terms of definitions, Seafarers' Employment Agreements (SEAs) and minimum wages among other provisions of the MLC, 2006;
- Clarifying the role of flag States to ensure the implementation of Regulation 1.4 on Recruitment and Placement services;
- Addressing the importance of a uniform approach on social security matters;
- Facilitating completion of the Declaration of Maritime Labour Compliance (DMLC) Part I and Part II;
- Underlining the importance of establishing effective on-board complaint procedures;
- Easing the process of reporting to the ILO;
- Understanding whether ongoing co-operation between IMO and ILO in the field of fisheries might be extended to maritime transport;
- Promoting ratification among ILO Members.

There are still 50/60 countries which have not ratified MLC, 2006. Among them, there are countries which have had their systems of maritime education, training and certification recognised at EU level under Regulation I/10 of the STCW Convention: Georgia, Pakistan, Turkey and Ukraine should be a priority in term of MLC-ratification.

Saudi Arabia, the United Arab Emirates and Yemen could also dramatically improve the situation of abandoned seafarers if they become Parties to the Convention.

6. Hours of work and rest – Minimum manning

There is a link between manning and hours of work and rest with the safe operation of ships. Manning issues have been difficult to be addressed in the text of relevant IMO and ILO instruments. For instance, nowadays, IMO is conducting a scoping exercise to determine how the safe, secure and environmentally sound operation of Maritime Autonomous Surface Ships (MASS) may be introduced in IMO instruments. This exercise to be completed will have to address manning issues.

The MLC, 2006 does not set a specific number of seafarers who must be working on board a ship as this is a matter that the competent authority in the flag State would need to decide for a ship or category of ships.

Whilst discussing reasons why these areas might be challenging from a compliance and enforcement perspective, the discussion is rather inconclusive on how to tackle the already known problems. Solutions were put forward such as increasing the number of crew working on board and ensure proper recording of hours of work and rest. However, these measures would have to be consistent if the aim is to comply with the relevant Regulations and Standards.

The debate may focus on whether deficiencies on hours of work and rest would decrease if an “adequate” manning level would be in place.

7. Seafarers' Employment agreement – Repatriation – Periods of service – Entitlement to leave – Payment of wages

These Regulations and Standards must be read in conjunction and not separately. It is also important to stick to what the Convention stipulates rather than applying our reasoning or judgement.

To the question about the duration of a Seafarers' Employment Agreement (SEA), some may reply that the maximum duration is 12 months. Some others may argue that the duration should be 11 months whilst some others may claim for even shorter duration of employment on board.

The MLC, 2006 does not set a maximum period for a contract of employment¹¹. In fact, Standard A2.1 envisages SEAs of an indefinite period. However, the interaction between the right of a seafarer to be repatriated after a maximum period of service on board (a period less than 12 months) under Standard A2.5 and the obligation of the flag State under Regulation 2.4 and the Code to require that seafarers be given the minimum paid annual leave establishes some limitations on the **period of continuous service on board a ship or ships**. The specific limits will include questions such as whether the competent authority has decided in some cases to permit seafarers to forgo their minimum paid annual leave or to whether a seafarer has chosen not to exercise her or his right to be repatriated are matters for national law and practice, including applicable collective agreements.

The concept of paid annual leave is assumed to be an uninterrupted period that is to be taken annually and therefore the maximum period for service on board a ship or ships without leave would be **11 months**.

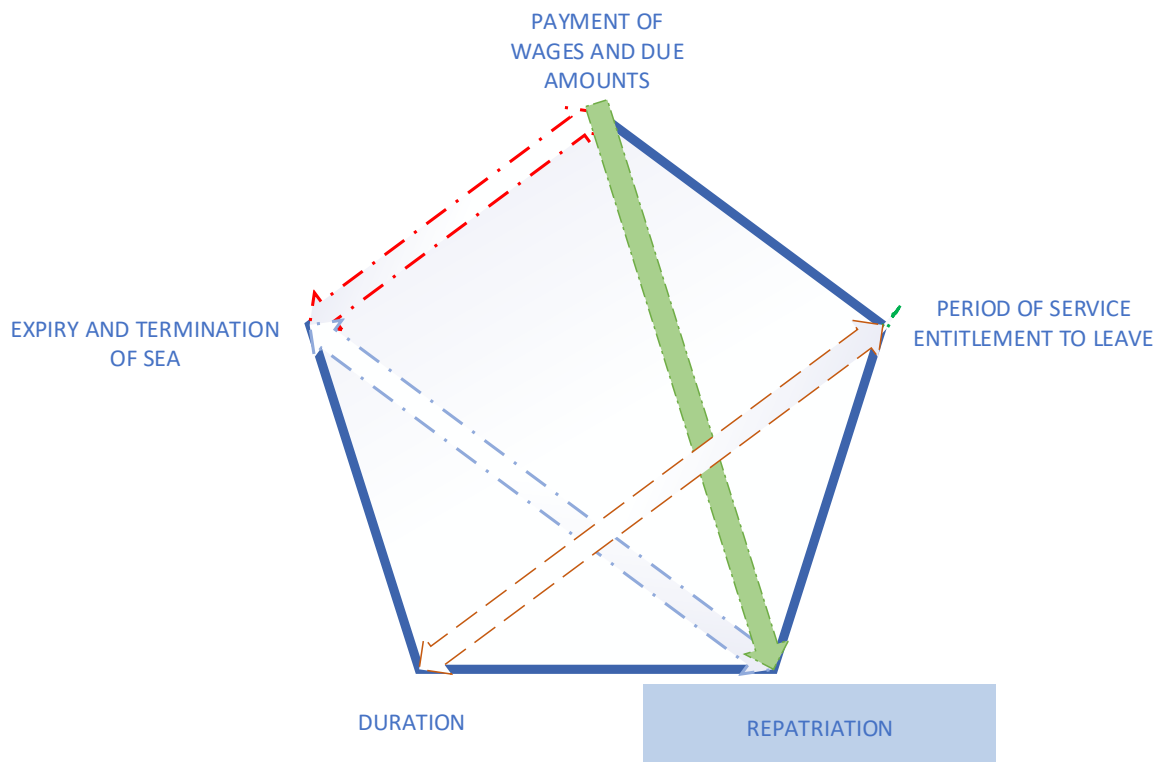


Figure 1 - SEA: Understanding the Conditions of Employment

¹¹ FAQ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/normativeinstrument/wcms_554767.pdf

8. Implementation and enforcement of 2014 Amendments – Financial security

The amendments to the Code implementing regulations on repatriation and shipowners' liability were intended to better address the specific problems faced in cases of abandonment of seafarers and to cover those cases where compensation must be provided.

Fifteen ratifying countries¹² are still in the process of acceptance of the 2014 Amendments. It is important to give a universal coverage to the amendments not only by ratifying countries' adoption of laws and regulation to give them effect but also by non-ratifying countries becoming Parties to the Convention. (Currently, there is a high incidence of reported abandonment-related cases that occur on board ships flagged by non-ratifying countries)

After the entry into force of the 2014 amendments, there was a spike in the number of new abandonment cases.

In recent years IMO and ILO have improved the functioning of their joint database on abandonment of seafarers. This allows IMO and ILO Secretariats to report the cases therein to LEG and to the ILO Governing Body. The database also had the support of the ITF.

Most of the ratifying countries have adopted the private insurance regime as the way to implement the 2014 amendments¹³. In that respect, P&I Clubs and the International Group provide an essential support in different cases of abandonment.

The ILO will update the inspection guidelines¹⁴ (flag and port State) to reflect the 2014 Amendments so that the system works uniformly in all ratifying countries.

ITF, ETF, ECSA and ICS consider abandonment of seafarers in this day and age as entirely unacceptable and highlight the importance of addressing this problem in an effective and determined way. As referred by the ITF representative, "every abandonment case is a stain in the industry's character." ITF also objected in principle to any subsidy system which ends up encouraging shipowners to persist in bad practices with regard to seafarers' living and working conditions. Before registering ships or issuing Maritime Labour Certificates, flag States should exercise due diligence and reject shipowners with uncertain financial histories.

There is the need for cooperation by all stakeholders for finding a solution to seafarers' abandonment cases.

The global maritime recruitment and placement system is an essential component of the global maritime labour market. Manning agencies and crewing companies have also a responsibility on this matter. Seafarers may have limited awareness of their rights and duties under the Convention.

¹² https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11301:0::NO::P11301_INSTRUMENT_AMENDMENT_ID:3256971

¹³ Sweden has opted for setting a social security system, public fund and adopted the social insurance code entitles seafarers to provide financial security for claims related to long term disability.

Denmark opted for a combined of public (Guarantee Employee Fund) and private systems

¹⁴ <https://www.ilo.org/global/standards/maritime-labour-convention/monitoring-implementation-tools/lang--en/index.htm>

9. The 2016 Amendments¹⁵

Guideline B4.3.1 – Provisions on occupational accidents, injuries and diseases: Guidance on eliminating shipboard harassment and bullying jointly published by the International Chamber of Shipping and the International Transport Workers' Federation¹⁶.

Standard A5.1.3 – Maritime labour certificate and declaration of maritime labour compliance

*Notwithstanding paragraph 1 of this Standard, where, **after a renewal inspection completed prior to the expiry of a maritime labour certificate**, the ship is found to continue to meet national laws and regulations or other measures implementing the requirements of this Convention, **but a new certificate cannot immediately be issued** to and made available on board that ship, the competent authority, or the recognized organization duly authorized for this purpose, **may extend the validity** of the certificate for a further period **not exceeding five months from the expiry date of the existing certificate**, and **endorse the certificate accordingly**. The new certificate shall be valid for a period not exceeding five years starting from the date provided for in paragraph 3 of this Standard.*

10. Port State Control: Harmonization of MLC, 2006 enforcement

Compliance by flag States and enforcement by port States must be hand-in-glove activities.

From the MLC, 2006 and port State perspective, it must be important to focus on:

- Sharing experiences among PSC MoUs on the enforcement of the MLC, 2006;
- Identifying how MLC inspection guidelines have been tailored in each region;
- Exploring actions for improving the exchange of information among MoUs;
- Determining the effectiveness of the enforcement of the 2014 amendments;
- Making the inspection results available so that flag States and shipowners can streamline their provisions and procedures to ensure proper compliance in those areas where more deficiencies are reported;
- Achieving harmonisation of inspection procedures and a common approach by port State control officers;
- Synchronising activities to enhance port State cooperation in reporting inspections to ILO;
- Underlining the importance of establishing effective on-shore complaint procedures;
- Improving the exchange of information with regard to rectification action plans.

These MLC-related inspection activities may interact with other duties of the port State control inspectors under IMO Conventions.

There is also a common concern on the need to provide training/guidelines for PSCOs to acquire the necessary competence to properly enforce the Convention. The updated ILO guidelines may be ready by the time of the 2021 Special Tripartite Committee in order to reflect the contents of the 2014 Amendments already in force.

Harmonization in the implementation and enforcement of the MLC, 2006 needs to be ensured at a global level. Enforcement initiatives would need to be undertaken to achieve such objective. Cooperation and coordination between all the players, i.e. ILO, IMO, PSC MoUs, EU/EMSA and flag States would be needed. This could take the form of enhancing information exchange, improving communication, sharing experiences and establishing a consistent training scheme to build the capacity of those responsible for ensuring compliance with the Convention.

Organising regional awareness-raising and inspection-related workshops and training sessions can be relevant. IMO, ILO (ILO Maritime Labour Academy) and EU/EMSA could establish joint initiatives regarding education and training on the MLC, 2006 as a continuous improvement process so that all ratifying and non-ratifying countries move towards an effective implementation of the Convention.

¹⁵ https://www.ilo.org/dyn/normlex/en/f?p=1000:51:::NO:51:P51_CONTENT_REPOSITORY_ID:3303971

¹⁶ <https://www.ics-shipping.org/docs/default-source/Other-documents/guidance-on-eliminating-shipboard-harassment-and-bullying.pdf?sfvrsn=4>

11. Shipowners and seafarers' organizations are also concerned

Shipowners can ensure compliance in different ways. One way is to make better use of the expertise, service and responsiveness of recruitment and placement services, making sure that recruited seafarers are not only competent, but also well informed about their rights.

The main challenges for shipowners and seafarers are:

- Insufficient ratifications of the MLC, 2006;
- Unclear or contradictory instructions by flag States;
- Excessive bureaucracy;
- Misuse of complaint procedures;
- Unfounded complaints and wrongful detentions.

Some recommendations:

- Promote further ratifications of the MLC, 2006;
- Promote respect for the tripartite process on which MLC, 2006 is founded in all events and fora where the MLC is discussed;
- Promote collaboration among all stakeholders;
- Support implementation of the MLC, 2006 through technical cooperation, capacity building, training activities and guidance;
- Support enforcement of the MLC, 2006 through harmonization of approaches to PSC inspections and training of PSCOs.

Seafarers' wellbeing on board should not be overlooked. Among other actions, it is necessary to:

- Promote the sea careers and empower women on board;
- Ensure seafarers' welfare on board;
- Promoting seafarers' mental wellbeing;
- Eliminate harassment and bullying;
- Provide internet on board to seafarers;
- Establish an effective social dialogue globally.

12. Additional resources

- Covid-19 and Maritime Labour Issues: https://www.ilo.org/global/standards/maritime-labour-convention/events/WCMS_746660/lang--en/index.htm
<http://extranet.itcilo.org/promotionbanners/mlc-ref-docs>
- Database on reported incidents of abandonment of seafarers: <https://www.ilo.org/dyn/seafarers/seafarersbrowse.home>
- Ratification and implementation information for the Maritime Labour Convention, 2006: <https://www.ilo.org/global/standards/maritime-labour-convention/database-ratification-implementation/lang--en/index.htm>
- EU Study on the implementation of labour supplying responsibilities pursuant to the Maritime Labour Convention (MLC, 2006): <https://ec.europa.eu/transport/sites/transport/files/modes/maritime/studies/doc/2015-10-implement-of-labour-supplying-resp-pursuant-to-mlc-report.pdf>
- Seafarer Statistics in the EU - Statistical review (2017 data STCW-IS): <http://emsa.europa.eu/visits-to-member-states/standards-for-seafarers/items.html?cid=128&id=3662>
- Coronavirus: guidance on repatriating cruise ship passengers and protecting ship crews https://ec.europa.eu/transport/modes/maritime/news/2020-04-08-coronavirus-cruise-ships_en
- Commission Guidelines on protection of health, repatriation and travel arrangements for seafarers, passengers and other persons on board ships <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1587132931038&uri=CELEX%3A52020XC0414%2801%29>
- Overview of national measures by country https://ec.europa.eu/transport/coronavirus-response_en
- Information note on maritime labour issues and coronavirus (COVID-19) https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_741024/lang--en/index.htm
- ILO: Release more than 150,000 seafarers trapped on board ships due to COVID-19 https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_747293/lang--en/index.htm

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