

**ILO Tripartite Seminar for South American Countries
On the Maritime Labour Convention, 2006
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It is now my privilege to make some remarks, from an ILO perspective, on the Maritime Labour Convention, 2006 and the way forward to ensuring widespread ratification and effective implementation.

When the Convention was adopted in an almost unprecedented tripartite vote of 314 in favour and none against, the Director-General, Dr. Juan Somavia described this Convention as “making labour history”. The vote reflected an enthusiastic commitment by ILO Members with a maritime interest to seeking solutions, on a tripartite basis, to common problems. It was also an implicit endorsement of international law, in the form of international labour Conventions, as a way to provide solutions. This commitment to making progress to achieve decent work in the context of an internationalized industry was inspiring for all who seek to find a way forward to secure justice, equality, fairness and human dignity for everyone.

An opportunity provided by the Seminar

At this Seminar we are now concerned with taking specific steps at the national level to move forward to achieve the dual objective of the Convention: **decent work for seafarers and fair competition for shipowners, worldwide.**

I know that the countries represented here are supportive of the new Convention and have strong interest in being part of, and indeed, even leading in its success. I am of course aware that many countries in this region have also been leaders in connection with international actions to protect endangered fish stocks and to improve marine environmental protection.

Decent work for seafarers and fair competition for shipowners, worldwide” ... worldwide! How will this objective be achieved? The answer to this question lies in the innovations and new approaches that are contained in the Convention. These innovations were in fact conceived by the shipowner and seafarer representatives in the Joint Maritime Commission in 2001. They were endorsed by Government

representatives meeting at the end of that year in the High-Level Tripartite Working Group. And throughout the five years of preparation of the Convention up to its adoption last February, these basic innovations have remained unchanged. Because of the innovations, ILO Members can make use of the carefully designed provisions aimed at wide-scale ratification and effective implementation. The tools are there now, in the Convention, to be used by each ILO Member considering ratification. But how can these tools best be used in practice so that countries can overcome any potential difficulties that may be posed by certain provisions in this very wide-ranging Convention? and so that countries are actually in a position to ratify and in a position to implement the Convention, including its enforcement? These are questions for each Member to decide in accordance with its national situation.

This Seminar, however, provides each participant with a valuable opportunity to draw attention to particular problems concerning ratification in their own country, with a view to obtaining clarification of provisions causing difficulties to them, or assistance in resolving the problems. Clarifications can be provided by participants representing the Governments, shipowners and seafarers who were closely involved in the preparation and adoption of the Convention and by the Office. Ideas for solving problems at the national level can be provided by other participants. The needs of countries can be noted by the ILO with a view to assistance under its technical cooperation programme. In addition, this Seminar offers an opportunity to discuss the possibilities for regional or international cooperation in the implementation of the Convention.

Regional and international cooperation is essential to the success of the Convention. Its importance is reflected in the very first Article of the *Maritime Labour Convention, 2006*: “Members shall cooperate with each other for the purpose of ensuring the effective implementation and enforcement of this Convention” (paragraph 2). It is clear that the national context is no longer the primary frame of reference for Governmental decision-making. The maritime sector, like other sectors, has seen the emergence of strong regional linkages through economic organizations and other agreements and arrangements. By regional I am, of course, referring to the idea of a region in its broadest sense. There are many different groupings depending on the particular concerns, quite apart from the ILO's designated regions. Many of the countries here are already linked through various economic associations and through the Vina del Mar Agreement on Port State Control¹ - and through other important cooperative regional marine related arrangements.²

¹ <<http://www.acuerdolatino.int.ar/>> The Viña del Mar Agreement does not yet include ILO Conventions.

² ROCRAM <<http://www.roccram.org/roccram/index.html>>
“La Red Operativa de Cooperación Regional de Autoridades Marítimas de Sudamérica, Cuba, México y Panamá, ROCRAM, es un organismo informal de carácter regional, siendo el mecanismo a través del cual las Autoridades marítimas, actúan integradamente en distintos planos de cooperación, por medio de un contacto fluido, franco y permanente. Fue establecido en Octubre de 1983 al realizarse la primera reunión sobre Cooperación Marítima Regional de Autoridades Marítimas, realizada en Santiago de Chile y patrocinada por la Organización Marítima Internacional, OMI y la Comisión Económica para América Latina, CEPAL.”

But I should like to return to the innovative features of the Convention. I will identify the main innovations and indicate what might be their practical relevance for countries considering ratification.

Innovative approaches

First, there is the novel structure of the *Maritime Labour Convention, 2006* (in comparison with traditional international labour conventions): with its division between the key principles and rights, set out in the Articles and Regulations, and the detailed requirements and guidance set out in the Code. This structure is relevant from the point of view of clarity for your national Parliaments, and should help them to see what the new Convention is about – namely, **the rights of seafarers** – and to have a quick view in the Articles and Regulations of the thrust of the Convention. This structure is also essential for enabling the Convention to be kept up to date through another innovation (for the ILO), namely the procedure for the accelerated amendment of the detailed provisions in the Code. This procedure gives each ratifying an important role in the special tripartite committee to be established under Article XIII of the Convention. Another innovative approach is very important – especially at this stage when Members are considering the Convention with a view to ratification. It is founded on **the principle of firmness with respect to rights and flexibility with respect to implementation**. This was a recurrent theme throughout the development of the Convention. The purpose was to enable widespread ratification and, at the same time, to ensure decent conditions of work. This principle is reflected in the carefully balanced relationship between the mandatory Part A of the Code and the non-mandatory Part B. It is also reflected in the development of the concept of “substantial equivalence”. This innovation is particularly relevant to each country’s review of national legislation for compatibility with the requirements of the Convention. I will come back to this subject in more detail in a moment. At this point I would just like to note that the Convention opens a totally new approach, requiring thought to be given in each country as to how to implement the Convention in the way that best responds to its own national conditions. The approach may also provide solutions to difficulties that countries may have with respect to certain provisions, provided however that the solutions do not weaken the protection provided by the provisions concerned.

A related innovation is an evolution of already well-accepted ILO practices regarding the need to recognize that not all ILO Members have the same economic or other capacity and may not be able to immediately implement all international standards. In short it is better to have everyone on board, and assist them to move to compliance with international standards, than to leave countries behind and outside the international system. The innovative solution relating to social security, which will be specifically discussed tomorrow, is an important example. Again, although the Convention applies broadly to all seafarers on all ships, as defined in the Convention, with a few exceptions, it also provides a solution to problems that many countries face, particularly in connection with smaller ships that do not go on international voyages.

This **flexibility** is present in the last of the great innovations as far as the ILO is concerned: I am referring to the flag State ship certification system, which is similar to the system under the IMO Conventions and which each country is to establish and to support with a strong system of inspection. It is complemented by the possibility of port State inspection to help ensure ongoing compliance by ships with the requirements of

the Convention. The Certification system has been seen as an advantage by both the shipowners and seafarers. However it will require some development of administration and capacity in flag States to inspect and issue these documents, even with the assistance of Recognized Organizations. **The Convention requires that all ships, as defined by the Convention, be inspected by the flag State**, but it has provided flexibility with respect to Certification and also with respect to the application of some of the technical requirements under the Code for smaller ships not engaged in international voyages. Areas that were identified as posing problems have been taken into account through the Convention provisions for flexibility based on consultation and through the use of Recognized Organizations and through cooperation in the form of voluntary port State inspections by Members that ratify the Convention.

National action as the essential next step to move forward

How can the Office help ILO Members to move forward towards ratification and to bring the Convention into force? As you know, entry into force requires ratification by at least 30 countries making up at least 33% of the world gross tonnage of ships. The Office can promote and encourage ratification through the Organization's Constitution which, under Article 19, paragraph 5(b), requires Members to bring Conventions before the relevant national authority for the enactment of legislation within a year, or, in exceptional circumstances, 18 months, after the adoption of a Convention by the International Labour Conference [...]. Actions taken to move towards ratification or, if that does not seem possible, efforts to move towards a position that would allow for ratification, as well as any areas of difficulty for the Member, are to be communicated to the Director-General. This is a helpful mechanism for the Office as it allows us to identify and target problems and find ways to help Members. A year has not yet passed since the Convention was adopted however I am aware that many Members, including those represented at this Seminar, are actively considering what will be necessary to ratify the Convention and where there may be difficulties that could delay this process. As I have already suggested this Seminar is an opportunity to explicitly encourage this reflection and an exchange about difficulties and solutions among a number of countries with common interests and concerns and a variety of existing linkages.

Of course, a country can ratify the Convention only if it is in a position to implement it. I think that this essentially means two things:

- (a) the country must have the necessary laws already in place or approved in accordance with its constitutional processes, and
- (b) it must also be sure that it will have the necessary administrative and technical infrastructures for implementing those laws and for ensuring that they are being properly implemented.

This twofold objective must be seen in the light of the very different situations of the Members around the globe and in the various regions: first, the weighting of the obligations under the Convention may vary depending on the nature of the Member's interest in the maritime sector. Some States may have an important role with respect to port State control; some countries may be essentially flag States; others (especially at this seminar) may be essentially labour-supplying countries; second, the inspection and

enforcement capacity of the countries may be at very different levels; third, the legal approaches can be very different, ranging from an emphasis on basic principles, legislation and the rights of seafarers, to an emphasis on freedom of association and regulation by collective agreements and custom.

As my earlier comment suggests, one of the most valuable innovations of the new Convention is its capacity to positively respond to this diversity. Let me start with the aspect of getting the necessary laws in place: as in the case of any new Convention, national laws may need some adjustment. However, the approach of the Convention – based on firmness of principle and flexibility with respect to the details of application – should avoid the need to rewrite large sections of national legislation: countries would need simply to review their national laws and other relevant implementing measures and make the necessary changes when the basic principles and rights under the Convention are not adequately embodied in national law or other relevant measures. The Office has undertaken some preliminary studies on this point. It seems clear that there are a variety of legal solutions depending upon how developed the legal situation is in the country in question. For States that are party to Convention No. 147 and other key conventions the legal adjustments, as far as the substantive law is concerned, may not be significant. For States that have not previously ratified ILO maritime labour Conventions, or have only ratified a few, the new Convention provides an opportunity to consider adopting a comprehensive approach, perhaps through the adoption of a single implementing law, depending, of course, on the preferred approach to implementing international agreements in each country.

The Office does have some ideas with respect to the adaptation of countries' national legislation to the requirements of the Convention, taking account of its novel features. But the Office, rather than stating its own thinking, should be listening to the views of the very persons who may be engaged in this process of adapting legislation. This is why the present Seminar is so useful to us. Particularly in connection with the first two subjects to be discussed tomorrow, namely the conditions of employment and shipowners' liability and social security, it would be very helpful to have information from each country on how it intends to approach the question of its national legislation: for example, does the country concerned consider that the best approach would be the adoption of a whole new national Code, consolidating the essence of its existing Labour Code or other legislation and adding any elements needed for the purposes of implementing the Convention? Or does it think that it would be preferable, especially from a practical point of view, to maintain the present legislation, and simply to adopt an amending Act or other regulatory instrument, making the adjustments or modifications and additions necessary to meet the requirements of the Convention?

At the same time, as I have already mentioned, it would be useful if participants could highlight any problems relating to the implementation of specific provisions of the Convention in its national law. As I have also indicated, the Office as well as other participants will do their best to help. I note that some States are working hard to translate the Convention text and this is taking some time. This process of translation into national languages is also very important especially with some wording or concepts may not translate easily. The Convention is now available from the Office in seven languages. In addition the ILO has more comprehensive maritime labour Convention websites in three languages:

<http://www.ilo.org/public/english/standards/norm/mlc2006/index.htm>

Site sur la Convention du travail maritime (2006)

<http://www.ilo.org/public/french/standards/norm/mlc2006/index.htm>

Sitio sobre el Convenio sobre el trabajo marítimo (2006)

<http://www.ilo.org/public/spanish/standards/norm/mlc2006/index.htm>

The Office is available to help with answers to specific questions, not only at this Seminar, but also on a permanent basis. We have an e-mail set up to allow us to quickly answer these sorts of queries and to respond to requests for clarifications, advice or assistance. The address is: "convention_(underscore)maritime@ilo.org "

[convention_ maritime@ilo.org](mailto:convention_maritime@ilo.org)

In the context of legislative measures, one very useful aspect of a Seminar such as this one is that countries with similar legal systems can share information as to how they intend to translate the provisions of the Convention into concrete national provisions and measures, with a view to ratification of the Convention. But this is equally important to the other main aspect of the preparation for ratification: namely, the establishment or strengthening of the necessary national administrative and technical infrastructures.

The sharing of information, and also cooperation based on the rational use of resources, will be particularly important in the context of the establishment of adequate national inspection and enforcement systems for ships. However I should emphasize also that we are not just talking about the inspection of **ships**. Information would be most welcome also on how the countries concerned intend to establish or strengthen an effective inspection and monitoring system for enforcing its **labour-supplying responsibilities**, as required by paragraph 3 of Regulation 5.3 of the Convention.

The Office is therefore also looking forward to the discussions on Subject 3 tomorrow, on Inspection. It hopes to have the benefit of participants' ideas with respect to implementation, especially on the use of recognized organizations and on the possibilities of regional cooperation with respect to inspection, and on the basic needs that countries may have in the area of inspection and certification. It is also hoped that this information will be useful for the countries that are more advanced in these areas, which may be able to provide material and other assistance to the less advanced to build their capacities.

The Action Plan

I will now comment on recent progress and follow-up to the Convention involving the Office. Much of my work in the months since February has in fact been very concerned with activities related to follow-up to the Convention. The Office has prepared an important Action Plan. This Action Plan specifically responds to the Resolutions adopted by the International Labour Conference at the same time as the Convention. It also reflects the guidance provided to the Office by the Officers of the Conference, a

tripartite advisory body, with a view to helping the Convention come into force with effective national level implementation. It is hoped that international tripartite guidance, which was so essential to the development and adoption of the Convention, will also continue through an advisory group. This group would consist of representatives of the ITF, the ISF and key Governments drawn from all regions.

The Action Plan, which has a five year time frame, has two primary goals:

- to promote the rapid ratification of the Convention, especially in countries that did not play an active part in its preparation, in order to bring it into force; and
- to arrange for countries that are not yet in a position to implement the Convention – and thus not in a position to ratify the Convention – to have the necessary legal or technical assistance.

With respect to the first goal, I am pleased to be able to note that already one ILO Member (Liberia) with a significant maritime interest has ratified this Convention. In September the Government of Bulgaria hosted a regionally focused Tripartite Seminar, which was well attended and encouraging. This was followed by a regional seminar in Tokyo that was also extremely helpful and encouraging. I have also been very encouraged by comments and support expressed at national level and international level industry meetings that I have attended in the last few months.

As I have just mentioned, the Plan has two primary goals. The second aspect of the Action Plan relates to strengthening the capacity of countries to implement the Convention. The Action Plan addresses this second aspect on two levels. At one level, assistance will be made directly available to individual countries or subregions. The idea is that they can be placed in a position that will allow them to ratify the Convention thanks to targeted technical cooperation activities.

The other level of assistance under the Action Plan is the more general one of developing international guidelines and other material such as models for national legislation. Under resolutions adopted by the International Labour Conference, tripartite expert meetings will be convened to develop guidance for port State control inspectors and also, for those countries that find it necessary and helpful, guidance will be developed for flag State inspections. The aim of the port State guidance goes beyond helping to strengthen national infrastructures; it will also help to coordinate the proper and uniform enforcement of the Convention. As my comments suggest, the Office is adopting an approach which builds upon and strengthens existing cooperation initiatives. The fact that, for many Governments, their ability to ratify may depend upon their capacity to implement was emphasized at the time of adoption of the Convention. Efforts are now under way by the Office to identify sources of funding for technical cooperation to help with the legislative reviews and information and training seminars that could be delivered at a national or regional level. Governments and others are also now beginning to express interest in helping to support the cost of activities under the Action Plan. This Seminar is an example of the kind of initiatives envisaged.

The Office is very interested in hearing from constituents as to areas in which such technical cooperation could be best directed to assist the countries in the South American region. This is a strategic question. It is important that increasingly scarce technical cooperation resources be provided in a way that benefits as many as possible.

The Office cannot determine priority needs without advice from its Members as to how best to work to help to achieve the goals set by the Members of the Organization.

I am looking forward to hearing from each of you over the course of this Seminar about your national experiences so far, as well as any difficulties you are having, so that appropriate steps can be taken to make this Convention a reality.