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**International Labour Standards Department
Sectoral Policies Department**

**Background paper for discussion at the second meeting
of the Special Tripartite Committee established under
Article XIII of the Maritime Labour Convention, 2006
(Geneva, 8–10 February 2016)**

Geneva, 2015

INTERNATIONAL LABOUR OFFICE, GENEVA

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A. Introduction

1. The Maritime Labour Convention, 2006 (MLC, 2006), entered into force on 20 August 2013. As of 7 December 2015, it has been ratified by 68 Members.¹
2. The Special Tripartite Committee was established by the Governing Body, at its 318th Session in June 2013, in accordance with Article XIII of the MLC, 2006.² It consists of “two representatives nominated by the Government of each Member which has ratified this Convention, and the representatives of Shipowners and Seafarers appointed by the Governing Body after consultation with the Joint Maritime Commission”. In addition, “Government representatives of Members which have not yet ratified this Convention may participate in the Committee” but have no right to vote on any matter dealt with in accordance with the Convention.
3. The second meeting of the Special Tripartite Committee was convened by the Governing Body at its 322nd Session³ in October–November 2014. Section B of this paper provides an overview of the tasks of the Committee at its second meeting and addresses the items contained in the agenda adopted by the Officers of the Committee and transmitted by the Director-General in the letter of invitation to the meeting.⁴
4. It is recalled that the first meeting of the Special Tripartite Committee took place from 7 to 11 April 2014 at ILO headquarters in Geneva and was attended by over 400 participants. The meeting facilitated useful bipartite and tripartite exchanges on many issues related to the working of the Convention, and tripartite agreement was reached on many important matters.⁵ The Committee adopted the proposed amendments to the Code implementing Regulations 2.5 and 4.2 of the MLC, 2006, and a resolution regarding transitional measures to address the period following the entry into force of these amendments.⁶

¹ An updated list is available on the ILO’s dedicated MLC, 2006, website at: www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:80001:0::NO:::

² The Standing Orders of the Committee are to be found at: <http://www.ilo.org/public/english/bureau/leg/download/so-mlc-2012-en.pdf>.

³ GB.322/PV/Draft, para. 518(c).

⁴ In accordance with article 3 of the Standing Orders. The agenda is set out in Appendix A.

⁵ GB.322/LILS/3. All documents related to the first meeting of the Special Tripartite Committee are available at: http://www.ilo.org/global/standards/maritime-labour-convention/events/WCMS_228789/lang--en/index.htm.

⁶ Pursuant to Article XV, paragraph 5, of the MLC, 2006, and article 17 of the Standing Orders of the Committee, the amendments were communicated to the Governing Body for transmission to the following session of the International Labour Conference (June 2014). The 103rd Session of the Conference approved them by the required two-thirds majority of the votes cast by the delegates present. On 18 July 2014, these amendments were (under Article XV, paragraph 6, of the MLC, 2006) notified to all Members whose ratification of the MLC, 2006, was registered prior to the date of the Conference’s approval. These Members have a period of two years from that notification – that is, until 18 July 2016 – to communicate to the Director-General a formal expression of

B. Tasks for the second meeting of the Special Tripartite Committee

5. As set out in the Standing Orders, the mandate of the Committee is threefold and involves three different provisions in the Convention. First, Article XIII of the MLC, 2006, provides in paragraph 1 that “The Governing Body of the International Labour Office shall keep the working of this Convention under continuous review through a committee established by it with special competence in the area of maritime labour standards”.⁷ Second, under Article XV, this Committee has a central role with respect to the more rapid process for amendment of the Code of the Convention – the Standards and the Guidelines – containing the more detailed, technical provisions. This process was developed to allow the Convention to respond to changes and important needs in the sector. Finally, the Committee also has an important function under Article VII with respect to consultation with shipowners’ and seafarers’ organizations, for Members where representative organizations do not exist.

B1. Consideration and possible adoption of proposals for amendment of the Code of the MLC, 2006

6. As indicated, the function of the Special Tripartite Committee with respect to the consideration of amendments to the Code of the MLC, 2006, is set out in Article XV of the Convention. Under this procedure, proposals for amendments to the Code must be submitted to the Director-General, who then communicates the proposals to all Members of the Organization with an invitation to submit comments or suggestions on them during a specified period (normally six months). The proposals for amendments and any comments made during this period are then considered by the Special Tripartite Committee at a meeting and, if adopted, are submitted to the International Labour Conference at its next session for approval. If approved, the amendments are notified to Members that have ratified the Convention. As indicated above, Members are given a period (between one and two years) to consider them. The Convention as amended enters into force six months after the end of that period, unless more than 40 per cent of ratifying Members, representing not

disagreement to the amendments. Up to now, no formal expression of disagreement has been received by the Office. The amendments will enter into force on 18 January 2017 – that is, six months after the end of the two-year period – unless more than 40 per cent of the Members which have ratified the Convention and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified the Convention have communicated to the Director-General their formal expressions of disagreement with the amendments. After the entry into force of an amendment adopted under Article XV, the Convention may only be ratified in its amended form.

⁷ The text of Articles VII, XIII and XV of the MLC, 2006, is set out in Appendix B. Article 2 of the Standing Orders sets out the mandate of the Committee as follows:

The MLC Committee shall:

- (a) keep the working of the Convention under continuous review and provide advice on this subject to the Governing Body, or through the Governing Body, to the International Labour Conference;
- (b) consider proposals for amendments to the Code of the Convention in accordance with Article XV of the Convention;
- (c) carry out the consultation referred to in Article VII of the Convention.

less than 40 per cent of world gross tonnage, have formally expressed their disagreement with the amendments.

7. In 2015, pursuant to Article XV, paragraphs 2 and 5, of the Convention, proposals for amendments were submitted by the groups of Seafarer and Shipowner representatives to the Special Tripartite Committee, and were promptly communicated to all Members for comment. The two sets of proposals as provided to all Members are set out in Appendices C and D to this paper.

B1.1. Proposals from the group of Seafarer representatives – Proposal for amendments to the Code relating to Regulations 2.2 and 4.3 of the MLC, 2006

8. The first proposal for amendment submitted by the group of Seafarer representatives to the Special Tripartite Committee relates to Regulation 2.2. – Wages – and aims to ensure the payment of wages during the period for which a seafarer is held captive by pirates.⁸
9. The proposal seeks to address some of the concerns that were raised, in particular, by Working Group 3 of the Contact Group on Piracy off the Coast of Somalia in the draft *Interim guidelines on measures relating to the welfare of seafarers and their families affected by piracy off the Coast of Somalia*.⁹
10. The second proposal for amendment, submitted by the group of Seafarer representatives to the Special Tripartite Committee, relates to Regulation 4.3 – Health and safety protection and accident prevention – which aims to ensure that seafarers’ work environment on board ships promotes occupational safety and health. This proposal is intended to better address the problems related to harassment and bullying on board ships through the adoption of measures to eliminate these types of conduct.

⁸ According to Article 101 of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS):

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).

⁹ International Maritime Organization (IMO) (2014): *Interim guidelines on measures relating to the welfare of seafarers and their families affected by piracy off the coast of Somalia*. Submitted by Italy, Republic of Korea, Philippines, the Baltic and International Maritime Council, ICC, ICMA, IFSMA, IMHA, INTERCARGO, INTERTANKO, ITF, the Nautical Institute, and OCIMF. MSC 93/16/1. London. Available at <http://intertanko.com/Documents/MS%2093-16-1.pdf>. The Contact Group on Piracy off the Coast of Somalia, created on 14 January 2009, pursuant to United Nations Security Council Resolution 1851(2008), is a voluntary, ad hoc international forum of approximately 80 countries, organizations and industry groups with a common interest in combating piracy in the Gulf of Aden and the Indian Ocean.

-
11. The proposal takes into account the guidance on eliminating shipboard harassment and bullying jointly developed by the International Chamber of Shipping and the International Transport Workers' Federation.¹⁰ In this context, it is recognized that "harassment and bullying on board ship can have serious consequences for the physical and emotional health of seafarers, lead to decreased motivation and increased sickness and can compromise teamwork. It can also have negative effects for companies, resulting in a deterioration of working conditions and potential organizational, economic and legal consequences". It is also emphasized that as a ship is often a seafarers' home for many months, harassment and bullying can be of concern given the shipboard living and working environment, isolation, size and proximity of cabins and the necessity to remain at the workplace during rest periods.¹¹

Section A – Proposal from the group of Seafarer representatives relating to Standard A2.2

12. Add the following new paragraph [5bis] or [7] after the present paragraphs 5 or 6 of Standard A2.2 – Wages:

[5bis] or [7] – Where a seafarer is held captive by pirates, payments as provided for in paragraph 1 of this Standard, including any allotments, shall continue to be paid during the entire period of the seafarer's captivity.

Section B – Proposal from the group of Seafarer representatives relating to Standard A4.3

13. Add the following new paragraph [9] after the present paragraph 8 of Standard A4.3 – Health and safety protection and accident prevention:

[9] – The competent authority shall ensure that shipowners develop policies and plans to eliminate harassment and bullying on board ships that fly its flag.

B1.2. Proposals from the group of Shipowner representatives – Proposal for amendments to the Code relating to Regulation 5.1 of the MLC, 2006

14. The proposal for amendment submitted by the group of Shipowner representatives to the Special Tripartite Committee seeks to bring the procedure for the renewal of the maritime labour certificate in line with those adopted under IMO Conventions.
15. Standard A5.1.3, paragraph 3 of the MLC, 2006, provides that "when the renewal inspection has been completed within three months before the expiry of the existing maritime labour certificate, the new maritime labour certificate shall be valid from the date

¹⁰ International Chamber of Shipping and International Transport Workers' Federation, *Guidance on eliminating shipboard harassment and bullying* (forthcoming).

¹¹ *ibid.* It should also be noted that, in 2013, the European Community Shipowners' Association and the European Transport Workers' Federation adopted the *Guidelines to shipping companies on eliminating workplace harassment and bullying*. The text is available at: <https://www.nautilusint.org/media/169252/ETF-ECSA-guidelines-on-eliminating-workplace-bullying-and-harassment-2014.pdf>.

of completion of the renewal inspection for a period not exceeding five years from the date of expiry of the existing certificate”.

- 16.** In accordance with Regulation 5.1.2, the renewal inspection for vessels of some flag States may be conducted by “recognized organizations”. Following the inspection, the flag administration will issue the new certificate on the basis of the recognized organization’s inspection result, indicating that the ship is in conformity with MLC, 2006, standards and national law. However, as some flag States do not permit recognized organizations to issue the new certificate on their behalf, there is a possibility that the ship may not receive the new certificate before the expiry date of the existing maritime labour certificate, despite the fact that the renewal inspection has been successfully completed. The old certificate may therefore expire before receipt of the new one.
- 17.** If a port State control inspection is scheduled shortly after the renewal survey without the new certificate having been received, the vessel must prove to port State control inspectors that the renewal survey has been successfully completed and that it is waiting to receive a new certificate from the flag State administration. In many cases, this might be difficult, and could result in a deficiency and a delay of the ship.
- 18.** It is proposed to amend Standard A5.1.3 and the relevant Appendix A5-II of the Code of the MLC, 2006, to allow flag State administrations, including duly authorized recognized organizations acting on their behalf, to extend the validity of the existing maritime labour certificate for up to five months from its expiry date. This would be conditional on the required MLC, 2006, renewal inspection having been successfully conducted and the ship having been found to be in compliance with the relevant requirements of the Convention. This would align the MLC, 2006 provisions with the procedure adopted under, for example, provisions in the International Maritime Organization (IMO)’s International Convention for the Safety of Life at Sea (SOLAS), 1974.¹²

Section A – Proposal from the group of Shipowner representatives relating to Standard A5.1.3

- 19.** Add the following new paragraph [4bis] after the present paragraph 4 of Standard A5.1.3 – Maritime labour certificate and declaration of maritime labour compliance:

[4bis] Where, after a renewal inspection completed prior to the expiry of a maritime labour certificate, the ship is found to continue to meet the standards of this Convention, but a new certificate cannot immediately be issued to that ship, the competent authority, or the recognized organization duly authorized for this purpose, may renew the certificate by extending its validity for a further period which shall not exceed five months from the expiry date, and endorse the certificate accordingly.

¹² Chapter 1, “General provisions”, Regulation 14(d).

Section B – Proposal from the group of Shipowner
representatives relating to Appendix A5-II

20. Add the following text at the end of the model form for the maritime labour certificate contained in Appendix A5-II:

Extension after renewal inspection (if applicable)

This is to certify that, following a renewal inspection referred to in paragraph 4bis of Standard A5.1.3, the ship was found to continue to be in compliance with the national requirements and that the present certificate is hereby extended until [date (not more than five months after the expiry date)] pending the issue of the new certificate to the ship.

Completion date of the inspection on which this extension is based was
.....

Signature of the duly authorized official issuing the certificate.

(Seal or stamp of issuing authority, as appropriate.)

**B2. Exchange of information related to implementation:
Keeping the working of the Convention
under continuous review**

21. As noted above, in accordance with Article XIII of the MLC, 2006, one of the primary tasks of the Special Tripartite Committee is to consider a wide range of questions relating to the working of the Convention. Where significant gaps or other difficulties are identified, this may lead to recommendations to the Governing Body on action to be taken to ensure the effective, efficient and, to the extent deemed expedient, uniform implementation of the Convention,¹³ or to proposals for amendments in the future. The Committee also provides an opportunity for a useful intergovernmental and tripartite exchange of information regarding implementation experiences. In this context, the constituents are encouraged to provide information in the meeting on the status of implementation, as well as to identify any particularly difficult issues they have encountered.

22. The general observation adopted in 2014 by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) related to the MLC, 2006, and the issues arising from the examinations of first reports submitted by member States, is of interest for a review of the working of the Convention.¹⁴

B3. Tripartite consultations under Article VII

23. The MLC, 2006, is a Convention that is founded on encouraging tripartism at the national level. A number of its provisions, particularly with respect to national “determinations” in

¹³ The Standing Orders provide in article 16, Reports to the Governing Body:

Following its meetings referred to in article 3 above, the MLC Committee, through its Chairperson, shall report to the Governing Body on the working of the Convention. The report may contain recommendations to the Governing Body on action to be taken to ensure the effective, efficient and, to the extent deemed expedient, uniform implementation of the Convention.

¹⁴ The text is reproduced in Appendix E to this document.

specific cases of application and exemptions under Title 3, require tripartite consultation by the Government with the shipowners' and seafarers' organizations concerned, as part of the process of implementation. However, some Members do not yet have such organizations. Article VII of the MLC, 2006, therefore provides that in such cases the Government is to consult the Special Tripartite Committee.

24. The Committee will need to consider any requests that are submitted to it in time for consideration at its second meeting. So far, no such requests have been made.
25. Procedures for consultation under Article VII of the Convention are provided for in article 14 of the Standing Orders of the Committee; requests for consultation are to be addressed to the Chairperson of the Special Tripartite Committee through the International Labour Office.
26. It is recalled that during the first meeting of the Special Tripartite Committee, the following interim arrangements were adopted by the Committee to enable it to perform its consultation function between meetings of the Committee:¹⁵

Arrangements for responding to requests for consultation made under Article VII between meetings of the Committee

Pursuant to article 14 of its Standing Orders, the Special Tripartite Committee agreed upon the following interim arrangements for responding to any requests made by a ratifying Member between meetings of the Committee, for consultation under Article VII of the Maritime Labour Convention, 2006:

1. There will be a panel made up of representatives of the Government group, the Shipowners' group and the Seafarers' group who will be available to provide advice, on behalf of the Committee, in the case of requests for consultation received from a government in accordance with Article VII of the Convention between meetings of the Committee.
2. Upon receipt of a request for consultation pursuant to article 14(1) of the Standing Orders, the Officers of the Committee will, taking account of all relevant factors, such as the subject matter of the request and the language needed to communicate with the government concerned, form a working group to provide the requested advice to the government concerned. Each Vice-Chairperson will select two members of the working group from their respective group.
3. The Officers will determine unanimously how consultation will proceed. This consultation process should not incur significant cost.
4. In accordance with paragraph 3(e) of Article 14 of the Committee's Standing Orders, the advice provided will be made available to the Committee at its next meeting and – to the extent approved by the Committee – to all Members of the Organization.
5. The government concerned will communicate to the Office the result of its determination made after consultation. The Office will then communicate it to the Committee.

27. No requests for consultations under Article VII of the MLC, 2006, have been submitted since the first meeting of the Committee, in April 2014. This arrangement has accordingly not been implemented. Nevertheless, it should be recalled that, in its 2014 general observation, the CEACR noted that “a number of Members indicated some difficulty as they do not yet have representative organizations established for consultation to assist with national implementation. The Committee recalls that the Special Tripartite Committee under Article XIII of the MLC, 2006, has now been established by the Governing Body,

¹⁵ GB.322/LILS/3, para. 442.

and held its first meeting in April 2014. The Special Tripartite Committee, in accordance with the Convention, adopted interim arrangements for consultation with shipowners' and seafarers' organizations, as provided for in Article VII of the MLC, 2006, in cases where representative organizations do not exist within a Member”.

B4. Other business

28. The Government members of the Special Tripartite Committee will need to make a proposal to the Governing Body for the next Chairperson of the Committee. Indeed, the term of the current Chairperson will end in 2016. It is recalled that in accordance with article 6(2) of the Standing Orders of the Committee:

2. The Chairperson shall be proposed by the Government members of the MLC Committee (i.e. from ratifying Members) and appointed by the Governing Body, for a term of up to three years. A Chairperson may be reappointed for a second consecutive term. The Chairperson must remain neutral in discussions and shall not vote. Where the Chairperson is a Government representative on the MLC Committee, her or his government may nominate another person as representative or substitute representative on the MLC Committee.

Appendix A

Agenda for the second meeting of the MLC, 2006, Special Tripartite Committee (MLC Committee) (Geneva, 8–10 February 2016)

1. Consideration of proposals for amendments to the Code of the Maritime Labour Convention, 2006 (MLC, 2006)
2. Consideration of any request for consultation under Article VII of the MLC, 2006
3. Exchange of information related to implementation
4. Any other business

In addition, the Government members of the Special Tripartite Committee will need to make a proposal to the Governing Body for the next Chairperson of the Committee.¹

¹ The term (November 2013–16) of the current Chairperson will end in 2016. In accordance with article 6(2) of the Standing Orders of the Special Tripartite Committee:

2. The Chairperson shall be proposed by the Government members of the MLC Committee (i.e. from ratifying Members) and appointed by the Governing Body, for a term of up to three years. A Chairperson may be reappointed for a second consecutive term. The Chairperson must remain neutral in discussions and shall not vote. Where the Chairperson is a Government representative on the MLC Committee, her or his government may nominate another person as representative or substitute representative on the MLC Committee.

Appendix B

Relevant provisions in the MLC, 2006

Consultation with shipowners' and seafarers' organizations

Article VII

Any derogation, exemption or other flexible application of this Convention for which the Convention requires consultation with shipowners' and seafarers' organizations may, in cases where representative organizations of shipowners or of seafarers do not exist within a Member, only be decided by that Member through consultation with the Committee referred to in Article XIII.

Special Tripartite Committee

Article XIII

1. The Governing Body of the International Labour Office shall keep the working of this Convention under continuous review through a committee established by it with special competence in the area of maritime labour standards.

2. For matters dealt with in accordance with this Convention, the Committee shall consist of two representatives nominated by the Government of each Member which has ratified this Convention, and the representatives of Shipowners and Seafarers appointed by the Governing Body after consultation with the Joint Maritime Commission.

3. The Government representatives of Members which have not yet ratified this Convention may participate in the Committee but shall have no right to vote on any matter dealt with in accordance with this Convention. The Governing Body may invite other organizations or entities to be represented on the Committee by observers.

4. The votes of each Shipowner and Seafarer representative in the Committee shall be weighted so as to ensure that the Shipowners' group and the Seafarers' group each have half the voting power of the total number of governments which are represented at the meeting concerned and entitled to vote.

Amendments to the Code

Article XV

1. The Code may be amended either by the procedure set out in Article XIV or, unless expressly provided otherwise, in accordance with the procedure set out in the present Article.

2. An amendment to the Code may be proposed to the Director-General of the International Labour Office by the government of any Member of the Organization or by the group of Shipowner representatives or the group of Seafarer representatives who have been appointed to the Committee referred to in Article XIII. An amendment proposed by a government must have been proposed by, or be supported by, at least five governments of Members that have ratified the Convention or by the group of Shipowner or Seafarer representatives referred to in this paragraph.

3. Having verified that the proposal for amendment meets the requirements of paragraph 2 of this Article, the Director-General shall promptly communicate the proposal, accompanied by any comments or suggestions deemed appropriate, to all Members of the Organization, with an invitation to them to transmit their observations or suggestions concerning the proposal within a period of six months or such other period (which shall not be less than three months nor more than nine months) prescribed by the Governing Body.

4. At the end of the period referred to in paragraph 3 of this Article, the proposal, accompanied by a summary of any observations or suggestions made under that paragraph, shall be

transmitted to the Committee for consideration at a meeting. An amendment shall be considered adopted by the Committee if:

- (a) at least half the governments of Members that have ratified this Convention are represented in the meeting at which the proposal is considered; and
- (b) a majority of at least two-thirds of the Committee members vote in favour of the amendment; and
- (c) this majority comprises the votes in favour of at least half the government voting power, half the Shipowner voting power and half the Seafarer voting power of the Committee members registered at the meeting when the proposal is put to the vote.

5. Amendments adopted in accordance with paragraph 4 of this Article shall be submitted to the next session of the Conference for approval. Such approval shall require a majority of two-thirds of the votes cast by the delegates present. If such majority is not obtained, the proposed amendment shall be referred back to the Committee for reconsideration should the Committee so wish.

6. Amendments approved by the Conference shall be notified by the Director-General to each of the Members whose ratifications of this Convention were registered before the date of such approval by the Conference. These Members are referred to below as “the ratifying Members”. The notification shall contain a reference to the present Article and shall prescribe the period for the communication of any formal disagreement. This period shall be two years from the date of the notification unless, at the time of approval, the Conference has set a different period, which shall be a period of at least one year. A copy of the notification shall be communicated to the other Members of the Organization for their information.

7. An amendment approved by the Conference shall be deemed to have been accepted unless, by the end of the prescribed period, formal expressions of disagreement have been received by the Director-General from more than 40 per cent of the Members which have ratified the Convention and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified the Convention.

8. An amendment deemed to have been accepted shall come into force six months after the end of the prescribed period for all the ratifying Members except those which had formally expressed their disagreement in accordance with paragraph 7 of this Article and have not withdrawn such disagreement in accordance with paragraph 11. However:

- (a) before the end of the prescribed period, any ratifying Member may give notice to the Director-General that it shall be bound by the amendment only after a subsequent express notification of its acceptance; and
- (b) before the date of entry into force of the amendment, any ratifying Member may give notice to the Director-General that it will not give effect to that amendment for a specified period.

9. An amendment which is the subject of a notice referred to in paragraph 8(a) of this Article shall enter into force for the Member giving such notice six months after the Member has notified the Director-General of its acceptance of the amendment or on the date on which the amendment first comes into force, whichever date is later.

10. The period referred to in paragraph 8(b) of this Article shall not go beyond one year from the date of entry into force of the amendment or beyond any longer period determined by the Conference at the time of approval of the amendment.

11. A Member that has formally expressed disagreement with an amendment may withdraw its disagreement at any time. If notice of such withdrawal is received by the Director-General after the amendment has entered into force, the amendment shall enter into force for the Member six months after the date on which the notice was registered.

12. After entry into force of an amendment, the Convention may only be ratified in its amended form.

13. To the extent that a maritime labour certificate relates to matters covered by an amendment to the Convention which has entered into force:

- (a) a Member that has accepted that amendment shall not be obliged to extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member which:

-
- (i) pursuant to paragraph 7 of this Article, has formally expressed disagreement to the amendment and has not withdrawn such disagreement; or
 - (ii) pursuant to paragraph 8(a) of this Article, has given notice that its acceptance is subject to its subsequent express notification and has not accepted the amendment; and
- (b) a Member that has accepted the amendment shall extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member that has given notice, pursuant to paragraph 8(b) of this Article, that it will not give effect to that amendment for the period specified in accordance with paragraph 10 of this Article.

Appendix C

Proposals from the group of Seafarer representatives appointed to the Special Tripartite Committee to amend the Code of the MLC, 2006

Proposal for the text of amendments to the Code of the Maritime Labour Convention, 2006, submitted to the Director-General of the ILO for consideration by ILO Members and by the Special Tripartite Committee established under Article XIII with a view to adoption in accordance with Article XV of the Maritime Labour Convention, 2006.

Proposal for amendments to the Code relating to Regulation 2.2 of the MLC, 2006

Add the following new paragraph [5bis] or [7] after the present paragraphs 5 or 6 of Standard A2.2 – Wages:

[5bis] or [7] – Where a seafarer is held captive by pirates, payments as provided for in paragraph 1 of this Standard, including any allotments, shall continue to be paid during the entire period of the seafarer’s captivity.

Proposal for amendments to the Code relating to Regulation 4.3 of the MLC, 2006

Add the following new paragraph [9] after the present paragraph 8 of Standard A4.3 – Health and safety protection and accident prevention:

[9] – The competent authority shall ensure that shipowners develop policies and plans to eliminate harassment and bullying on board ships that fly its flag.

Appendix D

Proposals from the group of Shipowner representatives appointed to the Special Tripartite Committee to amend the Code of the MLC, 2006

Proposal for the text of amendments to the Code of the Maritime Labour Convention, 2006, submitted to the Director-General of the ILO for consideration by ILO Members and by the Special Tripartite Committee established under Article XIII with a view to adoption in accordance with Article XV of the Maritime Labour Convention, 2006.

Proposal for amendments to the Code relating to Regulation 5.1 of the MLC, 2006

1. The group of Shipowner representatives appointed to the Special Tripartite Committee established under Article XIII of the MLC, 2006 had advised the Seafarer representatives appointed to the Committee that they wished to table the following proposal to amend the Code of the MLC, 2006, at the next meeting of the ILO Special Tripartite Committee in 2016. The Office recalls that the International Chamber of Shipping (ICS) had previously raised this matter with the ILO International Labour Standards Department and was advised that the only mechanism available to bring such a proposal into effect would be by way of an amendment to the MLC, 2006.
2. This proposal seeks to bring the renewal process for the maritime labour certificate in line with the renewal of certificates under International Maritime Organization (IMO) Conventions.
3. MLC, 2006, Standard A5.1.3, paragraph 3, states “when the renewal inspection has been completed within three months before the expiry of the existing maritime labour certificate, the new maritime labour certificate shall be valid from the date of completion of the renewal inspection for a period not exceeding five years from the date of expiry of the existing certificate”.
4. The renewal inspection for vessels of some flag States may be conducted by “recognized organizations (ROs)”.
5. Following the inspection, the flag administration will issue the new certificate on the basis of the RO’s inspection result that the ship is in conformity with MLC, 2006, standards and national law. However, some flag States do not permit ROs to issue the new certificate on their behalf.
6. There is, therefore, a possibility that the vessel may not receive the new certificate before the expiry date of the existing maritime labour certificate, despite the renewal inspection having been successfully completed. The old certificate may therefore expire before receipt of the new one.
7. If a port State control (PSC) inspection is scheduled shortly after the renewal survey without the new certificate having been received, the vessel must prove to PSC inspectors that the renewal survey has been successfully completed and that it is waiting to receive a new certificate from the flag administration. In many cases, this might be difficult, and could result in a deficiency and therefore a delay to the ship.
8. It is proposed to amend Standard A5.1.3 and the relevant Appendix A5-II of the Code of the MLC, 2006, to allow flag State administrations, including duly authorized ROs acting on their behalf, to extend the validity of the existing maritime labour certificate for up to five months from the expiry date. This would be conditional on the required MLC, 2006, renewal inspection having been successfully conducted and the ship having been found to be in compliance with the relevant requirements of the Convention. This would align the MLC, 2006, provisions with the process adopted under, for example, provisions in the IMO’s SOLAS Convention, 1974, Annex Reg. 14(d).

Proposal related to Standard A5.1.3

Add the following new paragraph [4bis] after the present paragraph 4 of Standard A5.1.3 – Maritime labour certificate and declaration of maritime labour compliance:

[4bis] Where, after a renewal inspection completed prior to the expiry of a maritime labour certificate, the ship is found to continue to meet the standards of this Convention, but a new certificate cannot immediately be issued to that ship, the competent authority, or the recognized

organization duly authorized for this purpose, may renew the certificate by extending its validity for a further period which shall not exceed five months from the expiry date, and endorse the certificate accordingly.

Proposal related to Appendix A5-II

Add the following text at the end of the model form for the maritime labour certificate contained in Appendix A5-II:

Extension after renewal inspection (if applicable)

This is to certify that, following a renewal inspection referred to in paragraph 4bis of Standard A5.1.3, the ship was found to continue to be in compliance with the national requirements and that the present certificate is hereby extended until [date (not more than five months after the expiry date)] pending the issue of the new certificate to the ship.

Completion date of the inspection on which this extension is based was

Signature of the duly authorized official issuing the certificate.

(Seal or stamp of issuing authority, as appropriate.)

Appendix E

General observation – Committee of Experts on the Application of Conventions and Recommendations – adopted 2014, published 104th ILC Session (2015)

Maritime Labour Convention, 2006: Observations arising from an examination of the first reports

In its 2012 report the Committee made a general observation with respect to getting ready for the entry into force of the Maritime Labour Convention, 2006 (MLC, 2006). That observation noted a number of innovative features of the Convention, particularly in connection with the compliance and enforcement system of the Convention which includes certification of seafarers' working and living conditions on ships. The MLC, 2006 entered into force for 30 Members on 20 August 2013 and has, as of November 2014, been ratified by 65 Members. This year the first national reports on the application of the Convention were requested from 32 Members for examination by the Committee. The Committee has had the opportunity to examine the majority of reports that have been received and, in accordance with its usual practice with first reports on Conventions, the Committee has made specific comments in the form of direct requests to the governments concerned.

The Committee has noted with interest the recent public report issued by the secretariat of a regional port State control Memorandum of Understanding, with respect to the number of inspections of ships, by port State control officers, for compliance with the requirements of the MLC, 2006. That report included a list of deficiencies that had been identified on board ships, as well as reporting a significant number of detentions of ships for MLC, 2006 related matters in this first year following entry into force of the Convention. The Committee notes that this shipboard-level system, involving both flag State inspections and inspections of foreign ships entering ports of ratifying Members, is important and supports, on an ongoing basis, and in a concrete manner, the cyclical national-level examination of the application of Conventions under the ILO's supervisory system. Although the MLC, 2006 is still relatively new and the system it establishes is still being put into operation, this information, along with the information provided by governments in their reports and the observations by shipowners' and seafarers' organizations, indicates that there is a significant level of implementation in practice, well beyond the adoption of legislation in many cases, and a high level of engagement by relevant actors in the industry. This implementation also indicates that questions relating to consistency of application in this, the earliest and one of the most international industries, are of significant concern to governments, and to shipowners and seafarers.

In view of the number of first national reports that will be requested over the next few years and the need to provide guidance and promote a common understanding of the requirements of the MLC, 2006, the Committee has decided to make a general observation on several matters that it has noted in its examination of these first reports under article 22 of the ILO Constitution.

Implementation and national tripartite consultation

The Committee notes that observations were received from a number of workers' (seafarers') organizations, the majority of which indicated that there has been a good, even high, level of consultation and social dialogue in the process of national implementation. There were, however, some concerns raised in observations from workers' organizations in a few cases, as indicated in the direct requests. In addition, a number of Members indicated some difficulty as they do not yet have representative organizations established for consultation to assist with national implementation. The Committee recalls that the Special Tripartite Committee under Article XIII of the MLC, 2006 has now been established by the Governing Body, and held its first meeting in April 2014. The Special Tripartite Committee, in accordance with the Convention, adopted interim arrangements for consultation with shipowners' and seafarers' organizations, as provided for in Article VII of the MLC, 2006, in cases where representative organizations do not exist within a Member.

National reports and implementing measures. The function and importance of the Declaration of Maritime Labour Compliance (DMLC), Parts I and II

The Committee recalls that the innovative structure of the Convention and its length resulted in the adoption by the Governing Body of a new form for national reports that would also facilitate electronic reporting and make use of national documentation prepared for use on board ships. The Committee notes that a number of governments provided detailed information in the report as well as substantial documentation and/or internet links to documents and websites related to implementation. Others, however, preferred to rely on the Declaration of Maritime Labour Compliance (DMLC), Parts I and II, as providing sufficient information on the 14 areas covered in the DMLC. In that context the Committee observed difficulties in the DMLC, Parts I and II, in some cases, apart from the question of sufficiency of information for the purposes of the national report. The Committee noted, in particular, that often the sample national DMLC, Part I, contains only a list of titles or references to national implementing legislation or other measures and in some cases, incorrect references, with no, or very little, additional information. The Committee recalls that paragraph 10(a) of Standard A5.1.3 provides that the DMLC, Part I, drawn up by the competent authority shall not only “identify the national requirements embodying the relevant provisions of this Convention by providing a reference to the relevant national legal provisions” but also provide, “to the extent necessary, concise information on the main content of the national requirements”. The Committee also recalls that paragraph 1 of Guideline B5.1.3 provides guidance with respect to the statement of national requirements, including recommending that “where national legislation precisely follows the requirement stated in this Convention, a reference may be all that is necessary”. However, in many cases a reference will not provide enough information on national requirements where they relate to matters for which the Convention envisages some differences in national practices. Similarly, the Committee noted that many of the examples of an approved DMLC, Part II (a document which is intended to identify the measures adopted by shipowners to implement the national requirements), also often contain only references to other documents. Unless all of these referenced documents are carried on board ship and are easily accessible to all concerned, it would be difficult for port State control officers or seafarers to understand what the national requirements are on these matters. In these cases the DMLC, Part I, does not appear to fulfil the purpose for which it, along with the DMLC, Part II, is required under the Convention, which is to help all persons concerned, such as flag State inspectors, authorized officers in port States and seafarers, to check that the national requirements on the 14 listed matters are being properly implemented on board ship.

The Committee also recalls, in that respect, that the DMLC does not address all the areas of the MLC, 2006 which must also be implemented by Members.

Article II. Definitions and scope of application

The Committee observes, in connection with the scope of application of the MLC, 2006 to seafarers, as provided for in Article II, governments have indicated that when making a determination after consultation with the relevant representative organizations concerned, they follow the definitions in the Convention and take into account the guidance and criteria set out in the resolution concerning information on occupational groups that was adopted by the 94th Session of the International Labour Conference (February 2006). However, in connection with the application of the flexibility provided in paragraphs 3, 5 and 6 of Article II, the Committee observed some difficulty. The Committee notes in that regard that the concept of “substantial equivalence”, as provided for in paragraphs 3 and 4 of Article VI, and discussed in more detail below, is not applicable to cases of doubt as to whether the Convention applies to a category of persons or ships.

The Committee also notes that the MLC, 2006 does not allow for the partial application of the national law implementing its provisions if the workers concerned are seafarers covered by the Convention. Exclusion of workers from the scope of the Convention is possible only where: (a) they clearly do not come within the definition of “seafarer”; (b) the ship on which they work is clearly not a “ship” covered by the Convention; (c) a doubt can arise in regard to (a) or (b) above and a determination has been made, in accordance with the Convention, that the categories of workers concerned are not seafarers or are not working on ships covered by the Convention; or (d) the provisions in the relevant legislation that do not apply to such workers relate to subjects that are not covered by the Convention.

In connection with the standards for seafarers working on board ships of less than 200 gross tonnage (gt) that do not engage in international voyages, paragraph 6 of Article II provides additional flexibility with respect to the application of “certain details of the Code” to these ships. The flexibility provided in paragraph 6 can only be exercised by the competent authority, in consultation with the shipowners’ and seafarers’ organizations concerned, for cases where it determines that it would not be reasonable or practicable to apply the details of the Code provisions concerned at the present time and that the subject matter of the relevant Code provisions is dealt with differently by national legislation or collective agreements or other measures. The Committee underlines that paragraph 6 of Article II does not provide for the exclusion of a ship, or a category of ships, from the protection offered by the Convention and, even if a determination has been made, it can only apply to details of the Code (the Standards and Guidelines). The provisions of the Regulations must still be applied.

The Committee has also observed several cases where the national legislation concerned provides the competent authority with power to make general exemptions, in specific circumstances, from the national requirements implementing the Convention. The Committee notes, however, that exemptions are possible only to a limited extent and only where they are expressly permitted by the MLC, 2006.

Article III. Fundamental rights and principles. Article VI. Regulations and Part A and B of the Code

In connection with the application of Articles III and VI, in the context of the MLC, 2006, the Committee considers, as a matter of approach, that in its examination of government reports on the application of the Convention, it cannot usefully form an opinion on general questions as to whether a Member has properly satisfied itself that its laws and regulations respect the fundamental rights referred to in Article III or whether, in the adoption of its legislation implementing the MLC, 2006, the Member has given due consideration to the provisions of Part B of the Code. Instead, the Committee’s review will, in principle, relate to concrete requirements in Titles 1–5 of the Convention, and will look at national provisions implementing those requirements which indicate that insufficient account may have been taken of a fundamental right referred to in Article III, as well as at practices related to implementation of particular requirements in Titles 1–5 that could indicate that the relevant national laws and regulations have taken insufficient account of a fundamental right referred to in Article III. Similarly, with regard to paragraph 2 of Article VI, the Committee will focus its review on national implementing provisions relating to concrete requirements for which due consideration does not appear to have been given to Part B of the Code.

In addition, the Committee recalls that the concept of substantial equivalence is not a matter for administrative discretion but is a matter to be decided by a Member that must first make sure, in accordance with paragraphs 3 and 4 of Article VI, that it is not in a position to implement the rights and principles in the manner set out in Part A of the Code of the MLC, 2006. Unless expressly provided otherwise in the Convention, the Member may implement the Standards in Part A of the Code in laws and regulations or other measures if it satisfies itself that the relevant legislation or other implementing measures “is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned” and “gives effect to the provision or provisions of Part A of the Code concerned”. The Member’s obligation is principally to “satisfy itself”, which nevertheless does not imply total autonomy, since it is incumbent on the authorities responsible for monitoring implementation at the national and international levels to determine not only whether the necessary procedure of “satisfying themselves” has been carried out, but also whether it has been carried out in good faith in such a way as to ensure that the objective of implementing the principles and rights set out in the Regulations is adequately achieved in some way other than that indicated in Part A of the Code. It is in this context that ratifying Members should assess their national provisions from the point of view of substantial equivalence, identifying the general object and purpose of the provision concerned (in accordance with paragraph 4(a) of Article VI) and determining whether or not the proposed national provision could, in good faith, be considered as giving effect to the Part A of the Code provision as required by paragraph 4(b) of Article VI. Any substantial equivalences that have been adopted must be stated in Part I of the DMLC that is to be carried on board ships that have been certified. As stated in the practical guidance (paragraph 7) at the beginning of the national report form for the MLC, 2006, explanations are required where a national implementing measure of the reporting Member differs from the requirements of Part A of the Code. In connection with the adoption of a substantial equivalence, the Committee will normally need information on the reason why the Member was not in a position

to implement the requirement in Part A of the Code, as well as (unless obvious) on the reason why the Member was satisfied that the substantial equivalence met the criteria set out in paragraph 4 of Article VI.

Regulation 1.4 and the Code. Recruitment and placement

In connection with the application of requirements in paragraph 5 of Article V and Regulation 1.4 and the Code, the Committee observes that, where ratifying Members, with recruitment and placement services operating in their territory, have not implemented these requirements, it is important to recall that shipowners and flag State inspectors of other ratifying Members are relying on all ratifying Members to effectively implement these requirements. A failure to move forward on this matter can result in an unfair advantage for a Member that has ratified the MLC, 2006, relative to Members that have not ratified, but whose seafarer recruitment and placement services are required to comply with the Convention's requirements in order for seafarers to be able to obtain employment through these services. The Committee has also noted that a number of countries rely on certification of recruitment and placement services, and in some cases appear to equate ratification of the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), with the ratification and implementation of the MLC, 2006. The Committee recalls that the MLC, 2006 does not contain exactly the same provisions as Convention No. 179, particularly with respect to the requirements in paragraph 5(b) and (c)(vi) of Standard A1.4 of the MLC, 2006.

Regulation 2.1 and the Code. Seafarers' employment agreements

In connection with seafarers' employment agreements, the Committee stresses the importance of the basic legal relationship that the MLC, 2006 establishes between the seafarer and the person defined as "shipowner" under Article II. In accordance with paragraph 1 of Standard A2.1, every seafarer must have an original agreement that is signed by the seafarer and the shipowner or a representative of the latter (whether or not the shipowner is considered to be the employer of the seafarer).

Regulation 2.3 and the Code. Hours of work and hours of rest

The Committee notes, in connection with flexibility regarding the limits provided in Standard A2.3 for the minimum hours of rest or maximum hours of work, that any exceptions, including those provided for in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), as amended, must follow the requirements of paragraph 13 of Standard A2.3.

Regulation 4.5 and the Code. Social security

In connection with social security protection, the Committee recalls that the obligation, under paragraphs 2 and 3 of Standard A4.5, is for each Member to take steps according to its national circumstances to provide at least three branches of social security protection to all seafarers ordinarily resident in its territory. It notes that on ratification, in accordance with paragraphs 2 and 10 of Standard A4.5, each Member has specified the branches of social security protection that are provided to seafarers ordinarily resident in its territory. This obligation may be implemented in a number of ways, as set out in paragraphs 3 and 7 of Standard A4.5, and the attribution of responsibility may also be the subject of bilateral and multilateral agreements adopted within the framework of a regional economic integration organization, as provided for under paragraph 4. The Committee has noted that regional arrangements have indeed been made among some Members and that, in some cases, Members may have made bilateral agreements with other countries. However these mechanisms and arrangements do not appear to be widespread and information is not clear on this important issue.

The Committee also wishes to point out that, although the primary obligation rests with the Member in which the seafarer is ordinarily resident, under paragraph 6 of Standard A4.5 Members also have an obligation to give consideration to the various ways in which comparable benefits will, in accordance with national law and practice, be provided to seafarers in the absence of adequate coverage in the nine branches of social security. As noted above, in accordance with paragraph 7,

this can be provided in different ways, including laws or regulations, in private schemes, in collective bargaining agreements or a combination of these.

Technical assistance for implementation

The Committee has noted that several governments have indicated that at present they are not flag States as they do not have any ships to which the Convention applies. They have, therefore, not moved to adopt detailed legislation to implement the MLC, 2006. However, the Committee observes that other obligations in the MLC, 2006, to the extent relevant to the country concerned, such as the regulation of any private recruitment and placement services, promotion of shore-based welfare facilities and fulfilling port State responsibilities, still apply and need to be implemented. In some cases the Committee observed that the Member concerned would benefit from technical assistance and cooperation to help move forward on implementation.

Disseminating and updating information on MLC, 2006 implementation. The ILO's MLC, 2006 website and database

Finally, the Committee recalls that, in order to fulfil the requirements in the MLC, 2006 regarding dissemination of information, the Office has developed a dedicated website and database which contains information provided by governments in accordance with the Convention. It is a useful source of information for other Members and shipowners and seafarers. It is important that Members ensure that they provide this information to the Office and take steps to keep their national information up to date.

Conclusion

Overall the Committee wishes to recognize the contribution of these first reporting Members, who were among those that first ratified the MLC, 2006 and brought it into force and who are now, in many respects, leading the way for others.