

**INTERNATIONAL FOUNDATION FOR THE LAW OF THE SEA
MARITIME TALKS 2011**

ILO MARITIME LABOUR CONVENTION, 2006

George Politakis

Abstract

2011 marks the fifth anniversary of the adoption of the landmark Maritime Labour Convention, 2006 (MLC, 2006). It also marks the tenth anniversary of the “Geneva Accord”, the agreement between the shipowners’ and seafarers’ representatives to launch a major consolidation exercise of existing international maritime labour standards. After five years of international tripartite negotiations, the *fourth pillar* of the international regulatory regime of world’s shipping was born.

The MLC, 2006 is a remarkably innovative instrument – truly visionary and ground-breaking in terms of ILO standard-setting procedures and practices – combining the “best of the old with the new”. It combines the core principles and standards of 37 existing maritime labour Conventions with an innovative format aimed at achieving universal acceptance and a new approach to securing ongoing compliance and allowing for more rapid updating.

The MLC, 2006 is designed to be firm on rights and flexible in implementation. Flexibility is mainly epitomized in the use of the concept of *substantial equivalence* and the division of the details of implementation, the Code, into mandatory Standards and non-mandatory Guidelines. The MLC, 2006 introduces a robust compliance and enforcement system based on ship *certification* and the principle of *no more favourable treatment* which helps to secure a level playing field with respect to employment rights.

In the five years since the adoption of the MLC, 2006, the ILO has devoted, and continues to devote, resources at an unprecedented level for the promotion of the rapid and widespread ratification and effective implementation of the Convention, including awareness raising seminars and workshops, training programmes, adoption of guidelines for flag and port State inspections, an action plan, ratification campaigns and two tripartite preparatory meetings.

The entry into force requirements, or 30/33 formula (30 ratifications from countries representing 33 of world tonnage), are challenging but are reasonably expected to be met before the end of the year. The first 12 ratifications reflect large flag States, strategically important port States and labour supplying interests. Despite the major economic turmoil of the last three years, many governments and key players of the maritime industry maintain the momentum and move rapidly ahead.

Personal Information

George Politakis holds a law degree from the University of Athens (1985), a LL.M. from the London School of Economics and Political Science (1987) and a Ph.D. from Geneva's Graduate Institute of International Studies (1994). He is specialized in the law of the sea, UN law, and international law of armed conflict and use of force. He has written on naval operations, international humanitarian law and issues relating to maritime delimitation. He was Lecturer at the Law Faculty of the University of Geneva (1992-1996) before joining the Office of the Legal Adviser of the International Labour Office in 1996. Since 2000, he has been working as Senior Legal Specialist in the ILO's International Labour Standards Department and is currently Coordinator of the Wages, Working Time and Maritime team.

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Alastair Couper

Abstract

The main purpose of this contribution is to discuss selected aspects of Title 2 Conditions of Employment from the point of view of the seafarer. Before proceeding through the regulations an outline of the related structure and functions of Seafarers' Rights International will be given.

2.1 The first issue on Employment covers a variety of types of contracts. Reference is also made to the ways in which the content of contracts from labour supply country governments mutate passing through Manning Agencies and finally as Articles on arrival at ships. As a result there can be difficulties in seafarers identifying even who employs them when it comes to making claims.

2.2 Wages. These are related to contract contents. The requirement for informing seafarers on a monthly basis of earnings and allotments is welcome. This will partly solve the anxiety of remote seafarers about ship owners who have cash flow problems and fail to meet their financial commitments. Reference will be made to a case example., and also to apparent trends towards regional wage rates.

2.3 The importance of Work and Rest regulations are discussed in the context of fatigue from operational pressures with reference to a typical case and the move away from simple human error blame in enquiries.

2.4 Leave entitlements are similarly dealt with in terms of stress avoidance, and in particular the difficulties of shore leave with fast turn around. This refers also to the complications of ISPS and the need for proper identification papers for seafarers to meet national requirements.

2.5 Repatriation is one of the most significant items. A brief account of an extensive history of unpaid seafarers being unable to return home from voyages is given. Reference is made also to the current situation. The advance to mandatory financial security will be welcomed by seafarers. Under 2.6 compensation in the case of loss of ship is shown is fair compared with the past.

2.7 Manning levels are discussed as closely related to problems under Hours of Work and Rest, the crew requirements for special types of ships, new technology, detection of fraudulent certificates and safety are included.

2.8 The final section of the paper covering Careers brings together aspects of Conditions of Employment and related regulations in practice, with emphasis on a "stable and competent work force". The difficulties in this are considered from the point of view of the seafarer who is vulnerable to increased risks in employment; prosecution under different jurisdictions; blame for accidents and pollution; exposure to piracy, robbery, hostage risks and murder. There is also the anxiety of senior officers with increased responsibilities and diminished authority under law. The success or otherwise of the legal instruments in employment can be measured by levels of retention of well qualified and experienced seafarers into the future.

Personal Information

Born: Aberdeen, Scotland. Seagoing career to Master Mariner level. University qualifications MA, Ph.D, D.Sc. Academic career Research Scholar Australian National University in Pacific Studies; Lecturer University of Durham, UK in International Transport; Professor University of Cardiff and Head of Department of Maritime Studies (secondment 2 years World Maritime University). Director Seafarers International Research Centre Cardiff. Other positions include Editor, Journal of Maritime Policy and Management; Member Executive Board Law of the Sea Institute, Honolulu; Trustee National Maritime Museum Greenwich; UN Consultancies. Currently Member Advisory Board Seafarers' Rights International. Many publications including most recent books 'Voyages of Abuse' and 'Sailors and Traders'.

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ILO MARITIME LABOUR CONVENTION, 2006

Natalie Shaw

Title 3 of the Maritime Labour Convention 2006

Abstract

The presentation focuses on Title 3 of the MLC which covers 2 main areas: Accommodation and Recreational Facilities and Food and Catering. It will cover the regulations, standards and guidelines for both of these areas and how they interact with each other.

The presentation will explain these elements in more detail and how they have been determined from previous conventions.

Changes made since the predecessor conventions in relation to these areas will also be made.

Practical examples of what is mandatory and what is not are also given as well as examples of best practice.

An explanation will also be given with regard to the use of substantial equivalence and how different flag states laws may determine different outcomes by way of national implementing laws. This clearly will make uniform inspections by class societies difficult and this is proving a real challenge to those who are used to the IMO procedures in this regard.

The objective is to make shipowners who have ships registered with different flags aware of how these differences might have an impact on their businesses.

The presentation will also make reference to how these areas have been modified to take account of increased diversity by way of age, gender race and nationality of crew. These are areas which have needed to be looked at in this regard and were subject to considerable discussion at the time of developing the convention.

Reference is also made to which ships qualify for the requirements under the scope of the convention, recognising the difficulties of modifying existing ships.

Personal Information

Natalie is the Director of Employment Affairs for the International Shipping Federation and International Chamber of Shipping, which she joined in March 2003. Since this time she has been actively involved in the development of the Consolidation of the ILO instruments into "the MLC" and discussions on the ILO minimum wage, Crew Claims and Abandonment, the Revision of the STCW Convention, and the human element concerns related to Piracy to name but a few examples of the work carried out.

Prior to this role she worked for Ford Motor Company in a plethora of Human Resources Management roles.

Natalie is a Director for the Sailors Society an UK registered charity promoting Seafarer Welfare and is also involved with the International Committee for Seafarers' Welfare.

Natalie holds a Masters Degree in European Human Resource Management and is a Chartered Member of the Chartered Institute of Personnel and Development. She has been elected a Fellow of the Royal Society of Arts and is a member of the Institute of Directors.

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ILO MARITIME LABOUR CONVENTION, 2006

Margret Eismann

Title 5 – Compliance and Enforcement

Abstract

Regulation 5.1 deals with Flag State Responsibilities

- 5.1.1 General Principles
- 5.1.2 Authorization of recognized organizations
- 5.1.3 Maritime Labour Certificate and Declaration of Maritime Labour compliance
- 5.1.4 Inspection and enforcement
- 5.1.5 On-board complaint procedures
- 5.1.6 Marine casualties (inquiries into any serious casualties)
Will not be mentioned in the presentation as it is a very short regulation without any special provisions.

Emphasis in the presentation is on practical aspects during implementation, inspections and certification.

The sequence of issues in the presentation is following their practical occurrence.

There is no official date for implementation of the MLC in Germany.

A new Maritime Labour Act is being developed which will implement the MLC.

There are four Federal Ministries involved (Labour and Social Affairs; Transport, Building and Urban Affairs; Health; Justice).

The Ship Safety Division has trained its inspectors and is developing guidelines for shipping companies and classification societies.

The Ship Safety Division will be responsible for inspection and certification of maritime labour conditions.

Personal Information

Ship Safety Division (since 2008)

Nautical Flagstate Surveyor, Port State Control Officer

Professional qualifications: STCW II/2, AG – Master, ocean-going, any GT

4 years seetime as apprentice, cadet, A.B.

10 years seetime as 3rd, 2nd, 1st officer

3.5 years lecturer at Nautical College (Gruenendeich)

7 years teacher at Seamen's School (Travemuende)

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ILO MARITIME LABOUR CONVENTION, 2006

Neil Atkinson

Abstract

Title 5 – Port State Control

Article V of the Maritime Labour Convention, 2006 is concerned with Implementation and enforcement responsibilities and paragraphs 4 and 7 deal specifically with the port State control aspect. Paragraph 4 allows foreign ships to be inspected for compliance with the Convention and the no more favourable treatment clause is included in paragraph 7.

No more favourable treatment means that ships from non-ratifying states are to be treated in the same way as those from ratifying countries.

In addition the underpinning regulations (5.2 and 5.2.1) require that:

- Port State control inspections must be carried out by an authorised officer for compliance with the requirements of the Convention (including seafarers rights).
- The production of the Maritime Labour Certificate and associated declaration shall be taken as prima-facie evidence of compliance with the MLC,2006.

If the documents cannot be produced, are incorrectly maintained, or the working and living conditions do not conform to the requirements of the Convention the authorised officer has clear grounds to undertake a more detailed inspection. A more detailed inspection should cover some or all the items listed in A5-III.

However a more detailed inspection must be carried out when the the working and living conditions constitute a clear hazard to safety, health, security of seafarers' (including seafarers' rights).

Regulation 5.2.2 allows a seafarer, a professional body, an association, a trade union or anyone with an interest in the ship to make a complaint to an authorised officer who must take appropriate steps to safeguard the confidentiality of the entity making the complaint during the investigation.

If the complaint results in a more detailed inspection being undertaken then the scope of this inspection should be limited to areas relating to the complaint.

In all cases the authorised officer should endeavour to resolve the complaint at shipboard level and of course should allow the shipowner or master to express their views. Advice can also be sought from the ships' flag State.

If the complaint cannot be resolved then the flag State should be notified. If after this the complaint is still unresolved a copy of the inspection report should be sent to the ILO and the social partners in the port State informed.

Personal Information

Following an extensive seagoing career as an Engineer in the Merchant Navy Neil Atkinson came ashore and worked as a Superintendent Engineer for three years before joining the Marine Safety Agency as a Marine Surveyor in 1994. Since then Neil has been involved in all aspects of the MCA's work including flag State surveys and port state control inspections. In 2007 Neil moved to the HQ Inspection Branch and has been primarily engaged in implementing the Maritime Labour Convention, 2006 for the UK. He is also a member of the UK's MLC Tri-partite Working Group. In addition, Neil chaired the ILO's informal tripartite working group which drafted the Guidelines for Flag State Inspections which, together with the Guidelines for Port State Control Officers were adopted at the ILO Experts meeting held in Geneva in September 2008. Neil is an ILO official trainer for the ILO courses on training of trainers and Maritime Inspectors on the application of the ILO Maritime Labour Convention, 2006.