

IMPOSING OF RESPONSIBILITY ON STATES' TO GUARANTEE LABOUR STANDARDS FOR SEAFARERS UNDER THE MLC 2006: CAN THE ILO ACHIEVE ITS GOAL?

Dan Malika Gunasekera^{[a],*}

^[a] Ph.D., Dr., Lecturer, Faculty of Management, CINEC Maritime Campus, Sri Lanka.

*Corresponding author.

Email: dan@cinec.edu; gdmmsg@live.com

Received 29 January 2013; revised 21 February 2013; accepted 10 March 2013.

Abstract

This Article focuses on responsibilities of States and Members of the International Labour Organization in the implementation of their respective duties under the Maritime Labour Convention 2006. With its coming into force scheduled for August 2013, those Members States that ratifies the relevant Convention will have to take necessary action in implementing its obligations while fulfilling convention provisions in a manner compatible with the providing of decent work agenda for Seafarers subject to strict controls of compliance. This Article discusses various issues and applications related to these said State obligations and indentify ways of remedying deficiencies in a much analytical manner.

Key words: Maritime Labour Convention, 2006; Rights of Seafarers; State obligations under MLC 2006; International Labour Organization; Seafarers; Maritime Labour

Dan Malika Gunasekera (2013). Imposing of Responsibility on States' to Guarantee Labour Standards for Seafarers Under the MLC 2006: Can the ILO Achieve Its Goal?. *Frontiers of Legal Research*, 1(1), 25-35. Available from <http://www.cscanada.net/index.php/flr/article/view/10.3968/j.flr.1929663020130101.192> DOI: 10.3968/j.flr.1929663020130101.192

The long waited need of securing a single document for the rights of sea-faring work force is gradually becoming a reality after a lapse of few months in this 2013 with the Maritime Labour Convention adopted in 2006¹ reaching its date of commencement into force fixed at August 20th. Under the auspices of the International Labour Organization, the High-level Tripartite² Working Group

¹ Adopted in February, 2006 by the 94th Int'l Labour Conference at a maritime session in Geneva.

² This was called Tripartite due to the involvement of three main representative stakeholders consisting of namely Governments, Shipowners and Seafarers.

on Maritime Standards³ that first met from 17 – 21 December 2001 has already made history by fulfilling its task of covering complex issues within a limited scope of substance. It is quite obvious that the intention for which this Convention was brought into being has well been met as a matter of incorporating various international maritime labour standards into a single coherent international instrument.⁴ During the initial discussions, it was felt by the drafters that the existed standards were often inconsistent and unclear and that the frequent revision procedures were in fact incapable of enabling their rapid adoption in meeting the special needs of the developing industry.⁵ The idea behind, was to create a balance between the industry's tradition and the need to innovate of the working standards in conjunction with the ILO's present approach of providing decent work agenda for the maritime workforce. Nevertheless, it was well viewed that the proposed instrument should be simple, clear and easy to apply so that States could implement it without much of hassle.

It was brought to the knowledge of the drafters at initial stage to have due regard to practical problems faced by States with the ratification and implementation of the existing standards on labour⁶, and the majority's view was to complement it with a distinct Convention insisting upon 'technical cooperation' based on 'flexible approach'. Since there were much of concerns on the procedure through which IMO's STCW Convention 95⁷ was brought into being, participating delegations view it as a role model despite of the law making procedures involved in IMO and ILO at varying degrees⁸. As many States regarded 'favourable treatment' would cause considerable harm as evidenced in some previous international instruments that would result in non-acceptance, much of the support were had towards the concepts 'no more favourable treatment' and 'substantial equivalence' clauses as a matter of supporting the idea of a level playing field especially considering the developing countries with much assistances in technical means. Nevertheless, the end result proved the upholding of the flexibility approach rather to gain consensus among participating States. The present work will concentrate on the application of this flexibility approach in achieving conventional objectives and issues that surround the implementation of State obligations.

SHORTCOMINGS AND WEAKNESSES OF PREVAILED TOOLS

Referring to the immediate sources on which the existed regime that stood until the adoption of the MLC, the Working Group steadily observed the very nature

³ The decision to set up this forum was taken at the 280th Session of the Governing Body of the International Labour Organization in March 2001 subsequent to the proposal made by the Joint Maritime Commission in its 29th Session in January 2001.

⁴ See C. Doumbia-Henry, D. Devlin, & M. L. McConnel, *The Maritime Labour Convention, 2006 Consolidates Seafarers' Labour Instrument*, 10 AMERICAN SOCIETY OF INTERNATIONAL LAW INSIGHTS (September 13, 2006).

⁵ See TWGMLS-FR-2002-01-0305-1-EN.Doc/v2, p2, paragraph 4.

⁶ See *id.*, p. 11, paragraph 55.

⁷ The Standard of Training, Certification & Watchkeeping Convention 1978 as amended by Protocol 1995.

⁸ ILO requires the communication of relevant national legislation at the time of ratification while IMO maintains a different method.

⁹ Concerning Maritime Standards in Merchant Ships (Geneva, 29 October 1976).

of application and their deficiencies in relation to the ILO Convention No. 147⁹, IMO's Safety of Life at Sea¹⁰ as well as national legislations on the related aspect. However, much of its concerns were directed on their enforcement rather than mere application of their existence in order to identify the shortfalls as well as the matters surrounding the issue at hand. Having identified the areas that lacked proper enforcement in wake of the industry developments despite the prevalence of diversified rules and regulations aforesaid, it was the common decision of the group to bring in the substance to a single international regime. Much concern were directed towards consolidating the prevailing instruments to a single regimes as observed aforesaid, and there seemed to have no indication of introducing new standards apart from the general developments in certain areas but to decide on the use of proper workable principles. Primarily, the drafters entrusted upon them the duty to practically impose responsibility to all States to ensure that decent conditions of work apply on all ships that are placed or come under their respective jurisdiction¹¹ rather than affording theoretical set of rights to seafarers that have already been incorporated in various other similar instruments of maritime nature.¹²

Apart from mere consolidation, the ILO's Tripartite Committee was highly concerned of the absence of a single coherent legal instrument that covers this particular subject in a more meaningful manner through which State obligations could thus be brought into place. Representing all corners of the maritime field of interests, the Committee primarily focused on amalgamating all the said interests to represent this single document. Therefore, it was highly emphasized that issues such as human rights at work, employment and incomes, social protection and security as well as social dialogue should be well addressed¹³ in its forth coming agendas. In view of these concerns, the drafters mainly focused on identifying overlapping or conflicting provisions of the existing instruments while adopting a two folded system of mandatory and non-binding application of the recommended standards as a matter of remedying the prevailing shortcomings and weaknesses.

IN REALIZATION OF A BILL OF RIGHTS

It was mainly in the agenda of the ILO drafters that Convention must introduce a bill of rights for seafarers in compromise of the safety and environmental standards already put in place by the IMO thus eliminating sub-standard shipping.¹⁴ Much emphasis were had on the initial reports such as the "Impact on seafarers' living conditions of changes in the shipping industry"¹⁵ and "Ships, slaves and

¹⁰ International Convention for the Safety of Life at Sea (SOLAS) 1974 adopted by the International Maritime Organization.

¹¹ See TWGMLS-FR-2002-01-0305-1-EN.Doc/v2, p 27, point 8.

¹² For further reading, see M. L. McCONNEL, *The ILO's Maritime Labour Convention, 2006: Filling a Gap in the Law of the Sea* (Mepielan e-Bulletin, Mepielan Centre, 7 April 2011) available at <http://www.mepielan-ebulletin.gr/default.aspx?pid=18&CategoryId=2&ArticleId=55&Article=The-ILO%E2%80%99s-Maritime-Labour-Convention,-2006:-Filling-a-Gap-in-the-Law-of-the-Sea>

¹³ See TWGMLS-FR-2002-01-0305-1-EN.Doc/v2, p27, subparagraph (b).

¹⁴ See *supra* n. 3, p. 3, paragraph 13.

¹⁵ Presented by the ILO to the JMC's 29th Session.

¹⁶ Report of the International Commission on Shipping (ICONS).

competition¹⁶ while the latter's statement that; thousands of seafarers work under modern slavery and on slave ships, raised much of the concerns for its justification against sub-standard shipping practices. Therefore, the need of a consolidated framework instrument containing key principles along with the annexes incorporating detailed requirements had to be met as a primary element. According to the views of several Government delegations, this would certainly establish a social level playing field for quality shipping while ILO's institutional ambitions stretched towards overcoming obstacles in national legislations and procedures. In turn this would realize the achieving of the strategic objectives of the ILO in maritime industry linked with the ISM Code¹⁷ for effective enforceability.

In its final draft, the ILO has been successful in setting up the required standards as Regulations and the Code spreading into five areas titled¹⁸ (1) Minimum requirements for seafarers to work on a ship¹⁹; (2) Conditions of employment²⁰; (3) Accommodation, recreational facilities, food and catering²¹; (4) Health protection, medical care, welfare and social security protection²²; and (5) Compliance and enforcement²³. Considering the subjects covered under the said respective Titles, this piece of work obviously operates as a means of charter for the shipping industry and especially to its work force. They have been well complemented with

¹⁷ International Safety Management Code of the IMO deals with providing an international standard for the safe management and operation of ships and for pollution prevention as found in its Preamble, in order to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular to the marine environment and to property as the main objectives of the Code in accordance with its Art. 1.2.1.

¹⁸ See Explanatory Note to the Regulations and Code of the Maritime Labour Convention, paragraph 5.

¹⁹ Title 1 - Minimum Requirements for a Seafarer to Work on a Ship: Regulations 1.1 Minimum Age, Standard A1.1, Guideline B1.1; 1.2 Medical Certificate, Standard A1.2, Guideline B1.2; 1.3 Training and Qualifications; 1.4 Recruitment and placement, Standard A1.4, Guideline B1.4

²⁰ Title 2 - Conditions of Employment: Regulations 2.1 Seafarers' employment agreements, Standard A2.1, Guideline B2.1; 2.2 Wages, Standard A2.2, Guideline B2.2; 2.3 Hours of work and hours of rest, Standard A2.3, Guideline B2.3; 2.4 Entitlement to leave, Standard A2.4, Guideline B2.4; 2.5 Repatriation, Standard A2.5, B2.5; 2.6 Seafarer compensation for the ship's loss or foundering, Standard A2.6, Guideline B2.6; 2.7 Manning level, Standard A2.7, Guideline B2.7; 2.8 Career and skill development and opportunities for seafarers' employment, Standard A2.8, Guideline B2.8

²¹ Title 3 - Accommodation, Recreational Facilities, Food and Catering: Regulations 3.1 Accommodation and recreational facilities, Standard A3.1, Guideline B3.1; 3.2 Food and catering, Standard A3.2, Guideline B3.2

²² Title 4 - Health Protection, Medical Care, Welfare and Social Security Protection: Regulations 4.1 Medical care on board ship and shore, Standard A4.1, Guideline B4.1; 4.2 Shipowners' liability, Standard A4.2, Guideline B4.2, 4.3 Health and safety protection and accident prevention, Standard A4.3, Guideline B4.3; 4.4 Access to shore-based welfare facilities, Standard A4.4, Guideline B4.4; 4.5 Social security, Standard A4.5, Guideline B4.5.

²³ Title 5 - Compliance and Enforcement: Regulations 5.1 Flag State responsibilities, 5.1.1 General Principles, Standard A5.1.1, Guideline B5.1.1; 5.1.2 Authorization of recognized organizations, Standard A5.1.2, Guideline B5.1.2; 5.1.3 Maritime labour certificate and declaration of maritime labour compliance, Standard A5.1.3, Guideline B5.1.3; 5.1.4 Inspection and enforcement, Standard A5.1.4, Guideline B5.1.4; 5.1.5. On-board compliant procedures, Standard A5.1.5, Guideline B 5.1.5; 5.1.6 Marine casualties; 5.2 Port state responsibilities, 5.2.1 Inspections in port, Standard A5.2.1, Guideline B5.2.1; 5.2.2 On-shore seafarer complaint-handling procedures, Standard A5.2.2, Guideline B5.2.2; 5.3 Labour supplying responsibilities, Standard A5.3, Guideline B5.3.

corresponding Regulations that require the maintenance of the relevant standards²⁴ while providing the necessary guidelines for the use of its systematic application. These regulations have not only imposed duties on States to ensure that proper surveillance be carried out in its implementation of the rights of the related labour, but thus provide complete attainment of dutiful opportunities in retrospect for the seafarers of the 21st century. It is noteworthy that the seafarers' competence has well documented by the MLC 2006 without leaving any loopholes in the process of issuing required certificates by competent authorities of States. Matters falling within the purview of the STCW Convention in relation to training have also been given due recognition through a standardized labour convention of this nature in order to fully supplement the needs of the trade as a gap filling source within ILO competence remarkably. Therefore, the instrument could be highly rated as a Bill of Rights as intended by its drafters rather than a mere set of international rules.²⁵

In contrast, the MLC provides seafarers with job safety subject to the necessary statutory requirements through State adherence unlike the other regimes that deal with specific issues as to certification, competency, safety and etc that do not singularly address the core matters as a collective document. It is therefore, the duty of States to ensure the due recognition of their respective obligation in undertaking, to give complete effect of its provisions in order to secure the right of all seafarers²⁶ who fall under each of their jurisdictions to decent employment.²⁷ In doing so, the States are obliged to respect the rights and principles set out in the Regulations and to implement each of them in accordance with the mandatory Standards provided in Part A of the Code²⁸ while giving due consideration to implementing their responsibilities in the manner set out in the non-mandatory Standards provided in Part B²⁹. In such context, proper justification could well be placed against the revising of 37 maritime related ILO instruments³⁰ while embodying all up-to-date standards of existing international maritime labour Conventions and Recommendations found in other instruments³¹ of it dealing with general topics on labour. Considering the entirety of it, the MLC 2006 operates undoubtedly as an

²⁴ For further reading on international labour standards, see J. Heintz, *Global Labour Standards: their impact and implementation* (Working Paper Series, Political Economy Research Institute, University of Massachusetts Amherst, No. 46, November 2002)

²⁵ For further reading, see also THE INT'L TRANSPORT WORKERS' FEDERATION, *A SEAFARERS' BILL OF RIGHTS: AN ITF GUIDE FOR SEAFARERS TO THE ILO MARITIME LABOUR CONVENTION*, 2006, http://www.itfseafarers.org/files/publications/23556/SBoR_English_inside_small.pdf

²⁶ Art. II.1(f) states that "Seafarer means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies"

²⁷ See Art. I.1

²⁸ See Art. VI.2

²⁹ *id.*

³⁰ See Art. X - Effect of Entry Into Force.

³¹ Found in the Preamble of MLC 2006 and in particular, the Forced Labour Conv., 1930 (No. 29); the Freedom of Association and Protection of the Right to Organize Conv., 1948 (No. 87); the Right to Organize and Collective Bargaining Conv., 1949 (No. 98); the Equal Remuneration Conv., 1951 (No. 100); the Abolition of Forced Labour Conv., 1957 (No. 105); the Discrimination (Employment and Occupation) Conv., 1958 (No. 111); the Minimum Age Conv., 1973 (No. 138); and the Worst Forms of Child Labour Conv., 1999 (No. 182)

umbrella convention with respect to seafarers' labour rights³² and in particular as an instrument covering all areas of work oriented privileges rather than a 'code of rights and corresponding duties'.

Evidently, the seafarers have been granted the fundamental labour rights including the right to safe and secure workplace, right to fair terms of employment, right to decent working and living conditions on board, right to health protection, medical care, welfare measures and other forms of social protection³³ while strictly imposing the onus on States to guarantee their fulfillment.

STATE OBLIGATIONS: BURDENSOME BUT EXECUTABLE

The conventional provisions have imposed extensive duties on States with considerable magnitude on unilateral, co-operative and consultative basis for the better realization of its goals. In particular, States are bound to apply the Convention in strict terms covering all categories of seafarers³⁴ employed in commercial shipping³⁵ engaged in trans-boundary or international navigation³⁶. But however, the application of the said provisions are excluded from ships that are engaged in fishing or in similar pursuits thereby omitting fishing personnel and their employees and further the ships of traditional build such as dhows and junks. These exclusions continue, as in other similar cases, to warships or naval auxiliaries that fall within the purview of one's national security concerns and in particular, to defense naval officers of the States.³⁷ In case a State is confronted with doubts as to application of the provisions with regard to complications surrounding the ascertainment of a seafarer, ship or ships of a particular category within conventional meaning, the matter shall be decided by its competent authority³⁸ having obtained the views of the relevant shipowners' and seafarers' organizations based on consultative onus.³⁹ Furthermore, a State is at liberty to exclude the application of the provisions of the Code in case its national laws or regulations 'at present time' and its collective bargaining agreements or other measures deal with the issue at hand in a manner different to that of the conventional provisions and to such extent of conflict. But however, this allocation has only been made with respect to ships of less than 200 GT not engaged in 'international voyages'.⁴⁰ Importantly, there are two main issues that arise with respect to this said provision. One is the

³² See M. L. McCONNEL, D. DEVLIN & C. DOUMBIA-HENRY, *THE MARITIME LABOUR CONVENTION 2006: A LEGAL PRIMER TO AN EMERGING INTERNATIONAL REGIME* (Martinus Nijhoff, 2011, p 41)

³³ See Art. IV

³⁴ See *supra* n. 27

³⁵ According to Art. II.4, it applies to all ships whether publicly or privately owned and originally engaged in commercial activities.

³⁶ See Art. II.1(i) which defines that Ship means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply

³⁷ See Art. II.4

³⁸ According to Art II.1(a), it means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provisions concerned

³⁹ See Art. II.3 and Art. II.5

⁴⁰ See Art. II.6.

use and means of the term 'at present time' which was not specifically dealt with at committee level though the President of the Conference recalled in its final session the importance of minimizing problems associated with the application of the Code in relation to smaller ships that would really come into conflicts with prevailing national legislations of respective States.⁴¹ It is clear that such affordability was granted in view of the flexibility approach advocated throughout the law making process for the ascertainment of a level playing field. Therefore, it is on these two grounds that the text has been drafted accordingly where the final outcome appears to be a settlement in allowing to afford protection via national laws, regulations or other measures.⁴² Nevertheless, it has been stressed that such national provisions would have to comply with the Articles and Regulations of the Convention.⁴³ But however, the *travaux préparatoires* do not unveil any related discussion on the specific use of 'at present time' though they suggest it to be of the 'material time' the competent authority is confronted with the issue for its determination, inferring future times instead of the time of drafting. The other is the use and means of 'international voyages' where the Convention specifically applies to international waters within its definition of 'ship' in Article II.1 (i) that contradicts with the use of the former and does not provide any sense for that specific use except the fact that these concerns were enumerated during working group stage where it was felt that domestic trade should be carefully considered since cabotage has certainly influenced the legislations of certain countries.⁴⁴ But however, the final text suggest that the later addition of Article II.6⁴⁵ was not a means of a gap filler in order to accommodate prevailing practices of States, and therefore, create no significant influence on the matter at hand.

Unilaterally, the States are obliged to implement decent working conditions through the imposition of much stricter 'state controls' over ships while particularly guaranteeing the fundamental rights such as freedom of association and right to collective bargaining, elimination of forced or compulsory labour, abolition of child labour and elimination of discrimination⁴⁶ and further endorsing on itself to implement and enforce laws and regulations or other measures⁴⁷ in fulfilling those ends. In doing so, the States are expected to effectively exercise its jurisdiction and control over ships that fly its flag⁴⁸ even in circumstances of convenience including their due diligence required in regular inspections, reporting, monitoring and legal proceedings⁴⁹ in relation to the respective rules and regulations. It is an utmost requirement to make sure that ships under their respective jurisdiction carry a 'maritime labour certificate' and a 'declaration of maritime labour compliance' as required by the Convention.⁵⁰ Importantly, the latter document was renamed

⁴¹ See ILC94-PR7(Part I)-2006-02-0376-1-En.doc, p. 7/19, paragraph 114

⁴² See ILO Handbook, *Guidance on implementing the Maritime Labour Convention, 2006 Model National Provisions* (Geneva, 2012)

⁴³ See *supra* n. 42

⁴⁴ See STWGMLS-FR-2002-08-0085-1-EN.Doc/v2, p. 26, paragraph 162

⁴⁵ See ILC94-PR7(Part I)-2006-02-0376-1-En.doc, p. 7/19, paragraph 115

⁴⁶ See Art. III

⁴⁷ See Art. V.1

⁴⁸ See Art. V.2

⁴⁹ See *id.*

⁵⁰ See Art. V.3.

from its original 'declaration of compliance' in order to avoid confusion with ISM Code requirement pursuant to shipowners' proposal⁵¹ thereby introducing two new formats for the latter as well as the former documents mentioned above in the Appendix to the Code without leaving any possibility for unilateral creation by a State. However, the inspection aspect was given much priority in determining the best suitable wording since its' wings spread over the non-States' Parties beyond the application to ones who ratify. While Member States have exclusive powers over its ships in ensuring compliance, they are also duly authorized as they wish to extend that power over the ships that fly a different flag during such time the particular ship is in a port of such inspecting State⁵² in accordance with international law thereby implementing Port State and Flag State Controls. However, the Members States are prohibited from less favouring ships that fly the flag of Member States over a non-Member,⁵³ thereby encouraging the obtaining of more ratification.

Onus on cooperative and consultative arrangements

Apart from individual action, Members are bound to cooperate with each other for the purpose of ensuring the effective implementation and enforcement of the Convention by virtue of its Article I.1 in conjunction with the *Preamble* and particularly furthering their respective obligations under the international public law on the use of the sea⁵⁴ that requires state cooperation in the marine sector, especially concerning the maintenance of its integrity needs. In turn, this would enable Member States to fully comply with the conventional requirements in their individual capacities while engaging in mutual exchange of information and each others' practical difficulties in developing a proper check and balance system. Furthermore, the Convention has fully endorsed the interplay between States and participatory stakeholders that evidently took an active role throughout the drafting process. But however, the said roles of those respective organizations have not been limited to mere participatory extent as States are further bound to resort for future consultation especially regarding matters that need consultation in respect of any derogation, exemption or other flexible application of the Convention.⁵⁵ In circumstances where such organizations do not exist within a Member State, the latter is bound to refer such matter to the Committee⁵⁶ prior to the taking of such decision. The Convention has well recognized this role of the stakeholders by entrusting upon them the voting power⁵⁷ in the said Committee that could cause some impact on the issues at hand. It proves the limit to which the influence that these stakeholder organizations could pose on individual States and their respective constituent competent authorities as a matter of importance of their presence

⁵¹ See High Level Tripartite Working Group on Maritime Labour Standards (Fourth Meeting) Final Report (TWGMLS-FR-2004-04-0034-1-EN.Doc/v2, 19-23 January 2004, p. 18, paragraph 84).

⁵² See Art. V.4.

⁵³ See Art. V.7

⁵⁴ More specifically, United Nations Conv., on the Law of the Sea, 1982.

⁵⁵ See Art. VII.

⁵⁶ According to Art. XII.2, the Committee means the Special Tripartite Committee that shall consist of two Government representatives of each ratified State, and the representatives of Shipowners and Seafarers appointed by the Governing Body of the ILO, which is the Executive Body, after consultation with the Joint Maritime Commission.

⁵⁷ See Art. XIII.4.

in maritime trade. However, such an approach is apparent in the ILO system where the contributions of social partners are reciprocally recognized to maintain flexibility.⁵⁸

Implementation

Whether it may involve one's national provisions of the law and regulations or other measures that become compatible to execute its due obligations in applying the relevant Regulations of the Code, a State is deemed to implement the conventional objectives in the manner specified by itself. It further provides that such corresponding means of enactment become substantially equivalent in one's duty to implement the said relevant Regulations for the purpose of achieving the general objects of the mandatory Part of the Code thus giving effect to those provisions⁵⁹ in the process of proper implementation. In a more general context, a proper system of inspection and evaluation would be extremely inevitable in line with the fulfillment of declaration of maritime labour compliance thus ensuring Member States' commitment towards upholding the principle of decent work emphasized in the *Preamble* to the Convention. Therefore, the collective efforts brought about by the Convention itself through its drafting process need to accommodate effective implementation and enforcement of the respective obligations of Member States.

ILO'S COMPETENCE AND FULFILLMENT OF STATE OBLIGATIONS: IS IT REALIZABLE?

With few more months to go for the MLC to come into force⁶⁰, the most important question is whether it could fulfill the purpose for which the Convention was brought into being. It is nevertheless important to note that the Convention becomes binding only upon the Members of the ILO who have registered their respective ratifications.⁶¹ In general, the ILO maintains the practice that its respective standards are formulated in a manner flexible enough⁶² to be translated into national law⁶³ and practice with due consideration⁶⁴ based on diversified domestic factors of its Member States. Standing on this flexibility approach that was evidently taken use

⁵⁸ See also, H. Mosley, T. Keller & S. Speckesser, *The role of social partners in the design and implementation of active measures* (Employment and Training Papers, Social Science Research Centre, Berlin, 1998, ISBN 92-2-111287-X).

⁵⁹ See Art. VI.4.

⁶⁰ As per Art. VIII.3, it shall come into force 12 months after the date on which there have been registered ratifications by at least 30 Members with a 33% over the world gross tonnage of ships. Accordingly, this milestone has been reached 20th August 2012 and therefore, it shall come into force on 20th August 2013. For list of country ratifications see http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO::P11300_INSTRUMENT_ID:312331

⁶¹ See Art. VIII.2

⁶² See *supra* n. 59

⁶³ See *supra* n. 43

⁶⁴ ILO, *How International Standards are Created*, Cartier Working Party - Working Party on Policy regarding the Revision of Standards (1995-2002): Information note on the progress of work and decisions taken concerning the revision of standards (updated in June 2002) available at <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-creation/lang--en/index.htm>

of in the present Convention making, the Organization allow States to lay down temporary standards that are lower than those normally prescribed⁶⁵. This would enable ratifying States to reserve certain duties by declaration to derogate that would in turn result in maintaining sub-standards. This is exactly the measure that transpires from the application of Article VII and further relaxation introduced by Article VI that operates two folded. The former Article would thus restrict the possibility of a Member State to arrive at a unilateral decision though such obligation is vague enough to proceed for like decisions that lead to maintain sub-standards while the latter Article enable flexibility to introduce national laws with a larger margin of appreciation. It is therefore, questionable whether the Convention has been able to fully respect the so-called 'Bill of Rights' that is certainly in place for the maritime industry through IMO interference. However, the ILO's much recently adopted 'integrated approach' methodology⁶⁶ has been well evidently used in the present text referring to it as a whole that correspond to the improving of coherence, relevance and impact of standards-related activities and developing a plan of action that embodies a coherent package of tools to address the present subject.⁶⁷

Considering the effect of this Convention that revise those existing standards introduced by the list of conventions mentioned in Article X, it is in a way much feasible for Members States to apply the present one as a whole. But however, it would not certainly affect the maintaining of sub-standards presently practiced by some Members though the attainment of fully fledged rights of the seafarers tend to fall into conflict against the conventional goals that reflect much adversarial scenario. Unlike in the case of the IMO which operates as a 'watch-dog' in commercial maritime that is engaged in regulatory matters⁶⁸ concerning shipping as its main source, the ILO's approach towards realizing occupational rights are much centralized towards person-oriented than that of the industry. This in fact imposes a higher degree of scrutiny upon the latter's competence requiring the realization of its organizational goals to the fullest. Therefore, one must bear in mind the respective obligations of these different organs and the nature of their importance in contrast in ascertaining whether the ILO has been able to achieve the end results of the MLC as a matter of fact. To date, much of the emphasis has been centered towards gaining wide ratification of States⁶⁹ thus diverting the attention on the implementation aspect as well as post-ratification burden of States. It is quite questionable whether the Guidelines⁷⁰ introduced in consequent

⁶⁵ *id*

⁶⁶ See also International Labour Conference, *Strengthening the ILO's Capacity: Continuation of the Discussion Possible Consideration of an Authoritative Document* (ILO, Geneva, 97th Session 2008, p. 16)

⁶⁷ See *supra* n. 65

⁶⁸ Article 1(a) of the IMO Convention provides that the IMO's competence lies on providing machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade and to encouraging and facilitating the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships.

⁶⁹ For further reading, see MARITIME LABOUR CONVENTION 2006: ACTION PLAN 2006 – 2012 (ILO, 2010) <http://maritimelabour.com/news/wp-content/uploads/2012/02/Action-Plan-for-MLC-2002.pdf>.

⁷⁰ Guidelines for Flag State Inspections under the Maritime Labour Convention 2006 and Guidelines for Port State Control Officers carrying out inspections under the Maritime Labour Convention 2006.

to the adoption of the MLC would provide sufficient means of handling the issue of proper implementation but seem to restrict their application to narrow scopes of decent work agenda such as on-board complaints mechanism⁷¹ and detention of ships lacking compliance. One might possibly see that these guidelines would serve the purpose for the seafarers in protecting their rights, but it can be measured only as a means of technical mechanism on conventional adherence. At least to a considerable degree, it can be concluded that the conventional goals have thus been achieved in respect of personal needs of seafarers with respect to health, education, accommodation, food and sanitary standards and employment security and benefits, training and social security rights⁷² with some overlapping situations with other corresponding IMO instruments discussed above. It is therefore, quite necessary to implement the MLC 2006 by the respective Members States in utmost good faith towards the realization of its goals in order to assess the success of it as a global leader in labour standards for seafarers.

⁷¹ See also D. DIMITROVA & R. ILANPAIN, *SEAFARERS' RIGHTS IN THE GLOBALIZED MARITIME INDUSTRY* (Kluwer, 2010, p. 85).

⁷² See also J. A. MENACHO, *HOW THE "MARITIME LABOUR CONVENTION, 2006" WILL IMPROVE SEAFARERS' CONDITIONS, RELATED WITH EMPLOYMENT RIGHTS, AND SAFE AND SECURE WORKPLACE?* (MSEA Class of 2010 - WMU) http://www.wmu.sof.or.jp/fw_jesus_01.pdf.