

MLC 2006 - One Year Later

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One year on having presented to you the slide show on the MLC, I come back to review this convention, what are the advantages and the inconveniences met within shipping Companies, ships, Masters on board, and one point on the controls made by member States and deficiencies observed on ships during PSC.

One concern is to respect and protect the various flags of ships having had deficiencies or following blocked ships has a control by the state of the port, I will not name in my presentation the Shipping companies, inspected ships or incriminated flags.

Introduction:

Since 1919, the International Labour Organization (ILO) has maintained and developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity. In today's globalized economy, international labour standards are an essential component in the international framework for ensuring that the growth of the global economy provides benefits to all.

Today, the ILO has developed a comprehensive Decent Work Agenda which takes up many of the same challenges that the organization faced at its inception. The Decent Work Agenda aims to achieve decent work for all by promoting social dialogue, social protection and employment creation, as well as respect for international labour standards. The standards have grown into a comprehensive system of instruments on work and social policy, backed by a supervisory system designed to address all sorts of problems in their application at the national level.

This general agreement expresses in one document the sea law of nations in decent working conditions as for almost all of the aspects of their conditions of work and life:

- Minimum age
- Contract of maritime commitment, conditions of employment
- Duration of the work or the rest
- The payment of salaries, the paid annual leave, the repatriation at the end of contract of commitment
- Medical care on board
- Departments of recruitment and investment placement deprived under license
- Accommodation, recreational facilities, food and catering
- Protection of the health and the safety, accident prevention, welfare and social security protection, procedures of treatment of the complaints of the seafarers.

On Year after implementation of MLC 2006:

The MLC 2006 was adopted in Geneva in 2006 and entered into force on 20 August 2013.

Commercial vessels of 500 GT and above, which trade internationally are required to carry a certificate as imposed by the convention. These vessels have to carry specific documents such as the Maritime Labour Certificate (MLC) and a declaration of Maritime Labour Compliance (DMLC) to show that the ships are in compliance with the requirement of the Convention.

The consequences of non-compliance with MLC 2006 are evident from the number of inspections and detentions being recorded which have been performed by Port State Control (PSC) regarding deficiencies related to MLC 2006.

About 160 ships have been detained so far for MLC deficiencies worldwide (113 in Paris MoU area, 26 in Tokyo MoU area). To be noted that a reluctance to cooperate with PSC authority (i.e. not signing the PSC report) may lead to detention.

PSC, Inspections, Analyses of the deficiencies and detentions.

According to the MLC regulation 5.2.1 item 4:

Inspections that may be carried out in accordance with this Regulation shall be based on an effective port State inspection and monitoring system...

The majority of the PSCs worldwide are part of regional PSC MoUs which have established monitoring systems through specific procedures and data bases with the results of inspections per vessel. This measure increases the ability of the PSC to monitor vessels since information on vessels inspections are available to PSCOs and can be used as guidance on what to expect onboard the vessel.

When the PSCO identifies deficiencies related to the MLC he must at first resolve the issue by bringing it to the attention of the vessel, giving specific guidelines and time lines for its rectification. Furthermore the PSCO may notify the vessel's flag state and inform the next port of call regarding the issued deficiency. In this way the efficiency and the effectiveness of the PSC enforcement is increased due to the fact that the status of a non conformity is known to authorities other than the PSC authority issuing the non conformity and therefore more stakeholders are involved in the matter (on the basis that someone involved in the procedure is willing to actually resolve a deficiency and not let it pass by).

Conformity in the MLC:

We speak about continuous conformity in the MLC: I think that the application of the MLC must be learnt to achieve a good application of the ISM, the purpose being to assure this famous continuous conformity which can be obtained only with the tools which the maritime world knows, that is quality procedures that are within the company. The MLC certifies only the ship while in fact a very big part of its application results from the company. Contrary to the ISM, we certify only ships.

The Seafarer's Engagement Agreement:

As per Standard A 2.1 :

Each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements:

- Seafarers working on ships that fly its flag shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this Convention;
- Seafarers signing a seafarers' employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities;

- The shipowner and seafarer concerned shall each have received original of the seafarers' employment agreement;
- Measures shall be taken to ensure that clear information as to the conditions of their employment can be easily obtained on board by seafarers, including the ship's master, and that such information, including a copy of the seafarers' employment agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited, and seafarers shall be given a document containing a record of their employment on board the ship.

Where a collective bargaining agreement forms all or part of a seafarers' employment agreement, a copy of that agreement shall be available on board. Where the language of the seafarers' employment agreement and any applicable collective bargaining agreement is not in English, the following shall also be available in English (except for ships engaged only in domestic voyages):

A copy of a standard form of the agreement and the portions of the collective bargaining agreement (This is the document which details all the terms and conditions of the crew employed on the ship.) It specifies entitlements such as pay (in the form of a wage scale), working hours, etc. that are subject to a port State inspection under Regulation 5.2.

In practice:

It is difficult for the Master to make sure of the conformity of the Seafarers Employment Agreement (SEA) with the MLC. It is already complicated enough for an inspector! The work must be carried out by the company. The Master has to make sure, in particular, that the seafarer signed, that a representative of the company signed and that the SEA is available for inspection. On the other hand, the Master has to make sure, in my opinion, that the seafarer possesses their certificates. One way of arguing, besides the obligations of commanding from agreements, is a small analysis of the risks by knowing better the work of the flag inspector and of the PSCO. The dismissal towards both guidelines of the ILO on the work of the inspectors and the PSCO could be interesting, in particular for their chapter 4 which is practice!

The Australian Maritime Safety Authority detains any ship having on board a seafarer with more than 12 months service on board! Annual leave must be taken!

Deficiencies found during PSC :

- Chief Officer SEA expired and no evidence of agreed extension.
- Manning agents, license expired in July 2014; no record for renewal is available
- SEA missing, not in accordance with national requirements, Company Bargaining Agreement (CBA).
- Seafarers Employment Agreement not signed between seafarer and shipowner
- Seafarers Employment Agreement not available in English language
- Certified Agreement stated that the company will pay a fixed amount in US dollars for each seafarer under the agreement to the Provident Fund, but there is no evidence on board of this payment being made.
- 1 x Able seaman onboard vessel since 03 Feb 2013, this exceeds maximum 12 month period allowed by Philippine Overseas Employment Administration (POEA).
- Seaman's employment contracts for Deck cadet, Engine Cadet and Third Engineer expired (more than 2 months back for cadets).
- Seafarers Employment Agreement (SEA): wrong vessel indicated / Duties uncorrected.
- Seafarers were not given opportunity to examine and seek advice on their SEA before signing (as per seafarers' declarations)

- No signed original Seafarer Employment Agreement held by seafarers.

Rest Hours:

Information from Port State Control:

Seafarers repeatedly working beyond maximum hours of work/rest (Standard A2.3, paragraph 5a & 5b). The PSCO can efficiently find such deficiencies if he checks thoroughly the rest/work hours records and shipboard working arrangements documents. It must also be mentioned that the subject of excess hours of work has been brought to the courts in cases where the seafarer claimed that his health has deteriorated due to excessive hours of work onboard.

Perhaps one of the most easily identifiable deficiencies related to MLC requirements that a PSCO can make on an inspection is one regarding hours of work/rest. Onboard a vessel in order to properly record the hours of work/rest two documents are being used:

1. A table of working arrangements or work schedule. This document is being used in order to know onboard the vessel where a seafarer has duty and during what hours of the day.
2. Up to date records of work or rest, for each seafarer serving on the ship. This document records how many hours a seafarer worked each day of the month.

Both records contain information on where a seafarer had duty and how many hours he worked. Both documents (especially document work/rest hours record) may be used in order to calculate payable overtime hours of seafarers.

Of course reliance on a simple checking of records of hours of work and rest is not an adequate method of inspection because, as with seafarers' certificates of competency, such records may be falsified. Thanks to shipping lines, the software for the calculation of hours are locked today and it is practically impossible to falsify them.

But if the PSCO is given time to cross check the documentation, it may be easy to identify a deficiency by simply checking the information contained in the shipboard working arrangements document against the information contained in the hours of work/rest document. Furthermore the PSCO needs to look at the working hours of all the seafarers onboard.

From Ship's:

At the level of the inspections, whom they are vetting, PSC, or the same visit to the company within the framework of the ISM, the MLC often seems to focus on the hours of rest.

The pressure on board is strong so that everybody is in the green and if this is not the case, the department heads quickly become bad managers in the eyes of the company and thus, if it repeats in spite of all their willingness we go straight to professional misconduct for mismanagement. "When a ship is detained there needs to be persons in charge".

The management of these extra hours can bring us sometimes even to absurd situations. The example in a Company where a Master blackmailed the promotion class to the Officers and the crewmembers which, due to their work, found themselves in the red level of these hours. Then, therefore, everybody lied and did not record in a just way the hours, while they were all more or less in the red. These attitudes are not correct.

Unfortunately, the company seeing that everybody was in the green eventually removed the staff.

For them "rest hours", it is about a complex problem which could be avoided in the major part of cases if the control of the detached flag or the company was effective as many other items of inspections. The Port State Control inspections does not have to substitute for the administration of the detached flag which has to control, nor the Shipowner which has to make sure of compliance with the MLC, in particular via the ISM. All ships by the programming of exercises and other activities, achieve a management respecting the time of work and rest.

Some Ship owners really took advantage of the implementation of the MLC to adopt a proactive management associating the efforts of the company and the limitations and they succeed in improving their results in this matter. Other margins of improvement remain of course the staff which must not be confused with that defined by the minimum safe manning and the consideration of this problem by the ground personal (harbour company, terminals, agencies, technical department). When a ship is waiting at anchor, the pilot is cancelled on 3 occasions, it's difficult to manage upstream the rest periods for the crew.

What seems to me so absurd is the way flag states determine the minimum safe manning. For example, how can France sign a minimum safe manning certificate for 15 or 17 crew for a product tanker and at the same time detain a product tanker under a foreign flag, crewed by 20 people, for reasons of violating hours of rest. A certain coherence is needed all the same!

We see states signing manning with a minimum of 15 for a VLCC, while everybody agrees that they need at least 23 or 24 persons on board to operate these ships in complete safety.

For the moment we make the best of what we can to give rest periods for the crew before the stopovers, then we arrange the hours when they pass in the red. On a VLCC it is rare, but sometimes the company will send additional staff to help the crew to stay really in accordance with the MLC, during long stopovers or planned successions in function. If the sailor is flexible at the level of these working hours, he becomes also flexible on the way of recording them.

Deficiencies found during PSC:

Records of daily hours of rest - not reflected actual rest hours, as evidenced by so many officers and 30 crew recorded rest during vessel monthly drill in nearly five months.

Records related to hours of rest not completed correctly (on call engineers).

Hours of work for May & June 2014 for non-watch keeping personnel are in excess of that allowed by the MLC 2006.

Officers and watchkeepers recording minor systematic violations of work/rest hours during port operations in Australia, 5 ports visited in 8 days.

Bridge watchkeepers regularly do not have a 6 hours unbroken rest in 24 hour period.

Records of work and rest hours do not reflect detailed hours of work.

The payment of salaries, paid annual leave, and repatriation at the end of contract of commitment:

Deficiencies found during PSC:

- In Canada, one ship was detained, and in Denmark another one was held. Both were stopped over lack of employment contracts. In the case of the first one, crew complaints included unpaid wages, a 'collective bargaining agreement' that lacked the vessel name, a date or a wage scale.
- 2/O, 2/E, 1A/B and 1 OIL onboard in excess 11 months without annual leave as per MLC standard A2.4.
- Crew members having been forced to sign blank contracts.
- Crew wages not paid monthly in accordance with MLC 2.2 and DMLC II 14(b). (February 2014 pay not paid as at 12/03/2014, January onboard allotment not paid until 12/03/2014)
- Monthly wages, including war risk allowance for several crew not pay in full in accordance with seafarer employment agreement.
- Seafarers claim agency asked payment from seafarers in order to have employment plus keep part of allotments.

Medical care on board:

Requirements to protect the health of seafarers and ensure their prompt access to medical care on board a vessel and ashore:

- Medical and essential dental care onboard and ashore:
 - o the right to visit medical services ashore at no cost.
 - o shipowners' liability/provision of financial security
- Medical treatment on board by appropriately trained personnel
- Carriage of medical equipment and medicines
- Workplace health and safety protection and accident prevention
- Access to shore based welfare facilities
- Social security protection.

Deficiencies found during PSC:

Crew member who had twice been refused access to a doctor.

Deficiencies marked (MLC) are clearly hazardous to seafarer's health in accommodation space including galley and sanitary facilities.

Medical examination certificates on board not as per MLC 2006/STCW requirements-missing information. Each seafarer to be in possession of original medical fitness document M1-105M as per note of document and DMLC part II.

Responsible crew on board not aware of medical oxygen and operating instructions not found.

Hospital washbasin - water coming out brown and only in small quantities, the same whether choosing hot or cold.

Accommodation, recreational facilities, food and catering:

Living conditions on board a vessel:

- Accommodation standards, including room sizes and their fixtures.
- Heating, cooling, lighting, ventilation and noise levels .

- Sanitary and laundry facilities.
- Requirements for mess rooms and recreation rooms
- Requirements for hospital accommodation
- Food and catering.

Accommodation standards on existing ships will continue with ILO 92/133. For new builds single cabins will be the standard to apply.

Deficiencies found during PSC

Insufficient recreational facilities provided on board. Television in crew and officers' recreation room unable to receive local television signal. No DVD movies, magazines, books etc. supplied.

Mess room unclean and infested with insects.

No vegetables or fruit (Neither fresh nor frozen) on board for intended voyage.

Dry store provisions including rice and flour infested with insects

Water, pipes, and tanks: Hot water is not available to the crew common toilets and galley

Pest control poison stored closed to food.

Freezer and cold room temperatures inadequate for intended food storage (meat partially frozen and butter melted)

Cold room, cold room cleanliness, and cold room temperature: Freezer and cold room temperatures inadequate for intended food storage (meat partially frozen and butter melted)

No recreational facilities provided for officer's recreation room. Crew recreation room TV unable to receive local TV signal.

No complaint procedure evident as per MLC A.5.1.5.3; master and crew unaware.

Crew cabins do not have hot running water as evident by random checks.

Crew Shower - unclean.

Sanitary facilities : Toilets in various cabins defective.

Hand basins not supplied with hot and cold water in sanitary cabins.

Insufficient fresh water on board to supply sanitary facilities for the duration of the intended voyage.

Qualification of cook missing.

Health and safety, accident prevention, welfare and social security protection, procedures for treatment of crew complaints.

Deficiencies found during PSC :

No complaint procedure evident as per MLC A.5.1.5.3; master and crew unaware.

Hospital toilet, floor, WC and sink dirty.

Crew with no money, no shampoo, toothpaste or other items.

Complaint procedure: missing, not in accordance with national requirements

Conclusions :

An important question which we could put:

Why are there so many deficiencies on certain subjects of the MLC on 2006, while ships were certified, were the subject of strict control and received the DMLC. Leads us to believe that the inspectors of the flag state did not complete their work very well?

We show the areas where MLC is more focused.

Port state control under the Maritime Labour Convention 2006 pointed out how the detentions prove the new convention's potential.

Following the intervention of PSC and the International Transport Workers' Federation (ITF), some vessels are now MLC compliant.

The Ten Most Frequently MLC 2006 Deficiencies Observed :

1. Name & Address of "Shipowner" included on Maritime Labour Certificate and also on the Declaration of Maritime Labour Compliance-Part II (DMLC-Part II) are not according to the correct definition of "Shipowner" established by Article II 1. of MLC, 2006. Refer to Definition of Shipowner for MLC, 2006 & Definition of Company for ISM-Code.
2. Medical Certificates issued by medical personnel not recognized by the Panama Maritime Authority (Standard A1.2.4 and MMC-261)
3. SRPS (Seafarer recruitment and placement service) without License or Certificate to operate (Standard A1.4.2; A1.4.3)
4. Seafarers Employment Agreement not signed between seafarer and shipowner (Standard A2.1.1)
5. Manning agreement between the shipowner and the representative of the shipowner (where the SEA is signed by a representative of the shipowner) not available on-board (Standard A2 1.1)
6. Seafarers Employment Agreement not available in English language (Standard A2.1.2)
7. Records of daily hours of rest for use on board the ship not properly completed (Standard A2.3.12)
8. Documented evidence of shipowners' financial security to assure compensation in case of seafarer's death or long-term disability due to an occupational injury, illness or hazard not found on-board (Standard A4.2.1)
9. Documented evidence of shipowners' financial security for repatriation of seafarers not found on-board (Regulation 2.5.2)
10. Complaint procedures not found on-board and personnel not familiarized with these procedures (Standard A5.1.5.2 and Guideline B5.1.5.1)

The most important areas where detainable deficiencies are found during port state controls. Detainable deficiencies were most frequently recorded in the areas "payment of wages", "manning levels for the ship", "qualifications of seafarers", "seafarers' employment agreements", "hours of work or rest". Other important areas with high deficiency levels are "health and safety and accident prevention", "food and catering" and "accommodation".

One year later, we thus notice that the MLC 2006 is firmly in place, with the improvement of the living conditions of the seafarers, their safety and security, their health, the possibility of expressing himself, of having finally decent salaries, the hope to see disappearing from seas of the globe, ships where the seafarers are exploited, unworthy of our time.