

Asia Pacific

A Regional Dialogue on the Maritime Labour Convention, 2006

Overview of the MLC, 2006, status on implementation and emerging Issues

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Good morning to all you. Let me begin by saying how very pleased I am to have been invited to speak to you at the opening session of what I am sure will prove to be a very useful and productive wider region meeting. First I would like to extend, on behalf of the ILO my special thanks to the Government of Australia for their support and in particular for organizing and convening this regional dialogue. In particular, I would like to acknowledge their support for initiatives both in this region and in connection with the ILO's, International Training Centre in Italy. I am particularly grateful to the Australian government for organizing this regional dialogue as I see this region as strategically even critically important. In fact, a central theme of my message today and our discussions over the next few days will be to emphasize for you the fact that the **Asia-Pacific region is a key, perhaps even essential, region for achieving the goals of the Maritime Labour Convention, 2006 (MLC, 2006).**

I will return to this point later in my remarks when I give you an update on recent implementation activities but you will find that the ILO has been very aware of the strategic importance of this region and has been working closely with countries through its regional and sub regional offices to promote and support implementation and ratification efforts. My colleague, Ms. Caroline Scott, will speak about some of these activities later in this meeting.

I was also very pleased to note the mix of speakers attending this meeting who can provide us with views from the perspective of the seafarers, the shipowners, governments with

differing economic and political experiences and, the classification societies, which already play an important role in implementation, along with seafarer welfare organizations. Of course, I am also happy to have the support from our partner UN organization the International Maritime Organization (IMO), with which we have many shared complementary interests and a long history of collaboration in the maritime sector. This is truly social dialogue at its best and, certainly, the meeting reflects the ILO approach based on the fundamental value of tripartism!

I also am aware, from my participation in a more technical MLC, 2006 seminar for Pacific Island States held in Nandi in October last year that this region has a longstanding history of regional cooperation, particularly in ocean related matters. The region also reflects all faces of the maritime interest including, important flag States, global seafarer or labour-supplying States and States with an interest in further economic development and, of course, as island or coastal States, this region also has important port States, with involvement, in some cases, in both the Tokyo PSC MOU and the Indian Ocean MOU.

I had the opportunity to speak to a number of you last night at the reception. It is good to see so many familiar faces many of who also played a important role in the five years of meetings to develop and adopt the MLC, 2006.

I think we can say that all countries and organizations invited to this workshop are also connected through a shared interest in, and dependency on, the ocean and the people for whom the ocean is a workplace. This is a very important strategic point for us to keep in mind. In many ways this shared interest reflects the reality we face in today's globalized economy.

Increasingly, the events of this century, be they economic or environmental, remind us of the underlying reality of our interdependence. This is an important aspect of this phenomenon called "globalization". As Juan Somavia, the Director General of the ILO, has pointed out in calls for "fair globalization" and sustainable economic development, it presents opportunities for many people in all countries. But it also brings with it challenges

for managing or regulating the situation and its effects on people and economies to avoid what has been described as “a race to the bottom” with unfair and exploitative practice that are not sustainable.

My task today to provide you with an overview of the MLC, 2006, update you on the status of implementation and provide you with some reflections on emerging issues.

I do not have much time to this morning so my overview will be brief, as I want to focus on the other two matters. However I am hoping through the course of this meeting that I and my ILO colleagues; Mr Politakis and Ms Scott, will have a chance to share ideas and engage in discussion with all of you regarding ways to help address any specific issues that are important for the Asia Pacific region

Overview of the MLC, 2006

I believe that many of you are very familiar with the MLC, 2006 and its history but some here today may be new to the Convention. Certainly, it has been a long, even epic voyage from its inception in 2001 till now. Many who were engaged may have new roles and many people have joined as supporters along the way, so a review will be useful.

For the ILO, 2011 is an important anniversary year with February 23 marking the fifth (5th) anniversary of the adoption of the MLC, 2006 by the 94th ILC at its 10th maritime session since 1920. Going back even further, 2011 will also mark the tenth (10th) anniversary of the famous “Geneva Accord”, an agreement that was reached in 2001 by the international representatives of the Seafarers and Shipowners on the Joint Maritime Commission. Some of you may even have been at that meeting. This Accord was the seed of the MLC, 2006 and provided the impetus for the ILO to move forward through five years of intensive international tripartite meetings to finally adopt the MLC, 2006, the Convention - often called the “Seafarers bill of rights” - that was intended to better address the needs of the seafarers and shipowners in the earliest of the globalized industries.

It cannot be forgotten that the MLC, 2006 has two important goals. It is intended establish decent work for seafarers AND a level playing for shipowners. In that equation, these two are inseparable and are predicated on the idea of some uniformity in implementation, albeit

with some flexibility to address specific national situations. This is also central to the very new idea of certifying labour standards in the maritime sector.

The MLC, 2006 a comprehensive Convention, sometimes called a “one-stop shop”, addresses almost every workplace matter including minimum age of seafarers, medical examinations, hours of rest, food on board ships and social protection obligations. It brings together and modernizes 37 ILO Conventions adopted since 1920. The 37 maritime labour **Conventions** that are now consolidated (revised) by the MLC, 2006 will be gradually phased out as States that are now party to these Conventions ratify the new Convention.

It also introduces a important new certification requirement for some ships, which will bring seafarers’ working and living conditions fully into the very effective regulatory system that already applies to international standards for ship safety, security and pollution prevention.

The ILO built upon both it its own and the best practices of the IMO, particularly with its structure, which is similar to that of the STCW, its adoption of a more rapid amendment process for more detailed parts to allow the Convention to remain relevant to changing needs. It also has an enhanced emphasis on the role of flag State inspection systems, ship certification, PSC, complaints systems that is backed up by the ILO supervisory system thus providing a unique and a firm foundation for the MLC, 2000 and a tool to help with implementation [Art 19 and Art 22 reports]

In summary than the ***Key features of the MLC, 2006 include:***

- A comprehensive approach to issues covered
- A comprehensive approach to coverage of seafarers and ships (no tonnage limit)
- A new system for effective enforcement and compliance - a *certification system* for conditions of “decent work” (some tonnage/voyage parameters)
- A “no more favourable treatment” provision to help ensure a level-playing field (in the context of port State control measures)

- specific areas for national flexibility as established in the Articles

Status of implementation

There are of course many important questions of detail which I or my colleagues will be happy to address. But now, I will turn to the question of the status of implementation

You will recall that the formula for entry into force is 12 months after the registered ratifications of at “least 30 Members with a total share of the world gross tonnage of ships of at least 33per cent” (30/33). At the time the Convention was adopted, it was thought it would take about 5 years to achieve this challenging formula that was intended to avoid creating a “paper tiger”. The formula is intentionally demanding because of the importance of ensuring that the MLC, 2006 is not a “paper tiger” but an instrument that results in real change: decent work for seafarers and a level playing field for shipowners.

Perhaps unexpectedly, the countries that ratified first were the largest tonnage flag States, one of which - the Marshall Islands - is from this region and will be speaking to us at this meeting. This meant that the tonnage element, often that hardest part of a formula to achieve, was more than met by 2009.

It was expected that, with the decision taken in the European Union (EU) in 2007 regarding ratification by its Members by the end of December 2010 and the agreement between the social partners in the EU, an agreement that will become a Directive once the Convention into force¹, that the other aspect, the ratification by at least 30 members would be achieved

¹ **The Council adopted a Decision on 7 July 2007** authorizing member States to ratify the ILO’s MLC, 2006 in the interests of the European Community, preferably before 31 December 2010 (see EU *Official Journal*: L 161/63, 22 June 2007). **On 19 May 2008, the EU social partners** representing management and labour in the maritime transport sector (European Community Shipowners’ Associations (ECSA) and the European Transport Workers’ Federation (ETF)) entered into the Agreement on the MLC, 2006, and requested the European Commission to propose a Council Directive giving effect to their Agreement and its Annex A under EU law, in accordance with article 139 of the Treaty. A Directive was adopted in February 2009. See: "Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners Association the European Transport Workers' Federation on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC". It will enter into force at the same time as the MLC, 2006.

by December 2010. However the ILO did have a concern since ratification is needed in all regions to ensure that the compliance system in the Convention works as intended. In fact progress in the EU, while steady, has been slow. My understanding is that many are working through the steps for ratification and, as I will mention below, many have trained their inspectors and are actively working on legal implementation of the Convention.

On the 30/33 formula - as of today, the Convention has been ratified by twelve (12)² countries, which brings the coverage of ships and seafarers on those ships to approximately 48 per cent of the world fleet based on gross tonnage. However eighteen (18) more ratifications must be obtained to achieve the entry into force formula in 2011, with actual entry into force 12 months later. Although we have now passed December 2010, the goal of five years may still be possible with the EU decisions that I mentioned. In addition, the Director- General sent a letter in December 2010 urging countries to consider ratifying in June, at the 100th session of the ILC.

Aside from the EU, I am aware of significant progress in other countries, particularly in this region. Many countries in the Caribbean are moving forward now, as well as several countries in Africa.

The ratification by some countries, including Antigua, Latvia and Poland appear imminent. Others, including India, have announced their intention to ratify within the next six months. However, ratification is most of the time the end of a long process that calls for careful consideration, broad consultations, consensus building and knowledge sharing.

In September 2006, the Office adopted a five – year *Action Plan to achieve rapid and widespread ratification and effective implementation of the Maritime Labour Convention, 2006*. That Plan largely responds to many of the 17 Resolutions adopted by the 94th ILC when it adopted the Convention. These included International Tripartite Experts meetings held in September 2008 to adopt the *Guidelines for Flag State Inspections Under the*

² Liberia, Marshall Islands, Bahamas, Panama, Norway, Bosnia and Herzegovina, Spain, Croatia, Bulgaria, Canada, St Vincent and the Grenadines, Switzerland

Maritime Labour Convention, 2006 and the Guidelines for Port State Control Officers Carrying Out Inspections Under the Maritime Labour Convention, 2006. These have been combined with other important initiatives such as the ILO Maritime Labour Academy based at the ILO's International Training Centre in Turin, Italy. The first course developed in 2009 was the "Train the Trainers" (Training of trainers and maritime inspectors on the application of the Maritime Labour Convention, 2006)³. Since then more than 190 MLC, 2006 trainers have been trained from all regions with more courses planned for 2011, including five courses in partnership with the ITF for ITF inspectors, of which two have been already delivered to 42 inspectors, and new courses for shipowners and also for national legal counsel/advisers.

Numerous regional and national level courses delivered by the ILO or trainers that have taken the ILO course have also taken place⁴, including for example, the important course in Australia that I expect Professor Pourzanjani will tell us about, plus many other industry or national activities.

The ILO has also supported national legal gap analysis in all regions, of which ten in the Asia-Pacific region to assist countries to move forward. Based on advice received at these seminars and at a meeting of the Preparatory Tripartite MLC, 2006 committee in September 2010, model national legal provisions are now under development with a workshop planned for September 2011 at Maritime Labour Academy, ILO/ITC in Turin, Italy. In addition, the port State control MOUs, particularly the Paris MOU, are already developing their regional guidance in readiness for entry into force.

³ the course was developed with the assistance of the Italian Government, the MCA of the United Kingdom, Sweden, Korea and the Singapore Maritime Officers' Union (SMOU)

⁴ AUSAID/ AMC (in Tasmania) April - May 2010 for South Pacific inspectors); November 2010- ILO, CMOU/JMA (in Jamaica). As of March 2011, 193 people from all regions of the world have been trained at this course. A survey carried out in the last few weeks by the ITC, had a very high level of response - 88/179 (179 trained as of February). These 88 people reported that after their course they carried out activities on their return home resulting in a total of at least 3,143 more people being trained with respect to the MLC, 2006! In November 2010, a pilot 3 day regional inspector training workshop was held in cooperation with the Jamaican maritime administration and the Caribbean PSC MOU. That workshop was attended by nearly 40 participants.

Clearly capacity to operationalize the MLC, 2006 inspection system is being developed by both public and private actors in the maritime sector. I am sure that you are far more aware than I am of the industry reports of ships already being inspected, either on a trial basis or for voluntary certification, as well as initiatives to include MLC, 2006 compatible terms in various industry agreements and other tools such as courses and training offered by ROs and others.

At the level of the broader international maritime law regime, some elements of the MLC, 2006 have strongly influenced the text of the recent amendments that were adopted by the IMO for its STCW convention. These amendments are expected to enter into force in early 2012. This means that, even before the MLC, 2006 comes into force, its requirements relating to medical examinations and certificates, minimum age and hours of rest will already be mandatory for the sector for seafarers covered by the STCW.

More importantly, overall there is a much greater awareness of the issues covered in this comprehensive Convention which touches on so many matters.

But it is essential to achieving the objectives of the Convention that countries from **all regions**, particularly key port States and countries from whom the majority of the worlds seafarers are drawn, also ratify. Even more importantly all countries that have ratified, particularly flag States, need to effectively implement their responsibilities under the MLC, 2006. Countries in the Asia Pacific region are a rising power and play an increasingly key role in the global maritime industry but many in the region also face challenges in connection with implementation.

I will turn now to my last topic and provide you with some brief reflections on emerging issues- challenges

I think we are all aware of what I would call the external forces or factors that provide some challenges. While a lot has been done and continues to be done, for most countries the maritime sector is only one of many economic sectors and, as we all know, the years

since 2007 have been haunted by economic upheaval and also, in some cases, significant political change. Some countries have also had major environmental and other disasters, particularly in this region, that have diverted resources and, not surprisingly, occupied governmental attention.

There are also some factor which I would call “internal” to the MLC, 2006 that present challenges to moving forward rapidly.

The comprehensive coverage of the MLC,2006 provide some difficulties particularly in connection with ships operating only on domestic voyages or engaged in regional trades among neighbouring island States or for some specific sectors [such as the cruise industry or yachting] . The comprehensiveness of the Convention can also pose a problem, especially for some governments, as it cuts across the various labour, maritime and social security departments. Not all of these departments were part of the delegations that were involved in the Convention’s adoption. The need for capacity to carry out inspections remains a issue for many countries. However, as I mentioned at the same time there is a surprisingly high level of implementation at the “on the ground” level, often well ahead of governmental legal action to ratify. For example the shipowners’ and seafarers’ organizations have adopted collective bargaining agreements to implement the MLC, 2006, flag State inspectors/ROs are already trained and have begun certifying ships and PSC MOUs have developed or are developing guidelines,

As I also mentioned earlier, one of the main issues that has emerged as creating a barrier for some countries to move to ratification relates to legislative drafting capacity. Aside from the model provisions and legal workshop that I referred to earlier, we are also developing guidance on the more complex or newer provisions of the Convention, the provisions on occupational safety and health and on social security. This information is all intended to help with the pace of ratification, especially in the countries with less developed economies.

In my view however regional dialogue and cooperation in Asia and the Pacific will help to identify any specific difficulties and help countries move forward to ensure ratification combined with effective implementation

Conclusion

I want to conclude by reflecting on those two anniversaries and the question of building on the past. I think it is important to keep in sight the fact that this “Seafarers’ bill of rights”, the MLC, 2006, is the shared aspiration of the maritime sector - the shipowners and the seafarers. It is not simply a legal goal set by the ILO, an international organization. But the point goes much deeper than aspirations, since the idea for the Convention, and the majority of the Convention’s provisions can be attributed to proposals put forward by the shipowners and seafarers as early as 2001, particularly in connection with the ship inspection, certification and the complaints provisions.

I hope we can see this Regional Dialogue as an important step in the evolving process of international cooperation to advance progress in all your countries on two important linked objectives – the rapid ratification *and* the effective implementation of one of the newest and most innovative of the International Labour Organization’s Conventions, the Maritime Labour Convention, 2006 (MLC, 2006).

The MLC, 2006 and its goals remain even more relevant today. I am confident that when it begins to operate the Convention will cover seafarers working on more than sixty per cent (60%) of the world merchant fleet and will be an important step forward for the maritime sector in ensuring that seafaring remains an attractive career. **I remain optimistic that with the support of events such as this Asia- Pacific Regional Dialogue convened by the Government of Australia and with the support of the seafarers and shipowners and other industry actors the MLC, 2006 will have all 30 countries onboard in 2011 and be ready to set sail in 2012.**