

General observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) during the COVID-19 pandemic

Adopted by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) at its 91st session (Nov-Dec. 2020)

General observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) during the COVID-19 pandemic

The Committee notes with **deep concern** the challenges and the impact that restrictions and other measures adopted by governments around the world to contain the spread of the COVID-19 pandemic has had on the protection of seafarers' rights as laid out in the Convention. ¹

The Committee takes note of the observations of the International Transport Workers' Federation (ITF) and of the International Chamber of Shipping (ICS), received by the Office on 1 October 2020 and 26 October 2020, respectively, indicating that all ratifying States have failed to comply with major provisions of the Convention during the COVID-19 pandemic, notably regarding cooperation among Members, access to medical care and repatriation of seafarers. They note that, in addition to the humanitarian concerns linked to the violations of seafarers' rights, there is now a risk that fatigue and other health issues could lead to serious maritime accidents. The Committee further notes the replies to these observations received from the Governments of Barbados, Cyprus, France, Honduras, Hungary, India, Ireland, Republic of Korea, Lithuania, Myanmar, Palau, Poland, Senegal, Singapore and United Kingdom of Great Britain and Northern Ireland, which acknowledge the existence of numerous challenges and highlight the different measures taken to ensure, as far as possible, the protection of seafarers' rights. Several other Governments have provided information to the Office concerning the measures adopted in relation to the implementation of the Convention during the pandemic (Australia, Belgium, Canada, Croatia, Denmark, Germany, Greece, Ireland, Japan, Malaysia, Panama, Slovenia and Spain). The Office has also received information about hundreds of individual seafarers' complaints which have been sent directly by the seafarers concerned or transmitted by the Seafarer Crisis Action Team set up by the Secretary-General of the International Maritime Organization (IMO). ²

In particular, the Committee notes that according to the information provided by the ITF and the ICS, hundreds of thousands of seafarers (approximately 400,000 for the ITF) are currently stranded on board and a similar number is waiting at home unable to replace them and earn their living. This situation has unfolded into a humanitarian crisis. This is so, in spite of an unprecedented level of social dialogue among the key actors of the maritime sector at the international level and the high level of cooperation among them, numerous governments and United Nations agencies, under the leadership of the ILO and IMO.

The Committee notes with **deep concern** that, while ports around the world have continued to operate uninterrupted during the pandemic, seafarers – who provide a key frontline service to society, with more than 90 per cent of world trade moved by sea, including food, medicines and vital medical supplies – continue to face extreme difficulties to disembark and transit through countries for the purpose of repatriation. Both the ITF and the ICS indicate that they have received thousands of individual claims from seafarers around the world describing desperate situations of violations of the provisions of the MLC, 2006. Seafarers are requested to continue working

¹ The Committee notes the [Information note on maritime labour issues and coronavirus \(COVID-19\)](#) developed by the Office to provide a rapid response to questions regarding the implementation of the Convention as well the [New Statement of the Officers of the Special Tripartite Committee of the MLC, 2006 on COVID-19](#).

² The Seafarer Crisis Action Team was set up in April 2020 in order to, inter alia, monitor developments, coordinate efforts, communicate with all relevant stakeholders and provide targeted support in seafarers' individual cases and particularly urgent situations regarding crew changes, repatriation, access to medical care and/or abandonment.

beyond the terms agreed in their seafarers' employment agreements (SEAs), they are denied access to medical care ashore (*Regulation 4.1*) and are deprived from their rights to repatriation (*Regulation 2.5*), annual leave and shore leave (*Regulation 2.4*) in a number of cases. It is recalled that most ships do not have medically trained staff on board and as consequence when access to medical care ashore is denied, seafarers have no medical care whatsoever.

The Committee notes the ITF indication that the notion of *force majeure* is being used by ratifying Members as a shield for non-compliance with the Convention. The MLC, 2006, is a comprehensive labour instrument for the maritime industry applicable to all ratifying countries, and not a compilation of labour regulations to be applied selectively, if and to the extent that circumstances so permit. At the beginning of the pandemic, ratifying States, in their different capacities as flag States, port States or labour-supplying States might have been confronted with genuine situations of *force majeure*, which rendered materially impossible the compliance with some of their obligations under the MLC, 2006. The Committee is bound to note, however, that more than ten months have elapsed since then, which constitutes realistically sufficient time frame allowing for new modalities to be explored and applied, in conformity with international labour standards. *Force majeure* may be invoked as a condition precluding wrongfulness for non-observance of a treaty obligation only in the case of unforeseen and unforeseeable event(s) creating an absolute and material impossibility of compliance with that obligation. In contrast, circumstances rendering observance of an international obligation more difficult or burdensome do not constitute a case of *force majeure*. ***The Committee stresses that the notion of force majeure may no longer be invoked from the moment that options are available to comply with the provisions of the MLC, 2006, although more difficult or cumbersome, and urges ratifying States which have not yet done so, to adopt all necessary measures without delay to restore the protection of seafarers' rights and comply to the fullest extent with their obligations under the MLC, 2006.***

The Committee welcomes the resolutions recently adopted by the United Nations General Assembly,³ the ILO Governing Body⁴ and the IMO Maritime Safety Committee,⁵ urging Member States to designate seafarers as key workers for the purpose of facilitation of safe unhindered movement for embarking or disembarking a vessel, the facilitation of shore leave, and, when necessary, to shore-based medical treatment. The Committee observes that as result of the primarily international character of the maritime sector, it is not possible to comply with a number of obligations under the MLC, 2006, without allowing the movement of seafarers across borders in appropriate conditions. ***The Committee therefore strongly encourages ratifying States in their different capacities as flag States, port States or labour-supplying States who have not yet done so, to recognize seafarers as key workers without delay and to draw in practice the***

³ See United Nations General Assembly [Resolution A/RES/75/17](#) on International cooperation to address challenges faced by seafarers as a result of the COVID-19 pandemic to support global supply chains.

⁴ See ILO Governing Body [Resolution](#) concerning maritime labour issues and the COVID-19 pandemic.

⁵ See IMO Maritime Safety Committee [Resolution MSC.473\(ES.2\)](#) on Recommended action to facilitate ship crew change, access to medical care and seafarer travel during the COVID-19 pandemic.

consequences of such qualification, in order to restore the respect of their rights as provided for in the MLC, 2006.

All governments are confronted with the need to strike an adequate balance between the protection of public health on the one hand, and the respect of the rights and dignity of seafarers on the other. The Committee notes in this regard the *Recommended framework of protocols for ensuring safe ship crew changes and travel during the coronavirus (COVID-19) pandemic*, which was proposed by a broad cross section of global industry associations representing the maritime transportation sector and which enjoy consultative status at the IMO (MSC.1/Circ. 1636). The United Nations General Assembly as well as the ILO and the IMO in the above-mentioned resolutions refer to the implementation of the *Recommended framework of protocols* as an appropriate guidance to ensure safe crew change and travel of seafarers. ***The Committee hopes that governments will refer to such guidance when adopting the measures urgently needed to restore compliance with their obligations under the MLC, 2006.***

The ITF and the ICS, in their observations, allege that ratifying States have failed to comply with their obligation under *Article I* of the MLC, 2006, according to which Members shall cooperate with each other for the purpose of ensuring the effective implementation and enforcement of the Convention. The Committee acknowledges that numerous governments have undertaken important actions at bilateral, regional and international levels to identify solutions and generate initiatives to overcome the challenges faced by seafarers and shipowners as a result of the pandemic. The Committee observes, however, that based on the information provided by the ITF and ICS and the evidence available at the Office, the provisions of the Convention continue to be disregarded worldwide. Indeed, hundreds of thousands of seafarers around the world are still on board well beyond the original expiry date of their SEAs and in numerous cases well beyond the default 11 months maximum period of service on board derived from the provisions of the Convention, with reported phenomena of physical and mental exhaustion, anxiety, sickness and even suicides; thousands of seafarers have been disembarked but are not allowed to go back to their countries of origin and find themselves stranded in a foreign country; moreover, hundreds of seafarers have been denied medical care ashore which has resulted in death of seafarers in several cases. In numerous cases, port restrictions are repeatedly introduced with short-term announcements hindering the reasonable planning of the ships' route while the non-coordinated implementation and enforcement of the MLC, 2006, increases the risk of travel prohibition for both ship and crew and, in some cases, leads to the detention of ships due to State failures. The Committee considers that these elements constitute sufficient basis to conclude that Members, as a whole, have failed to comply with *Article I, paragraph 2* of the MLC, 2006. The Convention does not contain any provisions allowing for the temporary suspension of the implementation of its provisions, in case of crisis, health related or otherwise. To the contrary, the Committee is of the view that it is precisely at times of crisis that the protective coverage of the MLC, 2006, assumes its full significance and needs to be most scrupulously applied. This is even more so as the Convention contains only minimum standards for the protection of seafarers' rights. ***The Committee accordingly urges Governments to adopt the necessary measures, in consultation with relevant seafarers' and shipowners' organizations, to further enhance cooperation with each other to ensure the effective implementation and enforcement of the Convention, a fortiori during the COVID-19 pandemic, where it is mostly needed.***

The Committee notes the ITF's indication that the failure to arrange the repatriation of seafarers at the end of their contracts effectively induces the forced extension of contracts (or

continuation of labour without contract), in circumstances where consent clearly cannot be freely given. The ITF adds that this raises serious questions of the precipitation of the international community to a form of forced labour on ships worldwide. The Committee refers in this regard to *Article III* of the MLC, 2006, according to which each Member shall satisfy itself that the provisions of its laws and regulations respect, in the context of the Convention, the fundamental rights to the elimination of forced or compulsory labour. The Committee observes that, implicit in the very inaction of certain Member States of ensuring crew changes or allowing seafarers to go back home, gives seafarers no option but to stay on board and creates conditions for them to languish for months on end in situations that could amount to forced labour. ***The Committee accordingly requests all ratifying States, in their various capacities as flag States, port States or labour-supplying States, to adopt the necessary measures or reinforce existing ones without delay to ensure that, in no case, seafarers are forced to continue working on extended contractual arrangements without their formal, free and informed consent.***

The MLC, 2006, contains a robust system to ensure the enforcement of its provisions. Under *Regulation 5.1.1, paragraph 1*, each Member is responsible for ensuring implementation of its obligations under the Convention on ships that fly its flag. ***Based on the information available, the Committee urges all ratifying countries with responsibilities as flag States to adopt the necessary measures and/or reinforce the existing ones without delay, including through more frequent inspections if necessary, to ensure that the ships that fly their flags fully comply with the provisions of the Convention. In particular, the Committee requests flag States, which have not yet done so, to ensure that:***

- (a) any extension of SEA is done with the seafarers' freely expressed consent (Regulation 2.1, paragraph 2);***
- (b) no fees or other charges for seafarer recruitment or placement, including the cost of any quarantine obligations before joining the ship, are borne directly or indirectly, in whole or in part, by the seafarer, other than the cost authorized under Standard A1.4, paragraph 5;***
- (c) the prohibition to forgo minimum annual leave with pay is strictly enforced, with the limited exceptions authorized by the competent authority (Regulation 2.4 and Standard A2.4, paragraph 3);***
- (d) seafarers are granted shore leave for their health and well-being and consistent with the operational requirement of their positions, subject to the strict respect of any public health measures applicable to the local population (Regulation 2.4, paragraph 2);***
- (e) seafarers are repatriated at no cost to themselves in the circumstances specified in the Convention, with strict respect of the default 11 months maximum period of service on board derived from the provisions of the Convention (Regulation 2.5 and Regulation 2.4);***
- (f) ships that fly its flag have a sufficient number of seafarers employed on board to ensure that ships are operated safely, efficiently and with due regard to security under all conditions, taking into account concerns about seafarer fatigue and the particular nature and conditions of the voyage (Regulation 2.7);***
- (g) seafarers on ships that fly its flag are covered by adequate measures for the protection of their health and have access to prompt and adequate medical care whilst working on board, including access to vaccination (Regulation 4.1);***

- (h) seafarers on ships that fly its flag are provided with occupational health protection and live, work and train on board ship in a safe and hygienic environment (Regulation 4.3);**
- (i) seafarers have access to shore-based welfare facilities, where they exist, subject to the strict respect of any public health measures applicable to the local population (Regulation 4.4); and**
- (j) measures are taken to support seafarers' wellbeing on board, in particular during the extended periods of service on board, including arrangements for contacting family and loved ones.**

The Committee stresses that the failure to apply any of the core principles and requirements listed above under the pretext of a protracted health crisis risks, may render the Convention meaningless especially at a time and in circumstances where its protective coverage would be most needed. Such failure to apply any of the core principles and requirements listed above has a direct negative impact on navigational safety, thus increasing exponentially the risk of maritime accidents, with unpredictable consequences on human lives and the environment, and immeasurable disturbances on the international supply and distribution of necessity goods.

Under *Regulation 5.2.1, paragraph 1*, every foreign ship calling in the port of a Member may be the subject of inspections for the purpose of reviewing compliance with the requirements of the Convention (including seafarers' rights) relating to the working and living conditions of seafarers on the ship. The Committee has highlighted the complementary crucial role that port State control plays in the enforcement of the Convention. The Committee draws in particular governments' attention to the obligation to take steps to ensure that a ship shall not proceed to sea until any non-conformity has been rectified, or until the authorized officer has accepted a plan of action to rectify such non-conformities, in the situations foreseen under *Standard A5.2.1*. In this regard, the Committee considers that the extreme fatigue of seafarers who have been on board beyond the default 11 months maximum period of service on board derived from the Convention not only constitutes a situation clearly hazardous for the safety and health of the seafarers concerned, but also profoundly endangers the safety of navigation in general. The Committee refers in this regard to *Standard A2.7, paragraph 2*, which aims to ensure that seafarers work on board ships with sufficient personnel for the safe, efficient and secure operation of the ship and which highlights the need to avoid or minimize excessive hours of work to ensure sufficient rest and to limit fatigue. **While noting the challenges faced by port State control authorities to conduct inspections during the pandemic, the Committee requests ratifying countries with responsibilities as port States which have not yet done so, to adopt the necessary measures without delay to fully comply with their obligations under the Convention. In particular, the Committee calls upon governments with port State responsibilities to:**

- (a) allow seafarers to enjoy their right to shore leave in accordance with Regulation 2.4, paragraph 2, subject to the strict respect of any public health measures applicable to the local population;**
- (b) facilitate the repatriation of seafarers serving on ships which call at their ports or pass through their territorial or internal waters (Standard A2.5.1, paragraph 7);**
- (c) allow and facilitate the replacement of seafarers who have disembarked and consequently ensure the safe manning of ships, by providing an expeditious and non-discriminatory treatment of new crew members who enter their territory exclusively to join their ships (Standard A2.5.1, paragraph 7);**

- (d) ensure that seafarers on board ships in their territory who are in need of immediate medical care are given access to medical facilities on shore (Regulation 4.1); and**
- (e) refrain from the adoption and/or repetitive modification of restrictive national measures and/or port regulations which may hinder the reasonable ex ante planning of ships' voyage and avoid inconsistent implementation and enforcement of the Convention vis-à-vis other contracting States.**

The Committee notes that labour-supplying States must play a crucial role in cooperating with flag and port States to ensure the respect of seafarers' rights. **The Committee calls upon governments with labour-supplying responsibilities which have not yet done so, to adopt the necessary and immediate measures to ensure that the required facilities are put in place in relation to transport, testing and quarantine in order to receive their seafarers currently abroad and allow others to join their ships.**

The Committee notes that the COVID-19 pandemic has severely tested the legal framework set out in the MLC, 2006, for the protection of decent working and living conditions of seafarers. The pandemic has also laid bare the essential role of seafarers and the criticality of the shipping industry for the world economy. Regrettably, public and private responses on a global scale have not always been respectful of, or attentive to, the needs of the maritime labour force to the point that there is a pressing need for restoring full respect of basic seafarers' rights and drawing the right lessons for the future. The possibility to attract young talent into the seafarer profession might also be further compromised if the international community fails to deliver on this. The Committee welcomes the inclusion of the issue of the impact of COVID-19 on the maritime sector on the agenda of the Fourth meeting of the Special Tripartite Committee of the MLC, 2006, to be held in April 2021.

The Committee will continue to examine the information provided by Governments and/or social partners about the issues raised in this general observation, with a view to ascertain compliance with the application of the Convention by ratifying Member States during this period of crisis.