

General observation

Observations arising from the entry into force of the amendments to the Code of the MLC, 2006, adopted under the simplified procedure of Article XV of the Convention

The Committee welcomes the upcoming entry into force of the amendments to the Code of the MLC, 2006, approved in accordance with the simplified procedure of *Article XV of the Convention* by the International Labour Conference (ILC) at its 103rd Session in 2014. The Committee also welcomes the approval of a second set of amendments to the Code under the same procedure by the ILC at its last session in 2016 (105th Session of the ILC). The Committee notes the critical role played by the Special Tripartite Committee (STC) in the elaboration of the amendments to the Code. The Committee looks forward to the success of the innovative simplified procedure of amendments to the Code of the MLC, 2006. This procedure has been designed to ensure that the Convention promptly responds to the needs of the maritime world while maintaining a level playing field. The Committee welcomes the participation of one of its members in the meeting of the STC and hopes that this collaboration will continue in the future.

The Committee recalls that the MLC, 2006, provides for two amendment procedures, namely: the amendment procedure set out in *Article XIV* of the Convention, and the simplified procedure for amending the Code set out in *Article XV* of the Convention. The latter procedure is the focus of this general observation. The Committee recalls that the amendments approved by the ILC in 2014 (103rd Session of the ILC) are expected to enter into force on 18 January 2017. The amendments approved in 2016 (105th Session of the ILC) will be deemed accepted on 8 July 2018, unless 40 per cent of the Members which have ratified the Convention and which represent not less than 40 per cent of the gross tonnage of the ships of the same Members have formally expressed their disagreement to the Director-General. If accepted, this second set of amendments will enter into force on 8 January 2019.

In view of these recent developments, the Committee makes the following observations on some of the legal implications of the entry into force of amendments to the Code of the MLC, 2006.

Article XV, paragraphs 6–8, of the MLC, 2006, set out a system of implicit acceptance of the amendments to the Code. However, these provisions of the Convention only apply to “ratifying Members” defined in *Article XV, paragraph 6*, as Members whose ratification of the MLC, 2006 was registered before the date of approval of the amendments by the Conference. While *Article XV, paragraph 12*, for its part, provides that the Convention in its amended form will be applicable to Members ratifying after the entry into force of the amendments to the Code, Members whose ratification was registered between the date on which the amendments were approved by the ILC and the date on which these amendments entered into force are not expressly covered by any provision of *Article XV*. As a result of this, in a number of cases, questions have arisen as to

the manner in which Members whose ratification was registered between the approval and the entry into force of the amendments may accept the amendments to the Code adopted pursuant to *Article XV* of the MLC, 2006. In light of the absence of an explicit provision in the Convention, the Committee wishes to invite the STC to consider this situation in view of future amendments to the Convention.

The Committee notes that, in the meantime, the Office has informed all the Members concerned that they may accept the amendments by addressing a formal declaration to that effect to the Director-General. The Committee therefore encourages these governments to clarify their position regarding the acceptance of the amendments to the Code before 18 January 2017 and accordingly requests the Office to transmit without delay this general observation to the Members concerned, and recalls that in order to protect seafarers' rights and achieve and maintain undistorted competitive conditions, all Members should to the extent possible be bound by the same provisions.

The Committee reiterates that a fundamental goal of the Convention is the achievement of a level playing field and the protection of labour rights; accordingly, each Member shall implement its responsibilities under the Convention so as to ensure that the vessels flying the flag of States that have not ratified the MLC, 2006, do not receive more favourable treatment than those flying the flags of parties to the Convention (*Article V, paragraph 7*). Specifically, when a maritime labour certificate relates to matters covered by an amendment which has entered into force, a Member that has accepted the said amendment is not obligated to extend the benefit of the MLC, 2006 (that is, the acceptance of the maritime labour certificate as prima facie evidence of compliance), to maritime labour certificates issued to ships flying the flag of another Member which has not accepted the amendment. This possibility is provided for in *Article XV, paragraph 13*, of the MLC, 2006, which closely follows the wording of *Article VIII(d)(i)* and *(ii)* of the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended. As a result, any Member bound by the amendment is entitled to apply the relevant provisions in their amended form to all ships entering its ports.