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## Detainable Maritime Labour Convention 2006-related deficiencies found by Paris MoU authorities

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### ABSTRACT

The Maritime Labour Convention 2006 (MLC, 2006) has entered into force in August 2013. Shipowners, flag States and port State authorities have an important role in the successful implementation of the MLC, 2006. Port State control (PSC) is responsible for ensuring that ships are in compliance with the requirements of the MLC, 2006. In cases of significant non-compliance ships are detained. This paper analyses the MLC, 2006-related deficiencies that were marked as a ground for detention of ships inspected in areas under the jurisdiction of the Paris MoU in the period 20 August 2013 until 31 December 2014. 390 recorded detainable deficiencies were related to 33 items, mostly belonging to areas "Accommodation, recreational facilities, food and catering" and "Conditions of employment". The fact that 220 ships were detained (a total of 39 based solely on the MLC, 2006-related deficiencies) in 18 port States, suggests that PSC is becoming effective in detecting unacceptable working and living conditions for seafarers on-board. Detention rates on the MLC, 2006 ground vary significantly between port States, indicating that there is a room for harmonisation of PSC procedure.

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### 1. Introduction

A competent and motivated crew is necessary for achieving safe and environmentally sustainable shipping [4]. Therefore, problems regarding maritime labour standards were identified and addressed by a number of international and legal instruments. However, they were inconsistently enforced and often were not widely ratified [5]. In response to need for a single, coherent instrument that provides decent working and living conditions for seafarers on-board, the Maritime Labour Convention 2006 (henceforth MLC, 2006) was developed by the International Labour Organization (ILO). Since the adoption of the MLC, 2006 at the 94<sup>th</sup> (Maritime) Session of the International Labour Conference on 23 February 2006, it took further 7 years for it to enter into force on 20 August 2013 [7]. Intended to be the "fourth pillar" of the international regulatory regime for quality shipping<sup>1</sup>, the MLC, 2006 address-

es a wide range of issues related to minimum requirements for seafarers to work on a ship, conditions of employment, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security protection, and compliance and enforcement.

The MLC, 2006 establishes labour standards for a complete maritime sector and deals with issues that had been the subject of contentious debates such as social security protection, liability of the ship owner and repatriation [1]. It sets out the minimum rights that seafarers should expect, while simultaneously helping to ensure competitiveness of shipowners operating at a high standard. An achievement of interconnected labour and social rights and economic goals of the MLC, 2006 relies on efficient implementation by the shipowners, flag States and port State authorities. The shipowner and the flag State are responsible for compliance with the MLC, 2006 and the formal certification. Port State control (PSC) inspections reinforce the surveys performed by flag States. They verify whether foreign ships comply with the MLC 2006's standards, regardless of flag and regardless whether the ship flag State has ratified the MLC, 2006. Where the flag State has not ratified the MLC, 2006 such ships must be able to provide

<sup>1</sup> The other "pillars" are The International Convention for the Safety of Life at Sea (SOLAS), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and the International Convention for the Prevention of Pollution From Ships, 1973 as modified by the Protocol of 1978 (MARPOL).

documentary evidence of compliance with its regulations and standards. Ships in severe violation of standards are detained until deficiencies are rectified.

The PSC has been acknowledged as an important and effective tool for improving the safety level of maritime transport [9]. For example, an analysis of Swedish Maritime Administration activities for the period from 1996 until 2001 showed that following a PSC inspection, the number of reported deficiencies during next inspection is reduced significantly [3]. In light of previous experience it can be expected that the PSC enforcement of the MLC, 2006 will contribute to the improvement of labour conditions.

The majority of the PSCs worldwide are part of regional Memoranda of Understanding on PSC (henceforth MoU). The Paris MoU is the oldest and most established of 10 regional agreements on the unification of criteria for the inspection of foreign ships by PSC authorities<sup>2</sup>. It consists of 27 participating maritime Administrations, 26 European coastal States and Canada. Therefore, for a preliminary assessment of PSC activities related to the MLC, 2006 we have analysed detainable deficiencies recorded under the Paris MoU from date of the MLC, 2006's entry into force until 31 December 2014.

The article is organised as follows. The second section briefly reviews the PSC activities related to the MLC, 2006. The third section looks into detainable deficiencies with respect to the defective items, ship type and age, flag State, recognised organisation and port State. The conclusions are presented in the final section.

## 2. Port state control enforcement of the MLC, 2006

All ships covered by the MLC, 2006 are potentially subject to inspection. Ships of 500 gross tons or over engaged in international voyages or operating from a port, or between ports in another country, must be certified. Procedures for carrying out PSC inspections under the MLC, 2006 are explained in the Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006 (called the "Guidelines" henceforth) [6]. Briefly, PSC inspection process starts with a review of the Maritime Labour Certificate (MLC) and Declaration of Maritime Labour Compliance (DMLC). Since MLC and DMLC must be accepted as *prima facie* evidence of compliance with the MLC, 2006 requirements, the inspection should be limited to checking the validity and completeness of required documents. However, more detailed inspection may be carried out if: (a) required documentation appears deficient, (b) the working and/or living conditions on the vessel do not conform to the MLC, 2006 requirements, (c) there is a suspicion that the shipowner has changed flag to evade compliance with the MLC, 2006, (d) complaints have been made by seafarers, alleging that specific working and living conditions on the vessel do not conform to the MLC, 2006 requirements. If working and living conditions,

believed or alleged to be defective, constitute a clear hazard to safety health or security of seafarers or a serious breach of requirements including seafarers rights, more detailed inspection must be conducted.

Ships flying the flag of a country that has not ratified MLC, 2006 cannot possess MLC and DMLC issued under MLC, 2006. In order to ensure no more favourable treatment to such ships, inspections are more detailed.

Regardless of whether a more detailed inspection is conducted because a ship does not have MLC and DMLC (a ship for which certification is not mandatory or a ship of a non-ratifying State) or as a result of the review, the port State control officers (henceforth PSCO) evaluate compliance with the specific requirements of the MLC, 2006 and take necessary action in cases of non-compliance. Although PSCO primarily examine 14 areas listed in Appendix A5-III of the MLC, 2006, other requirements of the MLC, 2006 related to working and living conditions are also considered. The PSC is empowered to detain a ship if serious deficiencies are found: (a) the conditions on-board are clearly hazardous to the safety, health or security of seafarers, (b) the non-conformity or non-conformities found constitute a serious or repeated breach of the requirements of the Convention (including seafarers' rights). Examples of findings that should result with detention are provided in the Guidelines. In the event that the PSCO detain a ship, a port State is obliged to inform a flag State. Permission to proceed to sea cannot be granted until the detainable deficiencies have been rectified or a rectification action plan has been agreed.

## 3. Analysis of detainable deficiencies

To assess whether a PSC inspection started to be effective mean of control of the MLC, 2006 implementation the Paris MoU Database THETIS is surveyed [11]. Port State authorities are entitled to conduct inspections on the MLC, 2006 requirements after one year from the ratification. Therefore, 12 out of 27 member States of the Paris MoU started enforcing the MLC, 2006 from 20 August 2013: Bulgaria, Canada, Croatia, Cyprus, Denmark, Latvia, the Netherlands, Norway, Poland, the Russian Federation, Spain and Sweden. During the first year of implementation, the following 9 member States began to enforce it: Belgium, Finland, France, Germany, Greece, Italy, Lithuania, Malta and the United Kingdom. The MLC, 2006 will enter into force for Ireland on 21 July 2015 [8]. The member States of the Paris MoU that have not ratified the MLC, 2006 are Estonia, Iceland, Portugal, Romania and Slovenia.

The Paris MoU PSC authorities are using THETIS deficiency codes for the various defects they are listing in the inspection reports. In addition to codes regarding certificates and documents related to the MLC, 2006 that are required to be carried on-board ships, further 72 codes are used to report deficiencies concerning labour standards [12]. Defective items are grouped into 4 areas: Minimum

<sup>2</sup> For the full text of the Paris Memorandum and additional information, see <https://www.parismou.org> (accessed 9 January 2015).

requirements to work on a ship, Conditions of employment, Accommodation, recreational facilities, food and catering and Health protection, medical care, social security with 5 digits codes starting with 181, 182, 183 and 184, respectively.

In the period from 20 August 2013 until 31 December 2014, 2729 the MLC, 2006-related deficiencies were recorded during 24611 inspections executed by one of the Paris MoU authorities [11]. 390 deficiencies were marked as a ground for detention resulting in 220 detained ships. This represents 24.9% of the total number of detentions (883) in the Paris MoU area during examined period. 39 out of 220 detained ships (17.7%) were detained based solely on the MLC, 2006-related deficiencies. Therefore, it seems that enforcement of the MLC, 2006 facilitated PSC activities regarding labour standards. Namely, labour issues were included in scope of PSC inspections under the umbrella of the ILO Conventions prior enforcement of the MLC, 2006. However, it appears that they were less important than vessel safety and pollution prevention issues [14]. For example, over the period 1998 – 2009, not one single ship was detained based on deficiencies in condition of work.

Observed detainable deficiencies were related to 33 items (Table 1). They were most frequently recorded in the area “Accommodation, recreational facilities, food and catering” (39.2%) followed by area “Conditions of employment” (31.8%). 28.5% recorded deficiencies belongs to area “Health protection, medical care, social security”, and only 0.5 to area “Minimum requirements to work on a ship”. As can be seen in Table 1, detainable deficiencies with regard to wages prevail (29%), probably due to the fact that conditions of employment belongs to area where the MLC, 2006 improved the protection of seafarers significantly. For example, it must be ensured that wages are paid at least monthly and in accordance with their employment agreement and any applicable collective agreement [6]. Furthermore, each seafarer has to be given a payslip detailing payments made, including additional payments and the rate of exchange used if payment has been made in a currency different from that agreed in the work agreement [2].

New Inspection Regime (NIR) of the Paris MoU, applied since 2011, has a risk based targeting mechanism, designed to reward quality ships and operators with a reduced inspection burden and to concentrate PSC activities on high risk ships [13]. The targeting of ships for inspection is based on a Ship Risk Profile (henceforth SRP) that is dependent on generic (type and age of ships, performance of ship’s flag, performance of the recognised organisation, performance of the company that is holder of Document of Compliance) and historic (number of deficiencies, number of detentions) parameters. Due to dynamic nature of parameters a SRP is recalculated daily.

Considering ship type, as can be seen from Table 2, the most prominent are general cargo ships and bulk carriers, in accordance with the general view that substandard ships are concentrated in these sectors.

**Table 1** The MLC, 2006-related detainable deficiencies recorded in the Paris MoU region, 20 August 2013 – 31 December 2014

Defective item	Code	Number of Detentions
Wages	18203	86
Sanitary facilities	18302	35
Calculation and payment of wages	18204	27
Cleanliness of engine room	18420	21
Sleeping room, additional spaces	18306	20
Provisions quantity	18314	20
Heating, air conditioning ventilation	18321	17
Electrical	18408	16
Prevention injuries and diseases	18428	15
Qualification of ship’s cook	18325	14
Galley, handlingroom	18312	12
Fitness for duty-work and rest hours	18201	11
Medical equipment, chest, guide	18401	11
Cleanliness	18313	9
Personal equipment	18412	8
Anchoring devices	18417	8
Cold room, cleanliness, temperature	18324	7
Hospital accommodation	18305	5
Water, pipes, tanks	18316	5
Entry dangerous spaces	18415	5
Winches, capstans	18418	5
Access/structural features	18425	5
Lighting	18407	4
Berth dimensions	18309	3
Provisions quality and nutritional value	18315	3
Food personal hygiene	18317	3
Ropes and wires	18416	3
Steam pipes, pressure pipes	18424	3
Medical fitness	18103	2
Medical care onboard	18406	2
Gas instruments	18410	2
Protection machines/parts	18414	2
Ship’s safety committee	18430	1

**Source:** Data from the Paris MoU Database THETIS (<https://www.parismou.org/inspection-search>)

**Table 2** Detentions on the MLC, 2006 ground in the Paris MoU region, 20 August 2013 – 31 December 2014 by ship type

Ship type	Number of Detentions
General Cargo	109
Bulk Carrier	47
Refrigerated Cargo	10
Livestock Carrier	8
Container Ship	7
Chemical Tanker	7
Oil Tanker	6
Ro-Ro Cargo	4
Gas Carrier	4
RO-RO Passenger	3
Other	15

**Source:** Data from the Paris MoU Database THETIS (<https://www.parismou.org/inspection-search>)

Data on detained ships' age (Table 3) show that majority of detained ships are older than 20 years, confirming that older ships show higher deficiency level.

**Table 3** Detentions on the MLC, 2006 ground in the Paris MoU region, 20 August 2013 – 31 December 2014 by ship's age

Ship's age (years)	Number of Detentions
1-5	19
6-10	16
11-20	52
21-40	109
> 40	24

**Source:** Data from the Paris MoU Database THETIS (<https://www.parismou.org/inspection-search>)

The Paris MoU *White, Grey* and *Black Lists* of flag States are compiled based on PSC records, showing a performance of ship's flag. The *White list* contains only flag States of ships with consistently low detention record. Nevertheless, 49.4% detained ships fly a white listed flag (Table 4). Additionally, 16 out of 30 flag States whose ships were detained ratified the MLC, 2006, showing that PSC acts like the second line of defence against substandard ships.

Difficulties with flag State implementation in the beginning of the enforcement were anticipated [10]. As one of the bottleneck for the implementation of the MLC, 2006 inspection system capacity has been recognised. In order to achieve more harmony regarding ship inspection requirements, the "Guidelines for Flag State Inspections Under the Maritime Labour Convention, 2006" were published by ILO. Additionally, course "Train the Trainers maritime labour inspectors on the application of the Maritime Labour Convention, 2006" was developed, and courses and workshops for all stakeholders were organised on regional and national level. However, it is possible that certain level of non-uniformity still exists leading to detention of inspected and certified ships. Similarly to findings for detentions by flag States, more than half of detained ships are certified by recognised organisations having a high performance level (Table 5). The interpretation of the MLC, 2006 requirements by different recognised organisations also could differ [10].

Based on presented data it can be expected that execution of PSC activities related to the MLC, 2006 will affect the PSC targeting and eventually contribute to the improvement of working and living conditions.

A harmonised approach to treatment of deficient vessels is desirable in order to achieve goals of the MLC, 2006. Data in Table 6 show that the detentions based on the MLC, 2006-related deficiencies were imposed by 18 port States.

The number of detentions with recorded the MLC, 2006-related detainable deficiencies divided by the number of inspections (detention rate on the MLC, 2006 ground) varies significantly, even among port States with equal period of enforcement. The highest share of de-

**Table 4** Detentions on the MLC, 2006 ground in the Paris MoU region, 20 August 2013 – 31 December 2014 by flag State

Flag State	Number of Detentions
<b>White list</b>	
Panama	40
Liberia	21
Malta	13
Antigua	8
Russia	5
United Kingdom	4
Marshall Islands	4
Bahamas	3
Poland	3
Italy	2
Turkey	2
Norway	1
Netherlands	1
Gibraltar, UK	1
Thailand	1
<b>Grey list</b>	
Belize	13
Saint Kitts And Nevis	8
Egypt	3
Ukraine	3
Vanuatu	3
Curacao	2
Algeria	1
<b>Black list</b>	
Tanzania	20
Cambodia	17
Moldova	17
Cook Islands	7
Togo	7
Saint Vincent	6
Comoros	2
Sierra Leone	2

**Source:** Data from the Paris MoU Database THETIS (<https://www.parismou.org/inspection-search>)

tained ships with the MLC, 2006-related detainable deficiencies occurred in Bulgaria and Sweden. It is interesting to note that Greece ranks high, although it began enforcement in January 2014. On the other hand, in Finland, Latvia, Lithuania and Norway ships were not detained based on MLC, 2006. There are many possible reasons for such difference in the MLC, 2006-related detention rates: characteristics of vessels calling in a specific country, and differences in the way inspections are done due to the process of adapting PSC procedures. Furthermore, training of PSCO, which is primarily maritime and technical, could contribute to the observed variation. Since the MLC 2006 is a labour and a maritime convention, a broad knowledge of both areas is needed for a successful implementation.

Presented data indicate the need to examine level of differences across the port States in more detail in order to detect areas with potential for harmonisation.

**Table 5** Detentions on the MLC, 2006 ground in the Paris MoU region, 20 August 2013 – 31 December 2014 by recognised organisation

Recognised organisation	Number of Detentions
<b>High performance level</b>	
Nippon Kaiji Kyokai	44
Bureau Veritas	27
Germanischer Lloyd	16
Registro Italiano Navale	11
Lloyd's Register	9
American Bureau of Shipping	4
Korean Register of Shipping	3
Det Norske Veritas	2
Turkish Lloyd	2
<b>Medium performance level</b>	
Panama Maritime Documentation	25
International Naval Surveys Bureau	20
Dromon Bureau of Shipping	13
Shipping Register of Ukraine	12
Maritime Lloyd-Georgia	4
Maritime Bureau of Shipping	3
<b>Low performance level</b>	
Bulgarian Register of Shipping	5
International Register of Shipping	2
Other	18

**Source:** Data from the Paris MoU Database THETIS (<https://www.parismou.org/inspection-search>)

**Table 6** Detentions on the MLC, 2006 ground in the Paris MoU region, 20 August 2013 – 31 December 2014 by port State

Port State	Detention rate (%)	Detention rate on the MLC, 2006 ground (%)
Bulgaria	3.2	2.7
Sweden	1.2	0.7
Greece	6.0	3.4
Canada	3.0	1.6
Spain	3.8	1.7
Cyprus	14.5	5.7
Belgium	1.7	0.5
Russia	3.9	1.2
Netherlands	2.6	0.7
Germany	3.4	0.7
Poland	4.8	1.0
France	2.6	0.5
Denmark	1.4	0.2
Croatia	4.9	0.6
United Kingdom	4.2	0.5
Malta	8.0	0.8
Ireland	6.1	0.3
Italy	7.6	0.2
Finland	1.1	0.0
Latvia	0.3	0.0
Lithuania	0	0.0
Norway	0.6	0.0

**Source:** Data from the Paris MoU Database THETIS (<https://www.parismou.org/inspection-search>)

## 4. Conclusions

A survey of PSC activities in the Paris MoU area shows that during 24611 inspections carried out in the period 20 August 2013 until 31 December 2014, 390 identified non-conformities related to social and labour issues were serious enough to warrant detention of 220 ships in 18 port States. Given the relatively early stage of the MLC, 2006 implementation, these findings suggest that PSC is becoming effective in detecting unacceptable conditions. An analysis of defective items reveals that a number of rights has been violated frequently, and may be useful in reviewing a ship management system for improvement.

It can be expected that the PSC activities, especially detentions of ships will urge ship managers to pay proper attention to seafarers' welfare, being equally important as safety standards. A uniform way of carrying out of inspections, particularly when it comes to the determination of the serious breaches of MLC, 2006 requirements should contribute to the achievement of its goals. In order to evaluate whether these goals are achieved globally, a more detailed and more comprehensive analysis of the PSC activities worldwide should be eventually performed.

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