

## **Dominick Devlin – Maritime Labour Convention, 2006**

<http://www.ilo.org/global/standards/maritime-labour-convention/lang-en/index.htm>

### ***What is it ?***

International treaty. Convention of the International Labour Organization

Organisation internationale du Travail – When established?

Labour and social progress

Special characteristic of the ILO?

### ***Tripartism***

Governments, Employers/Shipowners & Workers/Seafarers

Internationally in ILO

Nationally (e.g. Art. II-3)

Since 1920 – adoption of maritime labour Conventions

2000 – review of ILO Conventions and Recommendations.

See Article X – Content – Still valid but ...

- Uneven ratification e.g. No. 22, 60 ---- No. 178, 25
- Poorly enforced
- Difficult to update to changing conditions and technology

2001 – Shipowners and Seafarers propose new Convention

based on Firm enforcement of Seafarers' rights

But flexible on details

and A level playing-field for Shipowners

Then 5 years of tripartism at its best.

2006 – Unanimous Convention to consolidate with firmness and flexibility

Totally new approach for ILO Conventions and Recommendations

Aiming at universal ratification – SOLAS, STCW, MARPOL

Now: 52 ratifications (Morocco, Lebanon), 20 European, 80% world tonnage

## Who is protected by the MLC, 2006?

### II.1(f) seafarer

“means any person who is employed or engaged or works in any capacity on board a **ship** to which this Convention applies;” hotel staff, chaplains

*gens de mer ou marin*

désigne les personnes employées ou engagées ou travaillant à quelque titre que ce soit à bord d'un **navire** auquel la présente convention s'applique

#### (i) ship

means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters (??) or areas where port regulations apply

*navire*

désigne tout bâtiment ne naviguant pas exclusivement dans les eaux intérieures ou dans des eaux situées à l'intérieur ou au proche voisinage d'eaux abritées (??) ou de zones où s'applique une réglementation portuaire

II.4 ...this Convention applies to all ships,

... ordinarily engaged in commercial activities,

other than ... fishing and ...traditional ... dhows and junks.

la présente convention s'applique à tous les navires

... normalement affectés à des activités commerciales,

à l'exception des navires affectés à la pêche ... de construction traditionnelle tels que les boutres et les jonques.

## MLC, 2006 applies to all ships (what about gross tonnage??)

### II.1(j) shipowner (“Company” – ISM Code)

means the owner of the ship **or** another organization or person, such as ...

*armateur*

désigne le propriétaire du navire **ou** toute autre entité ou personne, telle que ...

II.3. In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Convention, the question shall be determined by the competent authority in each Member after consultation with the shipowners' and seafarers' organizations concerned with this question

3. Si, aux fins de la présente convention, l'appartenance d'une catégorie de personnes aux gens de mer soulève un doute, la question est tranchée par l'autorité compétente de chacun des Membres après consultation des organisations d'armateurs et de gens de mer intéressées

## Resolution VII concerning information on occupational groups

## Résolution concernant l'information sur les groupes professionnels

## ***Why does the MLC, 2006 need flexibility?***

because > it has to be **ratified**

> it has to be ratified **in full**

> and **without any reservation**

Are **exemptions** possible?

Only if expressly permitted by the MLC, 2006

- Title 3, Accommodation – consultation
- Art. II, para. 6. - domestic fleet, consultation
- Special case of Social Security Reg. 4.5

Main form of flexibility: **National implementation**

States must fully comply with MLC, 2006 requirements

“as implemented in national laws and regulations” (R 5.1.4-1)

“telles qu’elles sont mises en oeuvre par la législation nationale”

or in e.g. collective bargaining agreements (Art. IV.5)

## **Flexibility in details covered by the Code:**

“Code”=Standards + Guidelines

(Normes et principes directeurs)

Standards “shall” **MUST** be included in national requirements

(exception – substantial equivalents – Art. VI.3 & 4)

Guidelines “should” be included – not mandatory **but...**

Guidelines “shall” **MUST** be given “due consideration” (Art. VI.2)

être dûment envisagés

Many previous “shall” provisions have become “should”.

One of many Tripartite compromises:

Firmness in respecting rights

Flexibility on details

## Dominick Devlin – MLC inspection guidelines

Wonderful Convention: but will it work?

Answer: only if properly **enforced : MLC Title 5**

enforcement needs good **Inspectors**

(primary)

> Flag State inspectors MLC 5.1

> Port State Control MLC 5.2

Enforcement depends on national measures and ILO supervision

Committee of Experts reviewing

e.g. “due consideration” or “sheltered waters”

2008 ILO tripartite experts have adopted “Guidelines”

Not legally binding but make good sense

## ***Guidelines for flag State inspectors***

Chapter 1 – General – Key concepts of the MLC, 2006

Obligations on ratification: 1. Legal implementation

2. Onboard inspection

Chapter 2.1 addressed to **national administrations**

§ 28 Overview of main tasks of Flag States

§ 45 List of responsibilities

§§ 47-55 Certification system documents

Maritime labour certificate

Declaration of maritime labour compliance (DMLC)

déclaration de conformité du travail maritime

§§ 57-60 If country has few inspectors?? – RO

§§ 63-66 What to do with a **complaint** by a seafarer

§67 Important: All “ships” subject to **inspection**

=>500 GT, international voyages, are **certified**

Chapter 2.2 addressed to **national inspectors** (& ROs)

How they must prepare for and carry out inspections.

**Chapter 3 : Guidance on how to inspect for each requirement**

**what to inspect**

**how to recognize deficiencies**

**Chapter 4 : What to do when a deficiency is found**

## ***Guidelines for Port State Control Officers (PSCOs)***

Extra support for ships with flags of ratifying States

Same standard for foreign ships even if flag not ratified

“no more favourable treatment principle” (MLC Art. V.7)

“pas de traitement plus favorable”

Chapter 1 – General – Key concepts of the MLC, 2006

Chapter 2 – Responsibilities of port administration

Selection of competent “authorized officers” (not ROs)

Chapter 3 – Duties of PSCOs – their responsibilities:

Emphasis on careful review of Certificate and DMLC

Not port State requirements, but flag State (DMLC, Part I)

But what if flag State requirements are inadequate?

See §§69 & 70

Decision on more detailed inspection

**§§56-76** The various steps in PSC under the MLC

**§§77-83** What to do if PSCO receives a **complaint**

## ***Chapter 4 Guidance on how to inspect (Chapter 3 of Flag Guide)***

**§88** Interesting clarification on national requirements

## **Chapter 5 What to do if deficiency? When to detain?**

Not easy: Unduly detain or allow unacceptable conditions to go on.

Chapter 6 Onshore complaints by seafarers

International Guidelines; but national Guidelines encouraged

see MLC Guideline B5.2.1, - 1; Paris/Tokyo MOU Guidelines