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MLC 2006: A Sign of Hope for the Maritime World
by

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Good morning.

Archbishop Marchetto, let me begin by thanking you for inviting me to be with you and with so many of my friends here in Gdynia, Poland. I am very honored to have the opportunity to have a part in this important Congress and to share the Apostleship of the Sea's vital ministry to seafarers throughout the world.

I have been asked to speak with you about the new International Labor Organization's Maritime Labor Convention, 2006, or, more specifically, the MLC as a sign of hope for the maritime world.

I will begin my remarks by repeating some of the words spoken by His Excellence Monsignor Silvano Tomasi to the International Labor Conference Plenary in Geneva on 23 February 2005 following the Convention's adoption:

"The Holy See Delegation takes this opportunity to join its voice to that of numerous other delegations in highlighting the significance of this Conference. Three reasons in fact point out the importance of the present occasion. It underscores the truly historical opportunity presented by this Tenth Maritime Session of the International Labour Conference (ILO). It gives a chance to welcome the proposed Consolidated Maritime Labour Convention as an indispensable tool of decent work. It proves once again the value of tripartite negotiations and cooperation to ensure a successful and timely outcome. Allow me to

add that the word historical is not a rhetorical expression, but the definition of an achievement made possible thanks to the spirit of dialogue and the quality negotiations which have prevailed, thus enabling the conference to reach a consensus even on the more difficult provisions. The challenge that now remains is to formalize the good work already done.”

Archbishop Tomasi’s statement is an excellent summary of the points that I wish to share with you today:

- The MLC is truly an historical achievement. I will go beyond Archbishop Tomasi’s description by stating that, in my opinion, it is **the** most significant achievement in the entire history of seafarers’ rights law.
- The MLC was the product of five years of dedicated work by governments, seafarers’ trade unions, shipowners, and the ecumenical network of the International Christian Maritime Association (ICMA) of Christian organizations that includes the Apostleship of the Sea, representing 526 seafarers’ centers and 927 chaplains in 126 countries.
- The MLC is of little value if it is not put into use. Our challenge is to ensure that the Convention fulfills its promise by encouraging maritime nations to ratify and implement it.

For us to truly appreciate the MLC’s significance, we need to understand the special status that seafarers have in law and how seafarers’ rights law developed.

Seafarers are the most regulated of all workers. Virtually every aspect of their shipboard being: their work, their sleep, their food, their recreation, their hiring, their dismissal, their health, their sickness, and even their death are regulated.

The laws regulating seafarers and protecting their rights are contained in the general maritime law and in statutes enacted by maritime nations. The statutes are often influenced by the general maritime law and by international conventions.

The general maritime law is customary international maritime law that developed out of commercial customs and practices that were followed in ancient times. The protections for seafarers were therefore also based upon commercial interests. In other words, protecting seafarers was in the best interests of promoting commerce. It is extremely important for us maritime ministers to understand this, because the attitudes about seafarers that led to developing seafarers’ rights continue to be relevant today.

Specifically, we should not view seafarers with pity or as objects of charity. They are highly skilled and dedicated professionals who deserve our respect and honor. They are capable professionals, but they are also very vulnerable to exploitation, abuse, and discrimination. Their highly mobile workplace takes them from country to country and beyond. Mariners are often far away from the land-based institutions that provide stability, predictability, and the protections

that land-based workers take for granted. They are strangers and friendless almost everywhere they go. They are usually foreigners in the ports they visit. They are often treated with suspicion and they often are not protected by local authorities.

It is because of their vulnerability as well as their importance to commerce that the general maritime law has for centuries provided seafarers extraordinary protections.

The first written maritime codes that appeared in the 11th to 13th centuries provided remarkable protections for ship's crews, even by current standards. These codes followed commercial practices that had developed in Mediterranean shipping in the pre-Christian era. For example, the ancient codes' provisions for seafarers' medical care are still better than modern land workers' medical care rights. The codes guaranteed that ship's crews would be repatriated to their home at the end of their voyage. The codes also required that ship's crews be provided decent lodging and sustenance (by the standards of the day). The medieval Barcelona Code, for example, required that seafarers be provided bread every evening, meat three times a week and wine twice a day.

Enlightened lawmakers did not enact these ancient seafarers' protections for charitable or human-rights reasons. Such concepts didn't exist in the middle ages. The protections for seafarers were developed out of the self-interest of maritime commercial enterprises. In simple terms, if you wanted your ship and its cargo to get to its destination, you needed to attract and retain skilled and reliable ships' crews.

But, what happened? Why doesn't the philosophy that produced the ancient maritime codes continue to influence protections for today's seafarers?

What happened was the 17th and 18th century European exploration and colonization that required a lot of sailing ships and a lot of seafarers. 17th and 18th century sailing ships needed many more seafarers than were willing to go to sea. Jails were emptied, drunks were shanghaied, and many other deceptive methods were used to "recruit" seafarers. The merchant ship crews in that era were tough, unruly and unwilling workers. Shipowners and ships' officers resorted to extremely oppressive measures to maintain control over their crews. The 17th and 18th century maritime commerce expansion coincided with the rise in national legislative statute-making. The maritime statutes that were passed at that time were legislated mostly by maritime nations whose national interests focused on expanding trade. Therefore, the statutes tended to protect shipping interests, one of which was controlling unruly seafarers involuntarily pressed into service on merchant sailing vessels.

The resulting horrible abuses inspired 19th century reformations, principally through trade unions and Christian church institutions. For example, my own institution, the Seamen's Church Institute of NY & NJ, began its efforts to improve seafarers' conditions in 1834.

Unlike the general maritime law protections that provided universal protections, the seafarers' rights that emerged from 19th century reforms were country specific. A patchwork of national statutes had largely replaced the general maritime law traditionally followed throughout the maritime world. The general maritime law did, however serve as a source for maritime nations'

statutes, and it is still recognized by most national courts on maritime law issues not covered by statute.

By the beginning of the 20th Century, workers unrest about labor conditions grew in industrialized countries, and trade unions gained increasing influence. Their demands for social justice and higher living standards for workers were heard at the end of the First World War, where the participants in the Paris Peace Conference recognized workers' significant contributions to the war efforts, both on the battlefield and in industry. In 1919, the Treaty of Versailles created the International Labor Organization. The principal reason for creating the ILO was humanitarian: international standards were needed to improve labor conditions. Political and economic reasons also inspired the creation of the ILO: without improvements in working conditions, social unrest was inevitable, but without international standards, countries initiating social reforms could be at a competitive disadvantage with those which did not.

The ILO was mandated to establish international labor standards in a variety of industries. From its very beginning in 1919, the ILO focused its attention on seafarers. From 1920 to 2005, ten International Labor Conferences adopted 68 distinctly maritime conventions and recommendations.

But, problems occurred. ILO conventions do not by themselves establish enforceable standards. They may serve as guides for collective bargaining agreements and national standards, but implementing ILO conventions requires nations to ratify the conventions – and to enforce them. Most of the dozens of ILO maritime labor conventions, including some of the key ones, never came into force, having failed to receive a sufficient number of ratifications. Those maritime Conventions that did come into force had spotty ratification that resulted in uneven enforcement and provided competitive advantages to shipowners from non-ratifying nations. Even the most current maritime labor conventions adopted by the International Labor Conference in 1996 had, by 2001, attracted very few ratifications.

In response to these and other problems with existing ILO maritime instruments, representatives from shipowners and trade unions came to a remarkable agreement at the January 2001 meeting of the Joint Maritime Commission.

At this point I need to explain a little about how the ILO works. The ILO is unique among United Nations specialized agencies in that it has a tripartite structure. Each national delegation at the ILO has representatives from the government, from employers, and from trade unions. The employers and trade unions are called “social partners”. Governments and the social partners all have voting rights at the ILO, and the social partners may vote differently from the government of their delegation. The tripartite structure of the ILO means that negotiations at the ILO are a cross between treaty negotiations and collective bargaining, presenting challenges not encountered at other UN agencies, such as the International Maritime Organization.

The January 2001 agreement between shipowners and trade unions, later known as the “Geneva Accord”, called upon the ILO to consolidate and update existing ILO Conventions and Recommendations into a new, single “framework Convention” on maritime labor standards. The Geneva Accord was unprecedented in the scope of the work it recommended, the extent of its

collaboration between the social partners on such a major initiative, and in its ambitions to make shipping safer and more humane by creating a “super convention” to serve as the “fourth pillar” of international law. It proposed to go beyond the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention from Ships (MARPOL) and the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW) by comprehensively addressing the human factors of life and work on commercial vessels.

The Geneva Accord began a monumental five-year undertaking involving eighty-eight different countries and several non-governmental organizations, including the International Christian Maritime Organization. It aimed to consolidate nearly all ILO maritime labor standards, and in the process to update the standards to the realities of modern shipping, to make the convention capable of being universally ratified and to make sure that the standards would be enforced.

To give you an idea of the scope of the undertaking, the participants had to agree to standard definitions from the different definitions contained in the various ILO Conventions. For example, just deciding the definition of “seafarer” proved a particularly difficult and time-consuming exercise.

Even though deliberations at the ILO involved widely different points of view on a number of issues, the motivation to adopt a modern, comprehensive, understandable, flexible, and most importantly, ratifiable Convention unified governments, trade unions, shipowners, and non-governmental organizations.

The shipowners wanted a Convention with universal and predictable rules to protect them from unfair competition from sub-standard shipowners. The shipowners at the ILO meetings represented the quality shipowning interests. They understood that taking good care of ship’s crews was good for business and that their substandard competitors caused them to face greater governmental regulations and increasingly expensive inspections and certifications. They therefore wanted rules applicable to all shipowners, including their substandard competitors.

The seafarers’ trade unions wanted a seafarers “Bill of Rights” that would detail not only their fundamental rights as workers, but also provide minimum international standards for living and working conditions, including such things as food, accommodations, medical care, repatriation, social security, and recruiting. They wanted the Convention to have universal coverage and they wanted it to be enforceable.

The Governments did not have the cohesive positions that the shipowners and trade unions maintained, as their perspectives represented the diversity of flag states, port states, labor supplying states, industrialized nations, and emerging economies. But as a whole, the Governments understood that they would have to pay for many of the programs, and they would have to interpret and enforce the Convention. The Governments therefore wanted the Convention to have clear requirements capable of being implemented and enforced.

The International Christian Maritime Organization’s standing delegation to the ILO participated in all of the ILO meetings throughout the five year project.

I would like to acknowledge contributions that two AOS members provided to the ICMA Standing Delegation and to thank them for their time, talents, and professional expertise that contributed so much to the project: Commodore Chris York from the AOS United Kingdom and Domingo Gonzales from AOS Spain.

The ILO's tripartite system presents challenges for nongovernmental organizations that are not part of the employers or trade unions groups. The ICMA's representation at the ILO meetings was mostly behind the scenes. ICMA prepared detailed position papers on the various issues in the draft Conventions, and ICMA delegates distributed the papers to and consulted with Governments, shipowners and trade unions. I was pleased that many of ICMA's proposals were introduced into the official ILO deliberations; some by Governments, some by trade unions and some by shipowners. In addition, ICMA provided recommendations to the ILO Secretariat that were considered in their preparing early drafts of the Convention. ICMA wanted the Convention to include the seafarers' welfare provisions contained in the Seafarers' Welfare Convention, to maintain the ILO-147 standards for port state control, catering and accommodations, and to prevent eroding established seafarers' rights, especially seafarers' rights to medical care and shore leave. We were especially concerned that existing seafarers' rights were threatened by efforts to bring seafarers' labor standards in line with inferior land-based workers' labor standards.

On February 23, 2006 the Tenth Maritime Session of the International Labor Conference, adopted the Maritime Labor Convention. There were no votes against the Convention. One hundred and six countries participated in the Conference, including over eleven hundred accredited participants. The MLC consolidates thirty-seven of the forty ILO maritime Conventions, as well as thirty ILO Recommendations. It is the first ILO convention to consolidate nearly an entire sector of older ILO conventions.

The MLC represents the most significant development in the long history of seafarers' rights law. In more than one hundred pages, it provides in one convention a comprehensive statement of seafarers' rights that reflect both seafarers' rights that have withstood the test of time, as well as modern shipping realities. The MLC includes standards for conditions of employment, hours of work and rest, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security protection for seafarers, regulating recruitment and placement services, and flag State inspection systems. For the first time in any ILO Convention, the MLC includes seafarers' rights to shore leave. The Convention provides seafarers with the right to make complaints both on board and ashore. The Convention is easy to understand, is capable of ratification (unlike most ILO maritime conventions that preceded it), and it is enforceable. The most important aspects of the Convention are its underlying principles of respecting and honoring merchant mariners.

But, returning to the title of my presentation is the MLC a sign of hope for the maritime world?

Yes, it is a sign of hope, but at this point in time, it is only a signal directing us to embolden our efforts to make it reality. Whether the MLC will ultimately fulfill its promise to seafarers and the maritime world depends upon whether it enters into force and how widespread is its

ratification. The MLC will enter into effect twelve months after it has been ratified by at least thirty countries representing thirty-three percent of the world's gross tonnage of merchant ships. So far only one nation has ratified the MLC: Liberia.

The MLC is truly an historical achievement. It represents the collective efforts of five years dedicated work by of work by governments, seafarers' trade unions, shipowners, and nongovernmental organizations from all parts of the globe. By comprehensively incorporating ancient seafarers' rights with modern advances and realities, it is the most significant achievement in the entire history of seafarers' rights law. But, the MLC is of little value if it is not put into use.

We must inform the public and our governments about the contributions that seafarers make to our economies and our everyday life. We also need to let them know that seafarers are highly skilled workers who need legal protections because of their vulnerability to abuse, exploitation and discrimination. And finally, we need to encourage all maritime nations to ratify the MLC now. Those nations whose economies depend so much on seafarers' labors must honor their work by ratifying the MLC – not as a matter of charity or pity, but in recognition of their contributions and in affirmation that protecting seafarers' rights is a necessary part of promoting maritime commerce.