



PROGRESS ON SECURITY OF SEAFARERS IN THE MLC MARITIME LABOUR CONVENTION

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ABSTRACT

In the year 2010 which marks the year of seafarers, Spain has ratified the Maritime Labour Convention, 2006 of the International Labour Organization. Becoming the first EU member to ratify. This important Maritime Labour Convention, also called “super convention”, was adopted by the 94th (Maritime) Session of the International Labour Conference held in Geneva in February 2006. To ratify the MLC, 2006, Spain implemented a decision of the Council of the European Union 2007, which allows member countries to ratify in the interests of the European Community and invites them to do so before December 31, 2010.

The objectives of this article are to introduce and analyze the contents of the Convention in relation to safety and prevention of occupational accidents in the maritime environment.

To do this will be discussed in the text of the agreement in relation to Rule 4.3-Health and safety protection and accident prevention which is designed to ensure that the working environment of seafarers on board ships promotes safety and health at work.

From this analysis conclusions that will ratify the importance of this agreement to ensure decent working conditions for seafarers.

Key words: occupational accidents, occupational safety, accident prevention, seafarers, international convention.

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INTRODUCTION

The Maritime Labour Convention (2006) is an important new international labour Convention that was adopted by the International Labour Conference of the International Labour Organization (ILO), under article 19 of its Constitution at a maritime session in February 2006 in Geneva, Switzerland. It sets out seafarers' rights to decent conditions of work and helps to create conditions of fair competition for shipowners. It is intended to be globally applicable, easily understandable, readily updatable and uniformly enforced. The Maritime Labour Convention, 2006 has been designed to become a global legal instrument that, 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 International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), the International Convention on Standards of Training, Certification and Watchkeeping, 1978, as amended (STCW) and the International Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL).

METHODOLOGY

The material used is the text of the agreement MLC, 2006, Title 4: Health protection, medical care, welfare and social protection. Within this title is in Regulation 4.3 – Health and safety protection and accident prevention. Purpose: To ensure that seafarers' work environment on board ships promotes occupational safety and health.

There are several novel features as far as the ILO is concerned. The whole structure of the new Convention differs from that of traditional ILO Conventions. It consists of the basic provisions, i.e. the Articles and Regulations, followed by a two-part Code and divided into five Titles, one of which is devoted to compliance and enforcement. The Regulations and the Code, which contains Standards and Guidelines, are organized under the five Titles.

- 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.

There is also an Explanatory note to further assist Members implementing the Convention. The Convention also uses a new "vertically integrated" format with a numbering system that links the Regulations, Standards and Guidelines. Each Regulation also has a "plain language" purpose clause.

The status of Part B of the Code is based on the idea of firmness on principle and rights combined with flexibility in implementation. Without this innovation the new Convention could never aspire to wide-scale ratification: many of the provisions of



existing maritime labour Conventions, which relate to the method of implementing basic seafarers' rights (rather than to the content of those rights), have been transferred to the non-mandatory Part B Guidelines of the Code. Their placement in the mandatory Regulations and Part A (Standards) could have resulted in clear obstacles to ratification.

Each Member shall ensure that seafarers on ships that fly its flag are provided with occupational health protection and live, work and train on board ship in a safe and hygienic environment. Each Member shall develop and promulgate national guidelines for the management of occupational safety and health on board ships that fly its flag, after consultation with representative shipowners' and seafarers' organizations and taking into account applicable codes, guidelines and standards recommended by international organizations, national administrations and maritime industry organizations. Each Member shall adopt laws and regulations and other measures addressing the matters specified in the Code, taking into account relevant international instruments, and set standards for occupational safety and health protection and accident prevention on ships that fly its flag.

THE 4.3 STANDARD SAYS

Standard A4.3 – Health and safety protection and accident prevention

1. The laws and regulations and other measures to be adopted in accordance with Regulation 4.3, paragraph 3, shall include the following subjects:

- (a) the adoption and effective implementation and promotion of occupational safety and health policies and programmes on ships that fly the Member's flag, including risk evaluation as well as training and instruction of seafarers;
- (b) reasonable precautions to prevent occupational accidents, injuries and diseases on board ship, including measures to reduce and prevent the risk of exposure to harmful levels of ambient factors and chemicals as well as the risk of injury or disease that may arise from the use of equipment and machinery on board ships;
- (c) on-board programmes for the prevention of occupational accidents, injuries and diseases and for continuous improvement in occupational safety and health protection, involving seafarers' representatives and all other persons concerned in their implementation, taking account of preventive measures, including engineering and design control, substitution of processes and procedures for collective and individual tasks, and the use of personal protective equipment; and
- (d) requirements for inspecting, reporting and correcting unsafe conditions and for investigating and reporting on-board occupational accidents.

2. The provisions referred to in paragraph 1 of this Standard shall:

- (a) take account of relevant international instruments dealing with occupation-

al safety and health protection in general and with specific risks, and address all matters relevant to the prevention of occupational accidents, injuries and diseases that may be applicable to the work of seafarers and particularly those which are specific to maritime employment;

- (b) clearly specify the obligation of shipowners, seafarers and others concerned to comply with the applicable standards and with the ship's occupational safety and health policy and programme with special attention being paid to the safety and health of seafarers under the age of 18;
- (c) specify the duties of the master or a person designated by the master, or both, to take specific responsibility for the implementation of and compliance with the ship's occupational safety and health policy and programme; and
- (d) specify the authority of the ship's seafarers appointed or elected as safety representatives to participate in meetings of the ship's safety committee. Such a committee shall be established on board a ship on which there are five or more seafarers.

3. The laws and regulations and other measures referred to in Regulation 4.3, paragraph 3, shall be regularly reviewed in consultation with the representatives of the shipowners' and seafarers' organizations and, if necessary, revised to take account of changes in technology and research in order to facilitate continuous improvement in occupational safety and health policies and programmes and to provide a safe occupational environment for seafarers on ships that fly the Member's flag.

4. Compliance with the requirements of applicable international instruments on the acceptable levels of exposure to workplace hazards on board ships and on the development and implementation of ships' occupational safety and health policies and programmes shall be considered as meeting the requirements of this Convention.

5. The competent authority shall ensure that:

- (a) occupational accidents, injuries and diseases are adequately reported, taking into account the guidance provided by the International Labour Organization with respect to the reporting and recording of occupational accidents and diseases;
- (b) comprehensive statistics of such accidents and diseases are kept, analysed and published and, where appropriate, followed up by research into general trends and into the hazards identified; and
- (c) occupational accidents are investigated.

6. Reporting and investigation of occupational safety and health matters shall be designed to ensure the protection of seafarers' personal data, and shall take account of the guidance provided by the International Labour Organization on this matter.



7. The competent authority shall cooperate with shipowners' and seafarers' organizations to take measures to bring to the attention of all seafarers information concerning particular hazards on board ships, for instance, by posting official notices containing relevant instructions.

8. The competent authority shall require that shipowners conducting risk evaluation in relation to management of occupational safety and health refer to appropriate statistical information from their ships and from general statistics provided by the competent authority.

GUIDELINE B4.3

HEALTH AND SAFETY PROTECTION AND ACCIDENT PREVENTION

Guideline B4.3.1 – Provisions on occupational accidents, injuries and diseases

1. The provisions required under Standard A4.3 should take into account the ILO code of practice entitled Accident prevention on board ship at sea and in port, 1996, and subsequent versions and other related ILO and other international standards and guidelines and codes of practice regarding occupational safety and health protection, including any exposure levels that they may identify.

2. The competent authority should ensure that the national guidelines for the management of occupational safety and health address the following matters, in particular:

- (a) general and basic provisions;
- (b) structural features of the ship, including means of access and asbestos-related risks;
- (c) machinery;
- (d) the effects of the extremely low or high temperature of any surfaces with which seafarers may be in contact;
- (e) the effects of noise in the workplace and in shipboard accommodation;
- (f) the effects of vibration in the workplace and in shipboard accommodation;
- (g) the effects of ambient factors, other than those referred to in subparagraphs (e) and (f), in the workplace and in shipboard accommodation, including tobacco smoke;
- (h) special safety measures on and below deck;
- (i) loading and unloading equipment;
- (j) fire prevention and fire-fighting;
- (k) anchors, chains and lines;
- (l) dangerous cargo and ballast;
- (m) personal protective equipment for seafarers;
- (n) work in enclosed spaces;
- (o) physical and mental effects of fatigue;
- (p) the effects of drug and alcohol dependency;

- (q) HIV/AIDS protection and prevention; and
- (r) emergency and accident response.

3. The assessment of risks and reduction of exposure on the matters referred to in paragraph 2 of this Guideline should take account of the physical occupational health effects, including manual handling of loads, noise and vibration, the chemical and biological occupational health effects, the mental occupational health effects, the physical and mental health effects of fatigue, and occupational accidents. The necessary measures should take due account of the preventive principle according to which, among other things, combating risk at the source, adapting work to the individual, especially as regards the design of workplaces, and replacing the dangerous by the nondangerous or the less dangerous, have precedence over personal protective equipment for seafarers.

4. In addition, the competent authority should ensure that the implications for health and safety are taken into account, particularly in the following areas:

- (a) emergency and accident response;
- (b) the effects of drug and alcohol dependency; and
- (c) HIV/AIDS protection and prevention.

DISCUSSION

The MLC Maritime Labour Convention, 2006 sets out seafarers' rights to decent conditions of work and helps to create conditions of fair competition for shipowners. It is intended to be globally applicable, easily understandable, readily updatable and uniformly enforced.

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 per cent. This is a much higher than the usual ratification level (for ILO Conventions) and it uses a new formula that is intended to assure greater actual impact of the Convention. It reflects the fact that the enforcement and compliance system established under the Convention needs widespread international cooperation in order to be effective. Since many of the obligations under the Convention are directed to shipowners and flag States it is important that ILO Members with a strong maritime interest and a high level of tonnage operating under their legal jurisdiction ratify the Convention.

The existing ILO maritime labour Conventions will be gradually phased out as ILO Member States that have ratified those Conventions ratify the new Convention, but there will be a transitional period when some parallel Conventions will be in force. 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.

In ships flying the flags of countries that do not exercise effective jurisdiction and control over them, as required by international law, seafarers often have to work under unacceptable conditions, to the detriment of their well-being, health and safety and the safety of the ships on which they work. Since seafarers' working lives are spent outside the home country and their employers are also often not based in their country, effective international standards are necessary for this sector. Of course these standards must also be implemented at a national level, particularly by governments that have a ship registry and authorize ships to fly their countries' flags. This is already well recognized in connection with ensuring the safety and security of ships and protecting the marine environment. It is also important to understand that there are many flag States and shipowners that take pride in providing the seafarers on their ships with decent conditions of work. These countries and shipowners face unfair competition in that they pay the price of being undercut by shipowners which operate substandard ships.

The Convention aims to achieve worldwide protection for all seafarers. It seeks to meet this goal in a number of ways. It is estimated that there are over 1.2 million people working at sea in the world. Until now it had not been clear that all of these people, particularly for example, those that work on board ships but are not directly involved in navigating or operating the ship, such as many personnel that work on passenger ships, would be considered seafarers. The new Convention clearly defines a seafarer as any person who is employed or engaged or works in any capacity on board a ship that is covered by the Convention. Except for a few specific exclusions and areas where flexibility is provided for national authorities to exempt smaller ships (200 gross tonnage and below) that do not go on international voyages from some aspects 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.

Both the Constitution of the ILO and many ILO instruments seek to take account of national circumstances and provide for some flexibility in application of Conventions, with a view to gradually improving protection of workers, by taking into account the specific situation in some sectors and the diversity of national circumstances. Flexibility is usually based on principles of tripartism, transparency and accountability. When flexibility with respect to a Convention is exercised by a government it usually involves consultation with the workers' and employers' organizations concerned, with any determinations that are made reported to the ILO by the government concerned. This is seen as a necessary and important approach to ensuring that all countries, irrespective of national circumstances, can engage with the international legal system and those international obligations are respected and implemented, to the extent possible, while also making efforts to improve conditions. This is particularly important for an international industry such as shipping.

The Maritime Labour Convention, 2006 generally follows this approach as well as also providing for additional flexibility, relevant to the sector, at a national level. The Convention seeks to be “firm on rights and flexible on implementation”. A major obstacle to the ratification of existing maritime labour Conventions is the excessive detail in many of them. The new Convention sets out the basic rights of seafarers to decent work in firm statements, but leaves a large measure of flexibility to ratifying countries as to how they will implement these standards for decent work in their national laws.

The Maritime Labour Convention, 2006, aims to establish a continuous “compliance awareness” at every stage, from the national systems of protection up to the international system. This starts with the individual seafarers, who – under the Convention – have to be properly informed of their rights and of the remedies available in case of alleged non-compliance with the requirements of the Convention and whose right to make complaints, both on board ship and ashore, is recognized in the Convention. It continues with the shipowners. 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. The masters of these ships are then responsible for carrying out the shipowners’ stated plans, and for keeping proper records to evidence implementation of the requirements of the Convention. As part of its updated responsibilities for the labour inspections for ships above 500 gross tonnage that are engaged in international voyages or voyages between foreign ports, the flag State (or recognized organization on its behalf) will review the shipowners’ plans and verify and certify that they are actually in place and being implemented. Ships will then be required to carry a maritime labour certificate and a declaration of maritime labour compliance on board. 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 will carry out periodic quality assessments of the effectiveness of their national systems of compliance, and their reports to the ILO under article 22 of the Constitution will need to provide information on their inspection and certification systems, including on their methods of quality assessment. This general inspection system in the flag State (which is founded on ILO Convention No. 178) is complemented by procedures to be followed in countries that are also or even primarily the source of the world’s supply of seafarers, which will similarly be reporting under article 22 of the ILO Constitution. The system is further reinforced by voluntary measures for inspections in foreign ports (port State control).

CONCLUSIONS

The MLC, 2006 is globally applicable, easily understandable, readily updatable and uniformly enforced.



The Convention achieves to worldwide protection for all seafarers. It seeks to meet this goal in a number of ways. It is estimated that there are over 1.2 million people working at sea in the world. Until now it had not been clear that all of these people, particularly for example, those that work on board ships but are not directly involved in navigating or operating the ship, such as many personnel that work on passenger ships, would be considered seafarers.

The Maritime Labour Convention, 2006, establishes a continuous “compliance awareness” at every stage, from the national systems of protection up to the international system.

All this makes the MLC, 2006, to be effective to ensure that the working environment of seafarers on board ships promotes safety and health at work.

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AVANCES DE SEGURIDAD PARA LA GENTE DE MAR EN EL CONVENIO MLC

RESUMEN

La necesidad de la creación de este convenio surge de una resolución conjunta adoptada en 2001 por las organizaciones internacionales de armadores y de gente de mar, y que más tarde fue apoyada por los gobiernos. Se pidió a la OIT la elaboración de un instrumento que unificara, de ser factible en un texto refundido, la mayor parte posible del cuerpo de instrumentos existentes de la OIT, con el fin de mejorar la pertinencia de estas normas para las necesidades de todas las partes interesadas en la industria marítima. El gran número de convenios marítimos vigentes dificultaba a los gobiernos tanto la ratificación como el control de la aplicación de todas las normas. Además, era necesario elaborar un sistema más eficaz de cumplimiento y control de la aplicación que facilitara la eliminación de los buques que no se ajustaran a las normas.

METODOLOGÍA

El método utilizado ha sido el análisis del convenio MLC, 2006. El convenio MLC, 2006, establece los derechos de la gente de mar a disfrutar de unas condiciones de trabajo decentes y ayuda a crear condiciones de competencia justa para los armadores. Además ha nacido con la pretensión de ser un instrumento aplicable en todo el mundo, fácil de entender, fácil de actualizar y aplicado de manera uniforme. Este Convenio, tiene el objetivo de convertirse en un instrumento jurídico de alcance mundial. Tras su entrada en vigor, será el «cuarto pilar» del régimen normativo internacional garante de un transporte marítimo de calidad, que complementa los convenios fundamentales de la Organización Marítima Internacional (OMI), como el Convenio Internacional para la Seguridad de la Vida Humana en el Mar, 1974, enmendado (Convenio SOLAS), el Convenio internacional sobre normas de formación, titulación y guardia para la gente de mar (Convenio de Formación), 1978, enmendado, y el Convenio internacional para prevenir la contaminación por los buques (MARPOL 73/78).

El nuevo Convenio reúne casi todos los instrumentos sobre el trabajo marítimo vigentes (68 instrumentos sobre el trabajo marítimo) en un solo convenio en el que se han introducido algunas actualizaciones necesarias.

El Convenio consta de tres partes principales: los artículos, en primer lugar, que establecen los principios y obligaciones generales; van seguidos de las disposiciones más detalladas del Reglamento y el Código (partes A y B).



El Reglamento y las normas (parte A) y pautas (parte B) del Código están integrados y organizados en temas de interés general desglosados en cinco Títulos:

Título 1: Requisitos mínimos para trabajar a bordo de buques

Título 2: Condiciones de empleo

Título 3: Alojamiento, instalaciones de esparcimiento, alimentación y servicio de fonda

Título 4: Protección de la salud, atención médica, bienestar y protección social

Título 5: Cumplimiento y control de la aplicación.

Es el Título 4 el que se ocupa de la Protección de la seguridad y la salud y prevención de accidentes.

En este punto, es importante señalar que este Convenio está compuesto por normas (A) y pautas (B). Las partes A y B del Código están relacionadas entre sí. Las disposiciones de la parte B, no son obligatorias, aunque sí que son útiles, y en algunos casos fundamentales, para entender correctamente el Reglamento y las normas obligatorias de la parte A. En algunos casos, las normas obligatorias de la parte A están formuladas de una manera tan general que puede resultar difícil aplicarlas sin consultar las orientaciones de las disposiciones correspondientes de la parte B. Sin esta formulación el Convenio nunca hubiera podido aspirar a ser ratificado ampliamente.

Una novedad importante de este convenio es la definición de «gente de mar» o «marino» que se hace en el artículo II del Convenio:

- f) los términos gente de mar o marino designan a toda persona que esté empleada o contratada o que trabaje en cualquier puesto a bordo de un buque al que se aplique el presente Convenio.

Otra novedad será que se exigirá que los buques lleven a bordo un certificado de trabajo marítimo y una declaración de conformidad laboral marítima. También se prevé que los Estados del pabellón velen por que la legislación nacional por la que se aplican las normas del Convenio se respete en los buques más pequeños que no están cubiertos por el sistema de certificación. Los Estados del pabellón tendrán que llevar a cabo evaluaciones periódicas de la calidad y la eficacia de sus sistemas nacionales de cumplimiento, y las memorias que presenten en virtud del artículo 22 de la Constitución de la OIT deberán proporcionar información sobre sus sistemas de inspección y certificación, incluidos sus métodos de evaluación de la calidad. La expedición del certificado corresponde al Estado del pabellón para los buques que enarbolan su pabellón, una vez que el Estado (o una organización reconocida que haya sido autorizada a llevar a cabo las inspecciones) haya verificado que las condiciones de trabajo en el buque están de conformidad con la legislación nacional por la que se aplica el Convenio. El certificado tendría una validez de cinco años, a reserva de las inspecciones periódicas que realice el Estado del pabellón.

También este Convenio vela para que los buques se encuentren en una situación de desventaja por el hecho de que su país haya ratificado el nuevo Convenio. Tal y

como se recoge en las disposiciones del Título 5 del Convenio sobre el control por el Estado rector del puerto, en virtud de las cuales los buques de todos los países (con independencia de que hayan ratificado o no el Convenio) serán objeto de inspección en cualquier país que haya ratificado el Convenio, y podrán ser inmovilizados si no cumplen las normas mínimas del nuevo Convenio.

Este convenio entrará en vigor en el 2011.

CONCLUSIONES

1. El convenio MLC, 2006, es un instrumento aplicable en todo el mundo, fácil de entender, fácil de actualizar, reuniendo casi todos los instrumentos sobre el trabajo marítimo vigentes. Esto hace que sea una herramienta muy efectiva para incrementar la seguridad abordo.
2. El Convenio alcanza a la protección para todos los marinos en todo el mundo. Se busca cumplir con este objetivo de múltiples maneras. Se estima que hay más de 1,2 millones de personas trabajan en el mar en el mundo. Hasta ahora no había quedado claro que todas estas personas, que realizaban trabajos a bordo de buques que no están directamente involucrados en la navegación y el manejo del buque, como muchos miembros del personal que trabajan en buques de pasaje, se fueran gente de mar. En este convenio sí que se consideran gente de mar.
3. El Convenio de Trabajo Marítimo, 2006, establece una continua «cultura del cumplimiento» en cada etapa, desde los sistemas nacionales de protección hasta el sistema internacional.
4. Todo esto hace que el MLC, 2006, sea una herramienta eficaz para asegurar que el entorno de trabajo de la gente de mar a bordo de buques promueva la seguridad y salud en el trabajo.