

Implementing the ILO Maritime Labour Convention 2006

The role of the welfare agencies

By

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Within the seafarers welfare world there are great expectation for the implementation and enforcement of the International Labour Organisation, Maritime Labour Convention 2006. It is being regarded by maritime welfare practitioners as the single most important and influential regulatory instrument since SOLAS. In terms of welfare the MLC 2006 ranks alongside the Rules of Oléron¹ as the most significant development in the support of seafarers since the 13th century when those rules were codified.

Whilst Title 4 within the MLC deals specifically with welfare matters² it is clear that the entire convention has as its driving force a philosophy that **clearly affirms seafarers, counting them not as disposable commodities but as the agents of safety at sea, the enablers of international trade and the most important asset that the shipping industry has.** The MLC 2006 has been developed in order to facilitate the shipping industry whilst empowering and affirming seafarers in a judicious way. It has comprehensive regard for seafarers, recognises the unique environment within which they live and work and seeks to ensure that their well being is cared for. It is this term 'well being' that elucidates the rather vague assumptions contained in the term welfare. This must be the starting point in understanding the convention, its aim and purpose and the concerns that gave rise to the need for an internationally binding, legally enforceable code that clearly states the legitimate rights of seafarers and obligations of shipowners and member states.

So let us dismiss what is not intended by the word 'welfare'. A common understanding of welfare in USA is, 'being in receipt of financial aid from a government agency or another source.' This is not what is intended by the MLC 2006. Indeed a previous ILO convention failed to attract much ratification because there was a general understanding that it was possible to interpret the convention to mean that the public purse would have to pay for the provision of welfare facilities.³

¹ The Rolls of Oléron (*Rôles d'Oléron*, also known as the "Judgments of Oleron" and the "Rules of Oléron") were the first formal statement of "maritime" or "admiralty" laws in northwestern Europe. They were promulgated by Eleanor of Aquitaine on the island of Oléron in about 1160. These rules were the precursor of 'The Black Book of the Admiralty'

² Title 4. Health Protection, medical care, welfare and social security provisions

³ Seafarers' Welfare Convention, 1987 (No. 163), Article 2 paragraph 2 states, 'Each member shall ensure that the necessary arrangements are made for financing the welfare facilities and services provided in

In the UK what is normally referred to as welfare is 'the public agencies involved with giving assistance' What welfare means within the context of the MLC 2006 is, 'health, happiness and well-being in general'

With a clear understanding of this definition then the relevance of the entire convention to the well being of seafarers is obvious. The language throughout is one of legal protection without paternalism. There is no appeal to emotionalism but simply the reference to human rights and therefore what is at least the minimum standards for living and working conditions for seafarers.⁴ In all there are thirty five occurrences of the word rights within the MLC 2006.

This reflects the concern of the ILO for decent living and working conditions created not at the discretion of shipowners but as a fundamental right of the seafarer. The ILO states, 'The ILO recognises that.....all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.'⁵

None of these definitions, however, belong to the ILO, but this is only an assumption, as I am not aware of what the ILO means when it uses the word 'welfare' in the MLC. In the absence of such a definition within the text of the MLC to what does the ILO refer when it speaks of welfare, is a legitimate question. Presumably for an organisation that states it is, 'devoted to advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity.'⁶

Welfare is not just limited to the identification within Title 4, but inevitably must take account of seafarers being qualified for the job they are expected to do, (Title 1); the conditions of their employment, (Title 2); and all of Title 3, because if food and accommodation do not contribute to a seafarers well-being, what does? Even Title 5 is obviously a welfare concern because if the regulations and standards are not enforced and if the guidelines are ignored how can seafarers' welfare be addressed let alone guaranteed?

The MLC 2006 has throughout the text key words that indicate the focus of its welfare concerns, as follows:

Key Words and References

- Food 44

accordance with the provisions of this convention'. Similarly in Seafarers' Welfare Recommendation, 1987 No (173) Paragraph 7 (1) states, 'Members should provide or ensure the provision of such welfare facilities and services as may be required in appropriate ports in the country.'

⁴ Preamble to the convention refers to the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and further states, 'Mindful also that seafarers are covered by the provisions of other ILO instruments and have other rights which are established as fundamental rights and freedoms applicable to all persons.'

⁵ Declaration of the aims and purposes of the ILO, Annex (2a) to the ILO constitution.

⁶ http://www.ilo.org/global/About_the_ILO/lang-en/index.htm

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On this basis, therefore, it is legitimate and even imperative to regard the entire MLC as a welfare provision. From this table we also see the welfare needs that are addressed by the convention as warranting attention. It is somewhat surprising that in an industry that dates to the earliest spread of civilisation it is deemed necessary in the twenty first century to codify what the rights of seafarers are and what are the living and working conditions that need to be protected within international law. Perhaps the industry has now 'come of age' in recognising the issues as worthy of an international convention of the United Nations.

The success or failure of the MLC 2006 in terms of delivering the provision of welfare services to seafarers depends upon, almost exclusively the maritime welfare practitioners located in ports. Almost without exception these practitioners are staff of the various maritime ministries. These ministries are Christian based, church operated missionary societies. The organisation I represent, The Mission to Seafarers, familiarly referred to as the Flying Angel is present in two hundred and thirty ports.⁷ Of these one hundred and four have seafarers' centres whilst the rest depend upon mobile, peripatetic representatives. Other societies are also familiar to seafarers around the world, notable the Apostleship of the Sea often referred to as the Stella Maris.

When considering the network of other maritime ministries in addition to that of The Mission to Seafarers, the presence of the twenty seven members of the International Christian Maritime Organisation brings the number of port ministries to approximately seven hundred. This extensive network is the main delivery mechanism for the provisions of the MLC 2006. It is highly questionable if the MLC 2006 would have any possibility of implementation without these agencies to deal with seafarers at the waterfront.

Having a system of redress a legal remedy and the ability to seek satisfaction is obviously essential should shore side welfare services be denied. The identification of welfare needs is the 'sharp end' of this convention. Identification is equally essential to the outworking of the convention. For seafarers to know what their rights are and what protection in law they have is clearly important. Knowing how their living and working conditions fit into the

⁷ www.missiontoseafarers.org

provisions of the convention is equally important. A generic list of needs can be compiled from the 'Port Based Welfare Services for Seafarers – Summary Report 2007'⁸

All of these needs are met by maritime welfare practitioners. This is assuming that they have access to the ships and that seafarers are allowed shore leave. Without these, either the seafarers will have no knowledge of what is available locally, or even if they have the knowledge, they will not be able to avail themselves of the facilities. This situation is very frustrating for the seafarers especially when they know of facilities but are prevented from using them.

These circumstances draw attention to, Title 4, Regulation 4.4 – Access to shore based facilities. 'Each member shall ensure that shore based welfare facilities, where they exist, are easily accessible.'⁹

Immediately, significant difficulties come to mind. Ever since the introduction of the International Ship and Port Facility Security Code, (ISPS),¹⁰ maritime ministry practitioners continue to receive complaints from seafarers that shore leave is either restricted or even denied. Even getting off the ship can be problematic and if the welfare facility is outside the port area, seafarers may not have access. Even more difficult is when a seafarer has to exit one part of the port and enter another secure zone within the same port to get to where the welfare facility is located. Even more difficulties are accounted when some gates are closed after the end of daytime working hours and access and egress are confined to a small number of gates or even just the main entrance to the port. This does not take into account the shipboard routine and watch patterns. Often it is in the evening when some seafarers have the time to go ashore only to be confronted by a 'lock in'. Whilst more and more port authorities are realising that the welfare facility enhances rather than detracts from the port's operation, private terminal operators are notoriously difficult to negotiate access with. Many private terminal operators, especially those that are petro-chemical plants, oil refineries and storage depots, as well as a multitude of hazardous cargo handlers have, quite legitimately, for years, not wanted seafarers, or indeed anyone, walking through the terminal. With the advent of ISPS they are able to clamp down on security, deny access and claim that it is not their doing but that such restrictions are forced on them by the requirements of the ISPS Code.

⁸ Kahveci, Dr. Erol, Port Based Welfare Services for Seafarers – Summary Report 2007, Seafarers International Research Centre, University of Wales, Cardiff, prepared for the International Transport Workers Federation Seafarers' Trust.

⁹ Title 4, regulation 4.4 Clause 1

¹⁰ The ISPS Code was adopted by resolution on 12 December 2002 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, (London 9 to 13 December 2002). Included also are amendments to chapters V and XI of SOLAS that became mandatory on 1 July 2004. This has been re-identified as Chapter XI-1 and the new Chapter XI-2 was adopted on special measures to enhance maritime security.

In such cases it should be brought to the attention that the ISPS Code itself, requires due recognition of the essential nature of shore leave when it, 'Urges **Contracting Governments to take the human element, the need to afford special protection to seafarers and the critical importance of shore leave into account when implementing the provision of Chapter XI-2 of the Convention and the International; Ship and Port Facility Security Code (ISPS)...**'¹¹

Port authorities and private terminal operators also need to understand their obligations under other international instruments such as the Convention on Facilitation of International Maritime Traffic, 1965, (FAL) of the IMO. This convention states, 'Foreign crew members shall be allowed ashore by the public authorities while the ship on which they arrive is in the port, provided that the formalities on arrival of the ship have been fulfilled and the public authorities have no reason to refuse permission to come ashore for reasons of public health, public safety or public order.'¹² In addition the FAL Convention explicitly states, 'Crew members shall not be required to hold a visa for the purpose of shore leave.'¹³

When taken together with the MLC, these conventions combine to make an irrefutable case that seafarers are entitled to and must have access to shore-based welfare facilities. The maritime welfare agencies have the responsibility to make known to the shipping industry that such facilities are available because seafarers need them and international law says they must be accessible.

The MLC 2006 encourages the establishment of welfare boards and recognises the role that these play in helping the providers of welfare facilities be relevant to the needs of seafarers:¹⁴ 'Each member shall encourage the establishment of welfare boards which shall regularly review facilities and services to ensure that they are appropriate in the light of changes in the needs of seafarers resulting from technical, operational and other developments in the shipping industry.'

Throughout the convention there is an assumption that welfare facilities are available and all that is required is that seafarers are granted access and all is well. The assumption is based upon the provisions that are known to be available in the ports mentioned earlier. **This assumption ignores the fact that this international convention of the United Nations is depending for its implementation upon charity. What an indictment on the UN system and to the shipping industry of the 21st century that such a salient piece of international legislation depends upon the full participation of charitable organisations to have any practical effect!** In a world where popular opinion would have us believe that religion has no part to play in the formation and working out of society, in which faith communities are an

¹¹ Conference resolution 11 (adopted on 12 December 2002), Human-element-related aspects and shore leave for seafarers, Clause 1

¹² FAL Convention Section 3 – Arrival and departure of persons, G. Further measures of facilitation for foreigners belonging to the crews of ships engaged in international voyages – shore leave, Standard 3.44

¹³ FAL Convention Section 3 – Arrival and departure of persons, G. Further measures of facilitation for foreigners belonging to the crews of ships engaged in international voyages – shore leave, Standard 3.45

¹⁴ Standard A4.4 – Access to shore based welfare facilities, paragraph 3, p67

anachronism and where so much political opinion is derisory of faith based organisations, there is a tacit acceptance that the delivery of welfare services to seafarers is dependent upon faith based and exclusively Christian organisations.

Conversely this may be regarded as an admiration of this Christian global network because UN members are unable or unwilling to make such provisions. Whatever the case may be the network of the International Christian Maritime Organisation is key to the provisions of welfare services to seafarers and without which the noble words of the convention are meaningless. There is a huge degree of irony that what is claimed to be a predominantly secular world still needs faith based organisations for its well-being.

Given this situation thought must be directed to how best to co-ordinate the efforts of the ecumenical partners in their desire to provide for seafarers wellbeing. **The one most important contribution that can be made, other than ensuring the financial viability of these maritime ministries, is to create the welfare boards that the MLC 2006 encourages. There is a direct link in this to the recommendations that arose out of the ICONS report: 'There is also a need for improved communications between port State control authorities and those who can provide early warning of sub-standard shipping, such as pilots, unions and seafarers' missions.**

Funding of missions by port State authorities would alleviate concerns about compromise in the ability of missions to speak out about abuses, as a result of their current dependence on ship owners or agents for funding of their port services to seafarers.¹⁵

For the establishment of welfare boards there are a number of models that are appropriate¹⁶ and among these the most established is the Merchant Navy Welfare Board of the United Kingdom. **This model has in place local ports welfare committees that provide a forum for those interested in seafarers' welfare to engage with one another to share best practice and to assist in solving common difficulties.** Such forum draw together various stakeholders, including the statutory authorities of Customs, Immigration, Port Health, and port authorities together with industry interests such as ship owners, unions, agents, chandlers and other port users and essentially the voluntary organisations that provide the maritime ministries and maritime welfare practitioners. **In this way all interests, statutory, voluntary, industrial, both secular and faith based meet with the common idea of providing for seafarers' welfare.**

With such a grouping issues of port security, access of seafarer to shore based welfare facilities, access to ship by Port Chaplains and other maritime welfare practitioners, health and safety of those working in or transiting through the dock estate can be addressed all to the advantage of business continuity, safety, security and well-being. Customs and Immigration develop relationships with maritime welfare practitioners, agents, learn that

¹⁵ ICONS Executive Summary p13

¹⁶ e.g. welfare boards established in France, India and Sri Lanka

they have the excellent support of the Port Chaplains with 24/7, independent assistance that has immense integrity and a desire to assist.

With this forum seafarers are no longer regarded as the unfortunate human infestation of a business venture but the essential element that makes the whole thing work to the betterment of international trade and commerce. Seafarers become valued community members who are not regarded with suspicion but with respect for the dangerous and difficult job that they perform. In such forum difficulties are addressed before they become problems. For the organisation of welfare boards the country is divided into geographical homogenous regions that have a single or multiple ports. In geographically contained areas issues are relevant to all the participants. Information is fed from these local areas to a national body. This then acts as an enabling network, ensuring the free flow of information, cross referencing the agendas of each area committee so that strategies and solutions are shared throughout the sector. Other agencies, particularly of government appreciate the 'one stop shop' that can provide information and can deal with relations without the multiplicity of voices, sometimes competing voices that only serve to slow down responses and complicate issues. Such welfare boards are not hierarchical, not authoritative, nor commanding but, affirming, enabling and encouraging of its constituent members. Perhaps its most valuable contribution is to encourage throughout the country a system of voluntary port levies. Such levies can provide sustainability and budgetary certainty. When all ports in a country implement such a levy there is no competitive disadvantage to any one port that institutes the levy, because all operate the same system.

Many claim that the MLC 2006 represents best management practices in the operation of ships and that when there is full compliance there will no longer be a differentiation between respectable operators and sub standard shipping. Quite simply there will be the gradual elimination of the sub standard sector. It is perhaps an unfortunate term, 'best management practice' because attention to the basic human rights of seafarers should be the bare minimum that is required of an employer.

Changes in shipping patterns, trade routes and developing markets are alluded to for the provision of such facilities in appropriate ports.¹⁷ The essential role of the agencies that provide these facilities is recognised. What the MLC 2006 fails to address, however is the global phenomena that catering for the welfare needs of seafarers is entirely dependent upon charity. Without the maritime missions there would be virtually no provision of shore side welfare facilities. This fact is an indictment upon the shipping industry on two counts. The first is that charity is needed and the second is that there is no one else in the industry to fulfil this role except for the maritime ministries.

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¹⁷ Standard A4.4 – Access to shore based welfare facilities, paragraph 2, p67

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