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NEWSLETTER

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-The Maritime Labour Convention
-Salvage law under reform

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THE MARITIME LABOUR CONVENTION 2006

Seafarers play a significant role in the world economy as about 80% of the world trade is transported by ships. Working as a Seafarer, irrespective of rank, has always been one of the most distressing professions. The unique employment circumstances, the temporary nature of the occupation and the inherent difficulties of working at Sea often make Seamen more susceptible to unfair treatment or suboptimal working conditions than their land-based colleagues. The greatest problem for Seamen is that their rights are often difficultly traced or identified due to the inevitable mobility of the vessel and due to the various links (flag, ownership, management, etc.) governing their occupation. Although during the last decades the working environment for most Seamen in the Mercantile Marine has been considerably improved, substandard conditions still exist, especially as regards to safety, health care, sanitation, union rights, living conditions, etc.

Since the foundation of the International Labour Organization ("ILO") in 1919 the ILO has adopted nearly 70 Conventions or other Recommendations concerning maritime international labour standards. This has created a legal framework which, inevitably, was (and still is) very complex and fragmented. As a result, one of the greatest challenges for the ILO was to amalgamate a single, coherent instrument embodying, as far as possible, all up to date standards of existing international Maritime Labour Conventions.

THE MLC REGULATIONS/APPLICATION

After years of discussions, the ILO adopted in February 2006 in Geneva a new Convention cited as the Maritime Labour Convention, 2006 ("the MLC"), which many

characterize as a new “bill of rights” for Seafarers. The MLC sets out Seafarers’ rights to decent working conditions and aims to establish conditions for fair competition for ship owners. It was designed as a global legal instrument and because of its significance, despite all criticism, is often called the “Super Convention” or “the fourth pillar” of the regulatory regime for quality shipping alongside SOLAS, MARPOL and STCW (Convention on Standards of Training, Certification and Watch-keeping, 1978).

The MLC contains a comprehensive set of global standards modernizing, consolidating and complementing all previous Maritime Labour Conventions and establishes international requirements for the seafarers’ work including minimum terms in Seafarers’ Contracts of Employment, conditions of employment, minimum age, medical fitness requirements, training, wages, repatriation, leave, on board accommodation and victualling, recreational facilities, medical care, pre-employment medical examinations, occupational safety, health, welfare, social security, etc. which are aimed to improve labour conditions on seafarers around the world by establishing standard rights for all seafarers.

Most importantly, which is of course of great interest for the Shipping Community in general, the MLC may be establishing for the first time a strong compliance and enforcement mechanism based on flag State inspection and certification of the seafarers’ working and living conditions as per the requirements set by the MLC. In that context, ships of 500 GT or over engaged in international voyages or voyages between foreign ports, will be required to be certified by the Flag State and to obtain a Maritime Labour Certificate as well as a Declaration of Maritime Labour Compliance which will be subject to constant Flag State and Port State inspections.

The MLC applies to all ships engaged in commercial activities except ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply, to ships engaged in fishing, ships of traditional build (dhows, junks, etc.), warships and naval auxiliaries.

The main focus of criticism for MLC is that the Convention has key omissions (e.g. regarding the availability of visas for short leave in countries such as the USA and Australia, abandoned seafarers, the protection of Seamen’s right to strike, etc.), loopholes and potential lack of enforcement.

RATIFICATION/COMING INTO FORCE OF THE MLC

An issue that was raised since the adoption of the MLC was whether it will ever come into force. According to Article VIII (4) of the MLC, the Convention will enter into force 12 months after the date on which there have been ratifications by at least 30 Members of the ILO with a total share in the world gross tonnage of ships of 33%. Thereafter, the Convention shall come into force for any Member, 12 months after the date on which its ratification has been registered. To this date (January 2011) one of the two criteria has already been met and the MLC has been ratified by 11 States, including the world's 4 largest flag States (Panama, Liberia, Marshall Islands, Bahamas, Norway, Bosnia-Herzegovina, Croatia, Spain, Bulgaria, Canada -St. Vincent and the Grenadines being the latest as on 26-1-2011) representing nearly 45% of the world fleet by gross tonnage. As regards, to Greece and the EU, the ratification made by Spain in February 2010 may be of major significance because Spain who held the EU Presidency until June 2010, was the first EU member to ratify the MLC while its ratification implemented an EU Council Decision of 2007 authorizing member states, in the interest of the European Community, to ratify the MLC, and inviting them to ratify it before 31 December 2010. Italy may be the next ratifying country.

As per ILO officials and maritime experts, the second criterion (referring to the ratification by 30 states) may be met within 2011 which shall cause the coming into force within 2012.

ADVANTAGES OF THE SHIPS OF RATIFYING COUNTRIES

As the MLC compliance certification provided by the flag state will be a prima facie evidence of conformity with the MLC requirements in case of Port State inspections, all ships of the ratifying countries are expected to have an advantage against unfair competition from substandard ships through the certification system, avoiding or reducing the likelihood of lengthy delays related to inspections in foreign ports. According to maritime officials from ratifying countries, the MLC 2006 will help the quality shipowners who have chosen to fly the flag of their country to invest in their own country's shipping industry as these shipowners "need a level-playing field against unfair competition of substandard companies".

CONCLUSION

The MLC will be a landmark in the international regulatory framework on seafarers while its coming into force is not so distant, as was originally thought but *ante portas*. Under the circumstances, all members of the Maritime Community, Ship owners, Manning Agents, Port Authorities, Seamen's Unions, Ship Yards, etc. will have to prepare for the MLC and adjust to its requirements.

Taking into consideration the compliance and enforcement regime of the MLC, which, as already mentioned, provides for inspections from the Flag and/or the Port States, it is suggested to Ship owners to act proactively and take action e.g. by reviewing, redrafting or amending, if needed, the existing Seafarers' Contracts of Employment and Manning Agreements especially those for Foreign crew (an English version of the standard form of the Contract of Employment and the Collective Bargaining Agreement has to be available on board), reviewing contracts for new buildings with ship yards in order to adjust with the provisions of the MLC as regards to accommodation facilities for the crew, preparing for an infra-structure of medical services as regards to Seamen's pre-employment medicals, etc. and be ready, whenever the MLC comes into force, to obtain flag state certification and avoid any implications arising from non-compliance.

THE 1989 SALVAGE CONVENTION UNDER REFORM ?

INTRODUCTION

In December 2008 the International Salvage Union (ISU) wrote to the Committee Maritime International (CMI) pointing out that the 1989 Salvage Convention was nearly 20 years old and it was over 30 years since work had first began on its drafting. It suggested that there was a need for review of certain aspects of the Convention and invited CMI to undertake such a review. Prior to the CMI the ISU had approached in 2006 the Lloyd's Salvage Group which held 3 meetings with no agreement having been reached.

The CMI set up an International Working Group (IWG) in 2009 and a questionnaire was sent to the National Maritime Law Associations (NMLAs) in July 2009. The matter was further discussed at the CMI Colloquium in Buenos Aires in October 2010 and the IWG will continue its work until a decision is reached, probably at the Beijing Conference to be held in October 2012.

THE REQUESTED REFORM

The ISU proposes a series of amendments aiming at the enhancement of the Salvors' earnings, the most important being :

- The abolishment of quantitative and geographic restrictions regarding the definition of "*damage to the environment"* contained in article 1(d). Under the ISU proposal, any damage to the environment, wherever it may occur should satisfy the definition of "*damage to the environment*".

- The provision in par. 2 of article 13 of the possibility of the Salvor to claim against the ship the part of the savage remuneration corresponding to cargo, in case of container vessels (this proposal aims at relieving the Salvors from the obligation of claiming the cargo salvage remuneration possibly against thousands of separate cargo interests).

- The imposition in article 14 of a special "*environmental award"* that will be payable by the ship interests whenever the Salvor carries out salvage operations to a vessel which by itself, or its bunkers or cargo, threatened damage to the environment. The mere threat of damage would be sufficient for the environmental award to become payable. The criteria for the calculation of this environmental award will be similar to the existing criteria provided in article13 for property salvage and it will be capped to the limits provided in the 1992 CLC Convention, the 1996 HNS Convention, the 2001 Bunkers Convention or the 1996 LLMC Protocol, whichever may be appropriate in the circumstances. This award is to be secured by a maritime lien against the vessel.

- The amendment of article 16 in order for life salvage claims to be made directly against the owners of the property salved rather than against the property Salvor (as is the case now).

- The immediate publication of salvage arbitration awards, without obtaining permission of the parties, unless they object.

ANSWERS TO THE QUESTIONNAIRE

Up until the Buenos Aires CMI Colloquium (October 2010) 14 NMLAs had provided their replies on the questions raised by the CMI with regard to the ISU proposals. Most NMLAs appear to have mixed feelings for the various proposals. Negative to all proposals was Japan whilst positive (or at least open for discussion) to all proposals was Greece. Particularly with regard to the proposed imposition of an environmental award, positive were Argentina, China, Germany, Greece and Malta.

PRESENTATIONS AT THE OCTOBER 2010 BUENOS AIRES COLLOQUIUM

In favour of the ISU proposals (in particular the suggested environmental award) spoke the ISU President Mr Tod Bush and the ISU legal advisor Mr Archie Bishop. They ground the ISU proposals on the following reasons :

- The lapse of 30 years since the adoption of the text that became the 1989 Salvage Convention (the text was finalized at the 1981 CMI Montreal Conference).
- Declining workload in the salvage sector that necessitates more funding for the Salvage Industry if it is to survive.
- The increase of environmental issues and concerns that affect the provision of salvage services by increasing criminal and civil liability.
- The abandonment by the industry of article 14 of the 1989 Convention and the use instead of the SCOPIC clauses in the London Open Forms concluded for the provision of salvage services.
- Lack of appropriate remuneration for the environmental protection offered by Salvors and necessity for contribution to this remuneration by the ship's liability insurers (P&I Clubs), rather than by the property insurers (Hull and Machinery underwriters).

Against the ISU proposals spoke Mrs Kiran Khosla (Director of Legal Affairs of the International Chamber of Shipping and of the International Shipping Federation) and Mr Hugh Hurst on behalf of the International Group of P&I Clubs. Their main arguments are as follows :

- The 1989 Salvage Convention works very well, assisted by the SCOPIC clause, in a balanced way for both Salvor and shipowners.
- While pure salvage services may generate less income due to the improved safety on board ships, there is at the same time an uplift in related, work such as wreck removal, towage and heavy lift work which salvage companies engage in.
- The increase in criminal and civil liability applies to all parties involved in shipping and not to Salvors only.
- The proposed environmental award will significantly change the traditional "*no pay no cure*" principle applicable in Salvage and will render as primary objective the protection of the environment, rather than the assistance of vessels in distress.
- The suggested way of calculation of the environmental award is strictly hypothetical and speculative.
- The shipowners and their liability insurers are not the appropriate party to bear alone (as ultimate beneficiaries) all costs for the environmental protection.

Finally, it should be noted that the concept of "*liability salvage*" was thoroughly discussed and rejected during the CMI 1981 Montreal Conference.

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