



MARITIME LABOUR

The Maritime Labour Convention Persistence, policy significance and Port State Control

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Depending on the state of international trade, an estimated 1.2 to 1.5 million seafarers daily serve on a worldwide fleet of over 100,000 ships that transport over 90 per cent of world trade – manufactured goods, fuel, foodstuffs and commodities. Decent work for seafarers, and fair competition for ship owners are not topics that are frequently mentioned when Canadians discuss our international trade interests; nor do they arise when the subject of the effectiveness of marine environmental protection measures are being considered. Yet, the coming into force of the *Maritime Labour Convention, 2006 (MLC, 2006)* in August 2013 might serve to generate such a discussion amongst *BC Shipping News* readers. Therefore, this article will serve as an introduction to the convention and provide a summary of some of the policy implications for ship owners, seafarers and port State control officials.

Persistence

According to Seafarers' Rights International, there will always be special hazards to life and health because of the hostility of the sea and the nature of the working conditions aboard vessels. However, much can be done to improve the quality of life regardless of the rigours of modern ship operations. The International Labour Organization's position is that seafarers should be entitled to good living conditions, regular communications with their home, the guarantee of regular pay, adequate medical care,



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repatriation, social security and welfare benefits for themselves and their dependants, irrespective of the flag they are sailing under and the type of trade in which they are engaged.

The Convention is a culmination of many years of persistent work to consolidate and update a broad range of fragmented labour standards into a single convention. The policy intent was the creation of one global instrument that addresses all of the issues faced by seafarers.

While the *MLC* was adopted in 2006 there were two requirements that had to be met before it could come into force: first, that countries representing 33 per cent of the world's gross shipping tonnage ratify the convention (this requirement was met in 2009; second, that at least 30 International Labour Organization (ILO) member countries ratify the convention. Canada did its part by being the tenth country to ratify the convention in 2007. On August 20, 2012 the International Labour Organization (ILO) received the 30th ratification of the *MLC, 2006*. When the ILO issued a press release announcing that the last outstanding condition had now been met, Director General Juan Somavia stated that "this was great news for the world's more than 1.2 million seafarers".

Main policy features

As the fourth and final pillar of the international maritime regulatory regime, the *MLC, 2006* is a significant public policy achievement. The existing three pillars are the *International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL)*, the *International Convention for the Safety of Life at Sea, 1974 (SOLAS)*, and the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW)*.

There are a number of issues that gave rise to the need for minimum international standards for seafarers. Working and living conditions, occupational health and safety, causes of fatigue, crew retention and motivation, and recruitment are some of the most important reasons. As a result, the *MLC, 2006* covers conditions of employment, accommodations, food and catering, health protection, medical care, welfare and social issues and recreational facilities. Subject to few exceptions, the convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities.

The *Maritime Labour Convention, 2006* is very broad in content and complex to implement onboard ships. Thus, it is not possible in this brief article to fully illustrate the scope of the issues

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– rather, the structure of the convention will be outlined to illustrate some of the important features of the convention for both ship owners and seafarers.

MLC, 2006 is divided into three parts: Articles, Regulations and Code, the first two establish core rights, principles and obligations. The Code itself provides the details for implementation of the regulations. The Regulations and the Code are organized under 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; and
- Title 5: Compliance and enforcement.

Each of the titles consists of regulations, framed with a stated purpose (which forms an introduction to each regulation), standards and guidelines. The standards all have mandatory force while the guidelines do not. For example, Title 1, which sets out the minimum requirements for seafarers to work on a ship, has four regulations: minimum age of people permitted to work aboard ship; provision of medical certificates; seafarers' training and qualifications; and recruitment and placement.

Title 5 on compliance and enforcement, for example, addresses the following Flag State responsibilities:

- To define the national Flag State requirements;
- To inspect and certify vessels against the new Convention and national requirements;
- To authorize recognized organizations; and
- To have procedures for handling seafarers' complaints.

Canada's policy position

In Canada, there was very little political debate or public attention devoted to the ratification of this Convention. This may stem from the fact that Canadian laws and practices already highly conform with the *MLC, 2006*. Nevertheless, it may come as a bit of a surprise to labour policy advocates



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The MLC, 2006 establishes the labour working conditions and requirements onboard vessels and highlights flag state responsibilities, port state responsibilities and labour supplying responsibilities.

that the Conservative government ratified the *Maritime Labour Convention* on June 15, 2010 while the a minority government, led by Prime Minister Stephen Harper, was in power.

On a technical level, most of the Convention's provisions are implemented through the *Canada Labour Code* and the *Marine Occupational Safety and Health Regulations* and the *Canada Shipping Act, 2001 (CSA, 2001)*. Effective July 1, 2007, the *MLC, 2006* was added to Schedule 1 of the *CSA, 2001*. Yet more than one level of the federal civil service is involved in providing oversight. For example, Transport Canada and Human Resource Skills Canada are required to work collaboratively on occupational safety and health issues under the Convention. This raises an important question of what procedures are in place at a federal level to ensure an effective oversight mechanism free of political turf building, or under-investment of resources given the current fiscal climate and government budget.

Port State Control implications for ship owners

In November 2011, Canada was the host authority for the first specialized training course pursuant to the Tokyo Memorandum of Understanding. The theme of the training course, held in Vancouver, was the *Maritime Labour Convention, 2006*. Port State Control officers received in-depth training on key features of the Convention that pertain to port State responsibilities, including:

- The inspection of its own national flagged vessels in port; and
- The enforcement of the new Convention standards on foreign-flagged ships under the "no more favourable treatment" requirement.

Rick Ferraro, Client Training Manager for Lloyd's Register Americas, has noted that, under Title 2, there are a number of very critical inspection items along with some of the provisions in Title 3. For example, port State control officials are required to pay

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particular attention to:

- The size of rooms and other accommodation spaces;
- Heating and ventilation;
- Noise and vibration and other ambient factors;
- Sanitary facilities;
- Lighting; and
- Hospital accommodation.

To assist ship owners, Lloyd's Register and the UK P&I Club have introduced the *ILO MLC Pocket Checklist* in both a conventional format and, for the first time ever, a smartphone app, to help ship operators comply with the Convention's requirements and reduce the risk of Port State Control detentions or delays. Ferraro estimates that on a bulk carrier with 16 crew members, inspection time, even with a sampling approach, will typically take between nine and 10 hours. The pocket checklist app serves as an interactive tool that enables ships' crew and managers to check off required activities as they are completed. The app is free and will be available for iPhone, iPad, Android devices, Windows phone and BlackBerry.

Port State Control implications for seafarers

The issue of seafarers' complaints warrants discussion because the *MLC, 2006* has a number of requirements. Most notably, ships are required to

have onboard procedures for the fair, effective and prompt handling of seafarers' complaints alleging breaches of the requirements of the Convention. Seafarers have the right to complain directly to the master and, where they consider it necessary, to an appropriate external authority. In addition, port States must have procedures for complaints made while onshore.

Time will tell if the *MCL's* seafarers' complaints procedures are effective in preventing or resolving labour-related issues onboard a ship. Dr. Moira McConnell, Professor of Law and Associate at the Marine & Environmental Law Institute, Dalhousie University notes that, from a legal perspective, "one of the more important features of the *MLC, 2006* is that it emphasizes the possibility for seafarers and other individuals or groups to have a role in the overall goal of ensuring compliance and enforcement of the *MLC, 2006*." Dr. McConnell pointed out that, while there are already several different avenues to make a complaint or provide information, the *MLC, 2006* will provide for greater possibility for a complaint or information to be given to a wider range of people, such as a union or an association and importantly including, "any person with an interest in the safety of the ship, including an interest in safety or health hazards

to seafarers on board" in port States. "Depending on the nature of the concern, these complaints can trigger a more detailed inspection during Port State Control while at the same time protecting the individual seafarer from possible reprisal."

Another important change that Dr. McConnell noted was a better ability to respond to complaints, especially in port States: "The *MLC, 2006* brings together 37 existing ILO Conventions in one place so it will make it much simpler for port States to deal with complaints in that there is no longer a need to check whether the flag State has ratified the Convention in question. Either they are bound because it has ratified the *MLC, 2006* or, if the flag State has not ratified the *MLC, 2006*, then because of the application of the no more favourable treatment provision they will need to have similar measure in place onboard the ship."

Members of seafarer welfare organizations, such as the Mission to Seafarers and the Apostleship of the Sea — Canada, may wish to provide their clients with information on the Canadian procedures for filing complaints so that any seafarer can more readily access their legal rights. In addition, shipping agents and vessel owners would be well-advised to become aware of Transport Canada's Port State Control procedures in this regard if they wish to avoid unnecessary vessel delays.

Conclusion

Since Canada is not a major ship-owning nation and our mariners that do serve in the international merchant fleets are most frequently abroad, it is perhaps not surprising that the *MLC, 2006* has generated only a limited amount of discussion. It is hoped that this article will serve to peak the reader's interest from a maritime law, seafarer's welfare, or ship owner's perspective.

Dr. McConnell argues that we should all have an interest in the implementation and effectiveness of *MLC, 2006* even those *BC Shipping News* readers who are primarily involved in land-based activities. Dr. McConnell rightly asserts that "not only are labour, social and economic matters relevant to marine environmental protection, they

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should be viewed as central concerns. Too often, the human and economic dimensions are left out of the discussions about preventing ship-source operational or accidental harms to the marine environment. However, this concern — the working and living conditions and social rights for ocean workers/seafarers/fishers...is so sparsely dealt with in the 1982 *United Nations Convention on the Law of the Sea (UNCLOS)* that it can be considered a regime gap." Dr. McConnell further asserts that "from an environmental perspective we cannot ignore the fact that too often ship-source pollution, especially in the case of accidents, is often attributable to fatigue or other human elements". Establishing working conditions that avoid fatigue or other occupational health hazards arising from working conditions are key elements in ensuring the IMO's goal of safer ships and cleaner seas.

The ILO intends to use the performance indicators of deficiencies, detentions and seafarers' complaints as measures for gauging the effectiveness and success of the *MLC, 2006*. While this will be a good start, industry analysts have suggested that it will take two or three years to see how this "Seafarers' Bill of Rights" is actually unfolding. Nevertheless, Dr. Progoulaki, Maritime HR Consultant at the University of Aegean indicated that: "since higher standards of both working and living conditions are now set by the *MLC*, it is believed that the *MLC* will not only represent, but will actually be the fourth pillar of Quality Shipping."

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