

Approving Maritime Labour Convention 2006 in Vietnam-the Duties and Challenges

Nguyen Thanh Le

Abstract—The world has about 1.2 million seafarers working on ships which transport about 90% of global commercial goods now [3]. In front of increasing goods transport demand the quality improvement as well as the rights and obligations guarantee of seafarers working on the sea is a world problem which is being paid much attention. Therefore on February 22nd 2006 at the 94th meeting of ILO, the attendance of nearly 100 member countries had approved unifiedly Maritime Labour Convention [MLC 2006] [5]. The convention is established on the aggregation basis of 68 maritime labour conventions which had been approved by ILO from 1919 (the birth year of ILO) and integrated into a convention in order to adjust unifiedly the standards, guide suitably with the activities of current maritime and remove inappropriate regulations. Approving and implementing of the Convention's requirements in Vietnam plays a very important role in ensuring and protecting the rights of Vietnamese seafarers in the global standardization of the labour market.

Keywords—Maritime Labour Convention, approvement, protection of seafarers' rights, impact.

I. INTRODUCTION

THE MLC is also intended as a "fourth pillar" to complement three key International Maritime Organization (IMO) Conventions on ship safety and security (International Convention for the Safety of Life at Sea, 1974 [SOLAS 74]), crew competency (Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978 [STCW 78], as amended), and marine environmental protection (International Convention for the Prevention of Pollution from Ships, 73/78 [MARPOL 73/78] [1]. Although Convention has just been approved, it has received very high consensus from international maritime community. It is the target which had been adjusted by MLC 2006 and is being agreed with the participation of the international maritime community.

Vietnam has a coastline length of 3,260 km with 37 seaports, including nearly 170 small big ports with the 39,674m total length wharf. Currently Vietnamese fleet has about 1.691 small, big ships with the total tonnage nearly 7.4 million DWT (819/ 1,490 ships over 500 GT) and is being ranked the 4th position of 10 ASEAN countries, the 28th position of 192 IMO member countries; especially Vietnamese national fleet has nearly half of ships which always participate in activities on international maritime

voyages and the Vietnamese fleet goes to many countries' ports on four continents. According to statistics, Vietnam has about twenty thousand seafarers, in which there are 6,721 seafarers of Vietnam shipowner association who works on Vietnam and international ships operating at international seaports [6].

According to the regulation, Convention shall come into force 12 months after the date on which there have been registered ratifications by at least 30 members countries with a total share in the world gross tonnage of ships of 33 per cent[2]. Thereafter, Convention shall come into force for any members countries 12 months after the date on which its ratification has been registered. Up to October 18th 2012, there are 32 countries (Antigua and Barbuda, Australia, Bahamas, Benin, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Denmark, Gabon, Kiribati, Latvia, Liberia, Luxembourg, Marshall Island, Morocco, Netherlands, Norway, Palau, Panama, Philippines, Poland, Russian Federation, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Singapore, Spain, Sweden, Switzerland, Togo, Tuvalu) which joined the convention [4]. The Philippines has become the 30th country to sign up to MLC and that the Convention is anticipated to come into effect during August 2013. Thus, Vietnamese fleet on international routes and Vietnamese seafarers of Vietnam ships operating on international voyages or working on international ships must be inspected and granted different kind of certifications which are suitable with this convention in order to avoid being stored at international seaports. According to the statistics, about fifty thousand ships with the tonnage over 500 GT in the world must be granted certifications which are suitable with the convention. Currently, major agencies of ship decentralization (Germanischer Lloyd's, Det Norske Veritas...) have already actively supported the techniques for maritime transport companies to implement under Convention's provisions since 2008.

II. CONVENTION'S TARGET

MLC's targets has stipulated the standards of seafarers' rights and benefits so as to unify with SOLAS 74; STCW78; MARPOL73/78 about the prevention of oil pollution from ship in order to improve the safety and quality of international vessel transport. Although Convention has just been approved, it has received very high consensus from the international maritime community.

Now, States with ships that fly its flag can not execute the inspection and supervision relating to the labour conditions of

Le. Nguyen Thanh is PhD student, School of Law, Dalian Maritime University, Dalian, China, 116026 (E-mail: thanhlehn@yahoo.com)

seafarers, it will damage the seafarers' health and the ships' safety working on international voyage. Normally, seafarers working oversea under the management of shipowners or the organisation of managing international seafarers must obey an international standard. Of course, this standard must be regulated according to the law of the member states, especially the national administration of ships that fly its flag in ensuring the safety, maritime security and preventing environment pollution.

Convention stipulates the standards which are in accordance with the reality of maritime transport. They satisfy the strong growth of maritime transport sector in the globalization trend, simultaneously create advantages for member countries to establish and apply the standards according to their conditions through national laws so as to protect the minimum conditions of seafarers when working on sea.

The adjustment content of MLC emphasizes particularly on the importance of coordination between nations' administration and functional agencies at port in order to consider, approve, and implement an inspection, supervision and health certification system which is edited by ILO and recommended to use widely at world ports.

III. APPLICATION SCOPE

- For seafarers: Convention is applied for all seafarers who are of the crews or employed on ships under the application scope of MLC, without distinguishing nationality of ships that fly its flag. In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of Convention, the question shall be determined by the competent authority in each Member after consultation with the shipowners' and seafarers' associations.

- For ships: Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. Convention does not apply to warships or naval auxiliaries. In the case of doubt as to whether Convention applies to a ship or particular category of ships, the question shall be determined by the competent authority in each Member after consultation with the shipowners' and seafarers' associations.

In the case the competent authority determines that it would not be reasonable or practicable at the present time to apply certain details of the Code referred to in Article VI, para. 1, to a ship or particular categories of ships flying the flag of the Member, the relevant provisions of the Code shall not apply to the extent that the subject matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures. Such a determination may only be made in consultation with the shipowners' and seafarers' organizations concerned and may only be made with respect to ships of less than 200 gross tonnage not engaged in international voyages[2].

IV. MAIN PARTS OF CONVENTION'S CONTENT

A. Part 1: Articles

Including 16 articles of stipulating the terms, basic concepts to understand unifiedly this Convention; the rights, duties and fundamental principles of Convention member countries; the responsibilities of implementing Convention; the rights and benefits of seafarers; stipulating the consultation with the shipowners' and seafarers' organizations joining Convention, the conditions for convention into force, amendment and supplement.

B. Part 2: Regulations and principles

Including 5 titles with standards (standard A) which are mandatory and guidelines (guideline B) which are not mandatory, particularly as following:

- Title 1: Minimum standards for seafarers working on ship Stipulate and guideline minimum age, health certification for seafarers; train and grant certification as well as recruit and place seafarers.

- Title 2: Labour condition Stipulate and guideline labour contract, wages, hours of work and holidays of seafarers (seafarers); leave right, repatriation of seafarers, minimum safety payroll on ship, skill development abilities and opportunities for seafarers' employment.

- Title 3: Accommodation, recreational facilities, food and catering for seafarers Stipulate and guideline accommodation and recreational facilities of seafarers on ships.

- Title 4: Health protection, medical care, welfare and social security protection for seafarers Stipulate and guideline health protection and medical care for seafarers on board ship and ashore; accident prevention for seafarers; rights of accessing to shore-based welfare facilities and rights of enjoying social welfare as well as shipowners' liability in paying the financial consequences of sickness, injury or death occurring while seafarers are working.

- Title 5: Implementation article Stipulate and guideline the responsibilities, obligations which nation of ships that fly its flag or nation having port must implement and responsibilities of labour supply. Establish a system for inspection and certification of maritime labour and declare about the compliance of Maritime Labour Law for nation of ships that fly its flag as well as inspect the convention compliance of international ship for country having port.

C. Part 3:

Appendixes including instruction forms that relate to the Convention implementation, such as Maritime Labour Certification, Convention Compliance Declaration, Temporary Maritime Labour Certification.

V. CONVENTION'S IMPACTS, INFLUENCES FOR VIETNAM

Vietnam has long paid attention to building human resources for maritime sector, and it is shown in Vietnamese Party policies, State laws. Resolution No.09-NQ/TW dated 09/02/2007 was approved at the 4th Conference of the Party

Central Committee X, it defined clearly fundamental targets, and tasks about human resources of maritime sector. Laws, ordinances, resolutions, decrees, decisions, concerned circulars which were promulgated by Congress, government and other state agencies under their competence have the adjustment contents for human resources to serve Vietnam marine strategy. Vietnamese Maritime Code 2005 contains provisions relating to seafarers; however, provisions relating to wages, insurances, health care and preferential regime for seafarers are still adjusted by many laws such as Labour Law, Health Insurance Law and under the management of relevant sectors, Ministries (Ministry of Labour, Invalids and Social Affairs - the focal of ILO, the Ministry of Health, Ministry of Transport, Ministry of Finance).

Convention, after coming into force it will not only affect, influence certainly on Vietnamese maritime sector but also affect other areas such as insurance, labour, health, particularly as follow:

A. Influence on the system of Vietnamese legal documents

To comply with the requirements of Convention; legal documents relating to labour, insurance, social welfare fields; documents for adjusting maritime activities as well as some standards, criterias for designing and shipbuilding also need to be adjusted consistently and suitably with Convention's regulations. It will take long time and the effort of relevant ministries and sectors. However thanks to it, we will have a system of transparent and full legal documents which are in accordance with general norms of international law.

B. Influence on crew members

By implementing Convention, crew members will be received legal interests and rights with the better protection conditions, especially in the field of labour contract, wages, accommodation condition, recreation, health care and social welfare when they work on Vietnam and international ships.

C. Influence on Vietnamese shipowners

Vietnam shipowners will have to increase more expenses for supplementing essential equipments and facilities according to Convention's provisions (only for ships which are of the adjustment scope of Convention and built newly after Convention comes into force); ensure fully necessary conditions to be granted maritime labour certification and declaration of labour law compliance. They also must pay all expenses relating to seafarers' health and repatriation.

D. Influence on State management agencies specialized in maritime

State management agencies specialized in maritime must establish provisions for examining, granting certification according to Convention's provisions; inspection procedures for Vietnamese ships and international ships when they come to Vietnamese seaports.

VI. THE ADVANTAGES, DISADVANTAGES OF VIETNAM WHEN ACCESSING MLC 2006

A. Advantages

Vietnam is a member of United Nations Convention on Law of the Sea (UNCLOS) 1982, an official member of ILO 1950, is a nation which had already signed 15 international treaties and 17 maritime agreements with concerned countries about state management activities at seaport. Furthermore, as a coastal, seaport nation and ships that fly its flag and abundant labour force; simultaneously, Vietnam is also a member of relevant conventions such as SOLAS 74/78, STCW 78/95, MARPOL 73/78 and other relative conventions of IMO, so accessing MLC will contribute to raise national prestige and be the basis of ensuring the rights and obligations of Vietnam seafarers as well as be in accordance with the process of international economic integration.

The implementation of Vietnamese Maritime Code, Civil Code, Labour Law, Labour Export Law, Insurance Law, Health Law, Law on Signing & Accession and the implementation of international treaties and other relevant legal documents during the past time is basic steps, creates the initial conditions which are very important before accessing Convention.

Strengthening State management role for seafarers through the implementation of inspection and certification for association of seafarers management, seafarers and ships in accordance with Convention's provision to grant new certifications such as the implementation commitment of Convention and maritime labour certification for ships with the tonnage over 500 GT engaged in international voyages will raise the quality of Vietnamese crew members now, and meet the requirements of managing and exploiting effectively fleet having modern techniques.

When accessing Convention, member state can make provisions on labour conditions of seafarers on ships. They will help to minimize unfair competition with ships which donot comply with Convention. At the same time, ships of member state will be granted the appreciate certifications which reduce to be kept or checked at foreign seaports.

Convention shall come into force 12 months after the date on which there have been registered ratifications by at least 30 member countries with a total share in the world gross tonnage of ships of 33 per cent[2]. Thereafter, this Convention shall come into force for any member countries 12 months after the date on which its ratification has been registered. Because the feasibility is higher than previous Conventions, the required level on the percentage of member countries and via fleet tonnage must be higher.

In addition, conference's resolution is mainly the Governments of ILO member countries in which 30 first member states approve Convention accession, this Convention will take effect, issue maritime labour certifications for ships, seafarers and organise the seafarers' management of these countries. Then the inspection will be implemented by maritime authority at seaport. Therefore, it is a key factor for

member countries to have enough time for preparing the implementation as soon as the Convention has validity in their nations.

B. Disadvantages

Vietnamese Law on maritime, labour, and other relevant fields shows Vietnamese Party guidelines and State will for the process of international economic intergration. However, the system of relevant legal documents has not been sufficient and synchronous yet to ensure the implementation of commitments under Convention's provisions.

In fact, although the tripartite consultation in our country has been stipulated and implemented, the awareness of relevant parties about this issue still remains many restrictions, the consultation mechanism is still formalistic, the consultation effectiveness has not reached as expected. However, these difficulties do not belong to the nature and are gradually overcome.

In order to meet Convention's provisions, shipowners and associations of managing seafarers must invest, install and supplement equipments facilities on ships; adjust wages, allowances, insurance, quantify meal allowances and ensure accommodation conditions, activities for seafarers.

The government of nations always has different law provisions which are related to labour standards for ships and seafarers. It causes difficulties in ensuring the seafarers' rights due to the overlapping, asynchronous provisions between nations which are members of Convention.

The implementation of standards which are related to social obligations, labour employment and labour conditions of seafarers is one of difficulties for maritime government of counties due to the lack of experts on sociology field.

VII. DUTIES NEED TO BE IMPLEMENTED

Soon after the Convention is approved, being aware of the significance, importance, influence as well as impacts of Convention for maritime activities, Vietnamese Maritime Bureau – with the function as State management agency specialized in Maritime under the Ministry of Transport held the preliminary research on Convention's content and sent an official dispatch to Ministry of Transport for proposal research to join Convention. On December 19th 2006, Ministry of Transport had dispatch No. 7939/BGTVT-TCCB assigning Vietnamese Maritime Bureau to build “The research project proposes to join in Maritime Labour Convention, 2006” [7].

To implement the assigned tasks, Vietnamese Maritime Bureau collaborated with agencies relating to seafarers management such as Ministry of Labour, Invalids and Social Affairs, the Ministry of Health, held research for building and completing “The research project proposes to join Convention” [7] and submitted Ministry of Transport in October 2009. At the same time, Vietnamese Maritime Bureau with some national and international organisations held seminars to popularize the content of Convention as well as assess the impact, influence of convention for seafarers,

shipowners and the mechanisms, policies, law provisions of Vietnam when Convention has official validity.

Vietnam is a coastal country, so maritime economy plays an important role and is currently developing. During the past years, Vietnamese crew members and maritime fleet are continuously developing in both quantity and quality. On the other hand, Vietnam is also a member of Maritime Labour Organisation, International Maritime Organisation and joined United Nations Convention on Law of the Sea (UNCLOS) 1982. In order to being initiative, ready to deploy the Convention's implementation when it comes into force for Vietnam, in the next time Ministry of Transport – with the function as the lead agency of submitting that Government should early have submission to report the Prime Minister for considering and decide to join Convention. At the same time, Ministry of Transport should assign Vietnamese Maritime Bureau and relevant agencies to build a detail roadmap for guidelining the implementation of Convention's provisions on training, certification, employment and replacement of seafarers; minimum safety payroll on ship, consultation mechanism of seafarers and shipowner associations; the obligatory responsibilities and obligations of nations having ships that fly its flag, as well as having ports; Convention's provisions on accommodation and recreation for seafarers on ships, including the size of bedroom, diningroom, recreation room, and other space; regulations on officers' bedroom, the quality, size of sanitation, bathroom and medical area; lighting system, minimal lighting condition; heating, ventilation system; minimal equipments in room; noise, vibration condition; and other factors on ships. All of them must submit to competent authority to consider and amend relevant legal documents.

On the other hand, it is necessary to coordinate with Ministry of Labour, Invalids and Social Affairs for organising the regulations' research on the responsibilities of labour supply, minimum labour age, labour contract, wages, salary, hours of work, rest, conditions of labour safety protection; the responsibilities of paying the financial consequences of sickness, injury or death occurring while seafarers are working; and insurance as well as social welfare policy relating to seafarers in this convention. Furthermore it is also essential to collaborate with Ministry of Health for researching the regulations on health standard, quantity, diet of seafarers; health protection and medical care conditions of seafarers in convention so as to consider, supplement and amend the relevant provisions of Vietnamese law.

VIII. CONCLUSION

As the Convention is not yet in force, assessments regarding the possible effects of the Convention remain speculative. Nevertheless, there is little doubt that the Convention will have strong impact on seafarers' rights and will improve seafarers' working conditions around the world.

The Convention is groundbreaking, however only time will tell the extent of the impact of the Convention on the shipping

industry. Many speculate that the effects of this Convention cannot be overrated as every seagoing ship will have to deal directly or indirectly (through the “non better treatment” clause) with it. The most important point here is the large scope of possible port actions made possible by the MLC.

It was a brave step for the ILO to attempt to create a convention so revolutionary. However, it is unlikely the same model will as easily be applied to other industries and labour conventions. The convention shows that globalization made pressure can set off a “race to top” in labour standards.

Within international integration trend at present, participation in international institutions is very necessary, joining MLC 2006 is also to ensure the legitimate rights and interests of Vietnam shipowners, crew members as well as the responsibilities, duties of nation with the function as a convention member. It is also a motivation to standardize and complete legal system, national policy mechanism as well as to raise Vietnam’s position in the international arena.

REFERENCES

- [1] Cleopatra Doumbia-Henry, Dominick Devlin and Moira L. McConnell, *The Maritime Labour Convention, 2006 Consolidates Seafarers’ Labour Instruments*, ASIL INSIGHTS, 13 September 2006, from www.asil.org.
- [2] ILO (2006): *Maritime Labour Convention*, Geneva, Switherland :International Labour Organization. Retrieved from http://www.ilo.org/wcmsp5/groups/public/-ed_norm/---normes/documents/normativeinstrument/wcms_090250.pdf, article VIII, paragraph 3, 6.
- [3] ILO, New UN treaty guarantees merchant sailors’ labour rights in era of globalization, 23 February 2006, from www.un.org/apps/news.
- [4] ILO (2012), Ratifications of MLC - Maritime Labour Convention 2006 from http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:8650261605089417::NO:11300:P11300_INSTRUMENT_ID:312331:NO
- [5] Text available at: <http://www.ilo.org/ilolex/english/convdisp1.htm>.
- [6] Translation by author from <http://www.vinamarine.gov.vn/Index.aspx?page=detail&id=630>.
- [7] Translation by author from <http://www.vinamarine.gov.vn/Index.aspx>.