

Compliance and Conformity in Maritime Labour Law. The Maritime Labour Convention

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Abstract

The Maritime Labour Convention (MLC 2006) contains all updated maritime labour standards and provides effective procedures to ensure their implementation by the Member States, as well as a mechanism for monitoring compliance. As an element not found in any of the International Labour Organization's (ILO) conventions, its provisions introduce a certification system for social and working conditions on merchant ships. The Maritime Labour Convention of 2006 establishes three distinct levels of regulatory authority in the maritime industry: flag state, port state, and maritime labour supply states. The system established to ensure compliance with the provisions of the Convention consists of inspections, reports, monitoring measures, and legal proceedings in accordance with the applicable legislation. The verification of conformity concerns only compliance with the working and living conditions on board ships. In the event that the fundamental rights of seafarers as provided for in Article III of the Convention are violated, the only way to remedy this is to resort to national enforcement mechanisms or supervisory procedures established under the ILO Constitution. In this article, we intend to present the actual procedures that ensure the implementation of maritime labour standards by the Member States. The article is based on ILO sources and EU legislative provisions and is accompanied by a doctrinal analysis.

Keywords: Maritime Labour Convention, flag state responsibilities, port state responsibilities, labour-supplying states responsibilities, on board and onshore complaint procedures.

JEL Classification: K31

1. Introductory aspects

The MLC 2006 is a universal instrument known as the fourth pillar of the international regulatory regime for international shipping that complements four other core International Maritime Organization conventions². The adoption of the MLC 2006 Convention follows an agreement reached between international shipowners' and seafarers' representatives, the Geneva Agreement of 2001, on the need to adopt a new Convention and a new approach based on efficiency and ensuring widespread ratification³. Romania ratified the Convention in 2015⁴.

The Articles and Rules set out the fundamental principles and rights as well as the obligations of Member States ratifying the Convention⁵. The Code contains the details necessary for the implementation of the Rules. It consists of Part A (mandatory standards) and Part B (guiding principles of a recommendatory nature).⁶ The Convention contains sixteen articles that outline principles, rights, and responsibilities, as well as provisions for amending the Convention and concluding clauses⁷. The convention's approach is characterised by the use of broad definitions and a degree of flexibility⁸. The Articles serve as the foundation for many of the Convention's provisions on enforcement cooperation, promote social dialogue at the national level, particularly in the context

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² Christodoulou-Varotsi, Iliana, *Maritime Safety Law and Policies of the European Union and the United States of America: Antagonism or Synergy?* Springer Verlag, Berlin Heidelberg, 2009, p.75.

³ McConnell, M., L. *Making Labour History and the Maritime Labour Convention: Implications for the International Law Making (and Responses to the Dynamics of Globalization)*, in A. E. Chircop, T. Mc Dorman, & S. Rolston (Eds.), *The future of ocean regime-building: essays in tribute to Douglas M. Johnston*, (pp.349-384). Brill/Martinus Nijhoff Publishers, 2009, p.366.

⁴ Law No. 214 of July 21, 2015 on the ratification of the Maritime Labour Convention (MLC 2006), adopted on February 23, 2006 in Geneva at the 94th session of the International Labour Organization, and the 2014 Amendments to the Maritime Labour Convention (MILC 2006), approved at the 103rd session of the International Labour Organization in Geneva on June 11, 2014.

⁵ Explanatory Note, paragraph 3 MLC 2006.

⁶ Explanatory Note, para. 4 MLC 2006.

⁷ Doumbia, Henry, C., Devlin, D., McConnell, M., L. *The Maritime Labour Convention, 2006 Consolidates Seafarers' Labour Instruments*, ASIL Insights, 23 (10), 2006, p. 3.

⁸ Dürler, Reto, *The Maritime Labour Convention, 2006: a major step forward in maritime law*, in: *Serving the Rule of International Maritime Law, Essays in Honour of Professor David Joseph Attard*, Norman A. Martin Gutierrez (eds.), London and New York, Routledge, Taylor and Francis Group, 2010, pp.297-304, International Labour Organization, p. 300.

of a globalised industrial sector, and establish the conditions for fair competition⁹. The Rules and the Code establish five distinct areas, each with its own distinct title. The MLC 2006 contains several specific structural innovations related to ILO values, including tripartism and the encouragement of social dialogue at the national level as a means to address implementation issues¹⁰.

2. Compliance and enforcement

In accordance with the provisions of the Convention, Member States are required to exercise effective jurisdiction and control over ships flying their flag by establishing their own system to ensure compliance with the provisions of the Convention, including through regular inspections, reports, monitoring measures, legal measures and procedures in accordance with applicable law¹¹. Member States must prohibit violations of the provisions of the Convention and have an obligation under international law to establish sanctions or require the adoption of corrective measures in accordance with its law to discourage violations¹².

The Convention establishes three different levels of regulatory power in the shipping industry: flag state, port state and maritime labour supply states¹³.

An important innovation introduced by the MLC 2006 in respect of flag States, as reflected in the provisions of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) and the Labour Inspection (Seafarers) Convention, 1996 (No. 178), is the requirement for ships to hold a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance¹⁴. The certificates attest to compliance with the provisions of the MLC 2006 and must be accepted by the port states without further investigation¹⁵. Blue certificates are issued by the International Workers Federation and are granted to shipowners after the conclusion of collective labour agreements for their own ships or fleets operating on the same basis, guaranteeing that the ship in question complies with international labour standards¹⁶.

Port state control is the authority responsible for verifying compliance with national and international requirements on maritime safety, pollution prevention, and working and living conditions on board foreign ships calling at sea¹⁷. The emergence of the institution of port state control in international law is correlated with the normative requirement for greater uniformity and predictability in the implementation of international standards¹⁸. The concept of inspection of foreign ships was established in 1914 with the drafting of the SOLAS Convention, and the Memorandum of Understanding on Port State Control regime emerged in the early 1980s¹⁹.

Port state control employs a system in which vessels are registered on a black, grey, or white list, which is a record of the detention of ships from various states, classifying them as quality ships, poor-performing vessels, and high-risk vessels, respectively²⁰. The ILO has released Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006, to

⁹ McConnell, Moira Lynne, Devlin, Dominick & Doumbia-Henry, Cleopatra, *The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime*, Martinus Nijhoff Publishers, Leiden, Boston, 2011, p.167.

¹⁰ McConnell, M., L. *Making Labour History and the Maritime Labour Convention: Implications for the International Law Making (and Responses to the Dynamics of Globalization)*, in A. E. Chircop, T. Mc Dorman, & S. Rolston (Eds.), *The future of ocean regime-building: essays in tribute to Douglas M. Johnston*, (pp.349-384). Brill/Martinus Nijhoff Publishers, 2009, p. 380.

¹¹ Article V para 2. MLC 2006.

¹² Article V para. 6. MLC 2006.

¹³ Dimitrova, Desislava Nikolaeva, & Blanpain, Roger, *Seafarers' Rights in the Globalized Maritime Industry*, Wolters Kluwer Law International, 2010, p. 83.

¹⁴ Christodoulou-Varotsi, Iliana, & Pentsov, Dmitry A., *op.cit.*, p.322.

¹⁵ Regulation 5.2.1. para 1 MLC 2006.

¹⁶ Carballo Piñeiro, Laura, *International Maritime Labour Law*, Series Hamburg Studies on Maritime Affaires, Springer, 2015, p.59.

¹⁷ Dimitrova, Desislava Nikolaeva, & Blanpain, Roger, *op.cit.*, p.83.

¹⁸ Payoyo, P., B., *The Contribution of the 2006 ILO Maritime Labour Convention to Global Governance*, in A. E. Chircop, T. Mc Dorman, & S. Rolston (Eds.), *The future of ocean regime-building: essays in tribute to Douglas M. Johnston* (pp. 385-410). Brill/Martinus Nijhoff Publisher, 2009, p. 402.

¹⁹ McConnell, Moira Lynne, Devlin, Dominick & Doumbia-Henry, Cleopatra, *op. cit.*, p .547.

²⁰ Dimitrova, Desislava Nikolaeva, & Blanpain, Roger, *op.cit.*, p.79.

help states fulfil their obligations²¹.

The first Memorandum of Understanding on Port State Control, Paris, 1976, was drawn up in connection with the adoption of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)²². Convention No. 147 contains provisions relating to measures that may be taken by the port State administration against a ship calling at a port following a complaint or the presentation of evidence²³. Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) and the Labour Inspection (Seafarers) Convention, 1996 (No.178)²⁴ serve as the foundation for the current inspection and certification system in the MLC 2006²⁵. The MLC 2006 Convention, in contrast to the Merchant Shipping (Minimum Standards) Convention of 1976 (No. 147), stipulates that port State control inspections are limited to the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance. A further distinction relates to the fact that ships may be detained for noncompliance with the provisions of the MLC 2006, not only when they pose a threat to the health, safety, or security of seafarers, as required by Convention No. 147, but also when the noncompliance constitutes a repeated or serious violation of the provisions of the new Convention²⁶.

According to international law, any ship subject to the Convention that is at one of its ports may be inspected by a Member State other than the State whose flag it flies to determine compliance with the requirements of the Convention²⁷.

Inspections are carried out by port state authorities on their initiative or when a complaint has been received²⁸. A more detailed inspection is carried out to verify the working and living conditions on board the ship when the requested documentation shows non-conformities or there are reasonable grounds for believing that the requirements concerning working and living conditions on board the ship are not being complied with²⁹. Another situation for which a complaint can be lodged is non-compliance with working and living conditions on board ship³⁰. The most common deficiencies found were non-compliance with working and rest hours, insufficient food and water supplies and unsafe working conditions³¹.

Member States are required to ensure that the fundamental rights of seafarers are protected, although port State control inspections do not apply to these rights³². Seafarers whose fundamental rights under Article III of the Convention have been breached are required to invoke national enforcement mechanisms or supervision procedures established under the ILO Constitution³³. A seafarer whose right to the association has been violated, for instance, may seek redress in the courts of flag States, port States, or labour-supplying States if these are accessible, or, at the international level, invoke the supervisory procedures established by the ILO Constitution, through a complaint filed on his or her behalf³⁴.

In order to promote fair competition, the Convention requires port states to ensure that ships flying the flags of non-Convention states do not receive a more favourable treatment during inspections compared to ships of Member States³⁵. The adoption of such a provision is a first in the

²¹ ILO, Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006

²² McConnell, Moira Lynne, Devlin, Dominick & Doumbia-Henry, Cleopatra, *op.cit.*, p. 547.

²³ Ibidem.

²⁴ C178 - Labour Inspection (Seafarers) Convention, 1996 (No. 178) available at https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:::NO:12100:P12100_INSTRUMENT_ID:312323.

²⁵ McConnell, M.L., *The Maritime Labour Convention, 2006 - reflections on challenges for flag State implementation*. „WMU Journal of Maritime Affairs” 10, 127 (2011), p.136.

²⁶ Christodoulou-Varotsi, Iliana, & Pentsov, Dmitry A., *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*, Springer-Verlag, Berlin Heidelberg, 2008, p. 324.

²⁷ Article V para.4. MLC 2006.

²⁸ Lavelle, Jennifer, *The Maritime Labour Convention 2006: International Labour Law Redefined*, 1st Edition, Informa Law from Routledge, 2013, p.169.

²⁹ Standard A5.2.1 para.1 MLC 2006.

³⁰ Ibidem.

³¹ Dimitrova, Desislava Nikolaeva, & Blanpain, Roger, *op. cit.*, p. 79.

³² McConnell, Moira Lynne, Devlin, Dominick & Doumbia-Henry, Cleopatra, *op. cit.*, p. 508.

³³ Dimitrova, Desislava Nikolaeva, & Blanpain, Roger, *op. cit.*, p. 86.

³⁴ Payoyo, P., B., *op. cit.*, p.405.

³⁵ Article V para. 7 MLC 2006, Doumbia, Henry, C., Devlin, D., McConnell, M., L. *The Maritime Labour Convention, 2006 Consolidates Seafarers' Labour Instruments*, ASIL Insights, 23 (10), 2006, p.4.

work of the ILO³⁶. Port State inspections ensure compliance enforcement when the shipowner and flag State have not met their obligations and contribute to the establishment of a continuous and integrated system to ensure full implementation of the Convention standards³⁷.

Labour-supplying states have a reduced role in the implementation of maritime standards, lacking the capacity and authority to intervene in the rules and regulations of international shipping³⁸. The 2006 MLC Convention grants labour-supplying states and seafarers' states of residence a general regulatory role regarding seafarers' identity documents, certification of competencies, and recruitment and placement agencies located on their territory³⁹.

It has been pointed out in the doctrine that the Convention does not provide for a dispute settlement mechanism between the Member States in the case of unlawful detention of ships under port State control⁴⁰. Another issue left unresolved by the 2006 MLC Convention is the lack of provisions determining which courts may be seized by seafarers in respect of unresolved complaints, particularly where the on-board or shore-based complaints procedure has been used⁴¹.

Complying with the Convention is not solely the responsibility of the Member States⁴². The Special Tripartite Committee, a body with special competence in the field of maritime labour standards, continuously monitors the application of the Convention⁴³. The Commission is comprised of representatives appointed by the governments of each ratifying Member State, as well as representatives of shipowners and seafarers⁴⁴.

The implementation of the Convention by the Member States is achieved by giving effect to its provisions by port States, flag States, and maritime labour-supplying States⁴⁵. The MLC 2006 permits a great deal of flexibility in the implementation of fundamental rights and principles through the Code⁴⁶. Firstly, flexibility is manifested in the possibility given to the Member States to implement the detailed requirements of the Code through "substantial equivalence". By virtue of these provisions, Member States which are not in a position to apply the rights and principles as set out in Part A of the Code may implement Part A by provisions in their laws, regulations, or other measures which are equivalent in their entirety to the provisions of Part A⁴⁷. Secondly, flexibility in implementation is possible by formulating the requirements of Part A of the Code at a general level, which allows a wide margin of decision at the national level on the action to be taken⁴⁸. Difficulties in implementing the Convention relate to insufficient monitoring capacity, competition between states and state sovereignty⁴⁹.

3. Flag state responsibilities

The responsibility for the implementation of the obligations under this Convention is upon member states in respect of ships flying their flag⁵⁰. States are required to establish an effective system for the inspection and certification of working conditions in the maritime sector in order to ensure that working and living conditions for seafarers on ships flying their flag meet the provisions of the

³⁶ Dürler, Reto, *op. cit.*, p.303.

³⁷ Lavelle, Jennifer, *op. cit.*, p.153.

³⁸ Dimitrova, Desislava Nikolaeva, & Blanpain, Roger, *op. cit.*, p.84.

³⁹ *Ibidem*.

⁴⁰ Lavelle, Jennifer, *op.cit.*, p.179

⁴¹ *Idem*.

⁴² Dimitrova, Desislava Nikolaeva, & Blanpain, Roger, *op.cit.*, p.84.

⁴³ Article XIII MLC 2006.

⁴⁴ *Ibidem*.

⁴⁵ McConnell, Moira Lynne, Devlin Dominick & Doumbia-Henry, Cleopatra, *op. cit.*, p.483.

⁴⁶ Explanatory note, paragraph 8, MLC 2006.

⁴⁷ Article VI paragraph 3, MLC 2006.

⁴⁸ Explanatory note, paragraph 9 MLC 2006; see also Christodoulou-Varotsi, Iliana, & Pentsov, Dmitry A., *op. cit.*, p.302.

⁴⁹ Lillie, N., *The ILO Maritime Labour Convention, 2006: A new paradigm for global labour rights implementation*, in Konstantinos Papadakis (Ed.). *Cross-border social dialogue and agreements: An emerging global industrial relations framework?* (pp.191-217). International Institute for Labour Studies, 2008.

⁵⁰ Regulation 5.1.1 para.1 MLC 2006.

MLC 2006⁵¹. Ships with a gross tonnage of 500 tdw or more involved in international travel or operating out of or between foreign ports must comply with the criteria⁵².

Each Member State shall require ships flying its flag to carry and update a Maritime Labour Certificate attesting that the seafarers' labour and living standards on the ship, including measures to ensure continuing compliance, have been inspected and meet the provisions of national laws or regulations or other provisions for the application of this Convention⁵³. The matters subject to verification for the issue of a maritime labour certificate are set out in Annex I A5-I and relate to minimum age, medical certificate, seafarers' qualifications, maritime employment contracts, use of a licensed, authorised or regulated private recruitment and placement service, hours of work and rest, manning, accommodation, onboard recreational facilities, food and catering, health and safety and accident prevention, on-board medical care, onboard grievance procedure, and payment of wages⁵⁴. Although flag and port State inspections do not concern the fundamental rights of seafarers under Article III of the Convention, Member States have an obligation to ensure that they are respected⁵⁵.

The Maritime Labour Certificate is subject to an intermediate inspection and has a five-year expiry date⁵⁶. Member States may issue seafarers' employment certificates on a provisional basis with a period of validity of six months in the case of new ships on delivery, when a ship changes flag, or when a shipowner assumes responsibility for the operation of a new ship for that shipowner⁵⁷.

Each Member State shall require ships flying its flag to carry and update the Declaration of Maritime Labour Compliance, which shall specify the national provisions for the application of this Convention relating to seafarers' labour and living standards⁵⁸. The Declaration of Maritime Labour Compliance sets out the measures taken by the shipowner to ensure compliance on the ship or ships concerned⁵⁹. Measures to ensure continued compliance should refer in particular to the general international provisions concerning the obligation of the shipowner and the master to be kept informed of the latest technological and scientific developments concerning the layout of the workplace, taking into account the inherent hazards of seafarers' work⁶⁰.

The Maritime Labour Certificate, accompanied by the Declaration of Maritime Labour Compliance, attests, in the absence of any provision to the contrary, that the vessel has been properly inspected by the flag State and that the provisions of the MLC 2006 on working and living conditions for seafarers have been fulfilled to a certified extent⁶¹. A valid and up-to-date copy of the Maritime Labour Certificate and the Maritime Labour Compliance Statement shall be carried on board and posted in a conspicuous place on board, where they shall be available to seafarers⁶². On request, copies of these documents should be provided, in accordance with national law, to seafarers, flag State inspectors, authorised port state officers, and shipowners' and seafarers' representatives⁶³. The Maritime Labour Certificate shall be withdrawn by the competent authority or by the recognized organization authorized for that purpose by the flag State if there is evidence that the ship concerned does not comply with the provisions of the Convention and no remedial action has been taken⁶⁴.

By means of an effective and coordinated system of periodic inspections, surveys, and other control measures, the Member States shall ensure that vessels flying their flag comply with the provisions of the Convention as implemented by their national legislation⁶⁵. Ensuring compliance

⁵¹ Regulation 5.1.1 para.2 MLC 2006.

⁵² Regulation 5.1.3 para.1 lit a -b MLC 2006.

⁵³ Regulation 5.1.3 para.3 MLC 2006.

⁵⁴ Standard A5.1.3 para.1 MLC 2006.

⁵⁵ McConnell, Moira Lynne, Devlin, Dominick & Doumbia-Henry, Cleopatra, *The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime*, Martinus Nijhoff Publishers, Leiden, Boston, 2011, p.508.

⁵⁶ Standard A5.1.3 para.2 MLC 2006.

⁵⁷ Standard A5.1.3 para.5 MLC 2006.

⁵⁸ Regulation 5.1.3 para.4 MLC 2006.

⁵⁹ Idem.

⁶⁰ Guidelines B5.1.3 para 3 MLC 2006.

⁶¹ Regulation 5.1.1 para.4 MLC 2006.

⁶² Standard A5.1.3 para.12 MLC 2006.

⁶³ Idem.

⁶⁴ Standard A5.1.3 para.14 MLC 2006.

⁶⁵ Regulation 5.1.4 para.1 MLC 2006.

includes verifying compliance with measures related to working and living conditions as set out in the Declaration of Maritime Labour Compliance, where applicable, and compliance with the provisions of the MLC 2006⁶⁶. Inspections will be carried out at intervals not exceeding 3 years⁶⁷.

The competent authority shall designate an adequate number of qualified inspectors to conduct the inspections⁶⁸. Inspectors may request the rectification of any deficiencies found⁶⁹.

Inspectors have the authority to prevent a ship from leaving port until the required actions have been performed when there are clear grounds to believe that deficiencies represent a serious violation of this Convention's provisions (including seafarers' rights) or pose a significant threat to the safety, health, or security of seafarers⁷⁰. Where breaches of the rule do not endanger the safety or health of the seafarers concerned, and where there is no precedent of similar breaches, inspectors have the power to issue warnings and offer advice in return for instituting or recommending procedures⁷¹.

Inspectors are required to submit a report of each inspection to the competent authority⁷². The ship's master must take possession of one copy of the report while another copy will be displayed on the ship's notice board for the information of seafarers and, on request, sent to their representatives⁷³. The Member States shall apply appropriate penalties and other enforcement measures for failure to comply with the provisions of this Convention, including seafarers' rights and obstruction of inspectors in the exercise of their duties⁷⁴.

When carrying out an inspection, every effort will be made to avoid undue detention or delay of the vessel⁷⁵. Compensation shall be paid in accordance with national law for any damage or loss resulting from the unlawful exercise of powers by inspectors⁷⁶. The competent authority shall keep records of inspections of seafarers' conditions on ships flying its flag⁷⁷.

The Member States shall require that on ships flying their flag, procedures are in place to handle complaints from seafarers alleging a breach of the provisions of the Maritime Labour Convention 2006, including seafarers' rights⁷⁸. The provision does not affect the seafarer's right to seek redress by any legal means he or she sees fit⁷⁹. In order to harmonise flag State inspections internationally, the ILO has issued Guidelines for flag State inspections under the Maritime Labour Convention 2006⁸⁰.

On-board complaint procedures must be provided for in the legislation of the Member States. The procedures must ensure that the dispute giving rise to the complaint is resolved at the lowest possible level⁸¹. In all cases, seafarers have the right to address their complaints directly to the master and, if they consider it necessary, directly to the appropriate external authorities⁸². The competent authority should establish, in close consultation with shipowners' and seafarers' organisations, a model for fair, expeditious, and documented procedures for handling complaints on board vessels flying the flag of the concerned State⁸³. Complaints shall be directed through the hierarchical channel to the head of the seafarer's department or the seafarer's superior officer, who shall be obligated to

⁶⁶ Standard A 5.1.4 para.1 MLC 2006.

⁶⁷ Standard A 5.1.4 para.5 MLC 2006.

⁶⁸ Standard A 5.1.4 para.2 MLC 2006.

⁶⁹ Standard A 5.1.4 para.7 lit c MLC 2006.

⁷⁰ Ibidem.

⁷¹ Standard A 5.1.4 para.9 MLC 2006.

⁷² Standard A 5.1.4 para.12 MLC 2006.

⁷³ Ibidem.

⁷⁴ Standard A 5.1.4 para.17 MLC 2006.

⁷⁵ Standard A 5.1.4 para.15 MLC 2006.

⁷⁶ Standard A 5.1.4 para.16 MLC 2006.

⁷⁷ Standard A 5.1.4 para.13 MLC 2006.

⁷⁸ Regula 5.1.5 para.1 MLC 2006

⁷⁹ Regula 5.1.5 para.3 MLC 2006.

⁸⁰ ILO, Guidelines for flag State inspections under the Maritime Labour Convention 2006, 2009, available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_101788.pdf.

⁸¹ Standard A 5.1.5 para.2 MLC 2006.

⁸² Ibidem.

⁸³ Guidelines B 5.1.5 para.1. MLC 2006.

resolve the matter within a timeframe commensurate with the nature of the dispute. In the absence of a solution agreed upon by the seafarer, the seafarer may contact the master, who must personally address the issue⁸⁴.

The procedures shall provide that complaints and the decisions to which they give rise shall be recorded and a copy is given to the seafarer concerned⁸⁵. A complaint that cannot be resolved on board should be submitted to the shipowner on shore, and the shipowner should be given sufficient time to resolve the issue if this is done in consultation with the seafarers involved or other individuals designated to represent them⁸⁶.

In addition to a copy of their individual employment contract, seafarers must receive a document describing the complaint procedures in effect on board the ship⁸⁷.

Every State prohibits and penalises any form of victimisation of a seafarer who has lodged a complaint⁸⁸. According to the Convention, "the term "victimization" describes any malicious act, regardless of the perpetrator, with respect to a seafarer who has made a complaint that is not obviously abusive or defamatory"⁸⁹. In order to avoid such situations, seafarers have the right to be accompanied or represented at the time of the on-board complaint procedure, and measures will be provided to prevent the victimisation of seafarers who have lodged a complaint⁹⁰.

4. Port state responsibilities

Foreign ships calling at a port of a Member State may be subject to inspection, for a reason connected with their operation or in the course of their work, for compliance with the provisions of the Convention relating to seafarers' working and living conditions on board ship, including seafarers' rights⁹¹. The control of the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance, which Member States are required to recognise as irrefutable proof of compliance with the MLC 2006's rules, including seafarers' rights, is the only thing that may, in principle, be inspected at ports⁹².

Port inspections shall be carried out by specially authorised officers in accordance with the provisions of the Convention and applicable international agreements relating to port State control inspections⁹³.

The port authority may carry out a more detailed inspection to verify working and living conditions on board the ship when a number of non-conformities are found during the on-board inspection⁹⁴. Firstly, when the required documentation does not exist, is false, is out of date, or the documents submitted do not contain the information required by the Convention or are not valid⁹⁵. Secondly, when there are reasonable grounds to believe that the ship has changed its flag to avoid compliance with the Convention⁹⁶. Thirdly, when there are sound reasons to believe that these working and living conditions on board ship do not comply with the Convention⁹⁷. If, following a more detailed inspection, conditions on board the ship are found to present a clear danger to the health or safety of seafarers or the non-compliance constitutes a serious or repeated violation of the provisions of the Convention, including seafarers' rights, and the ship does not comply with the

⁸⁴ Guidelines B5.1.5 para 2 lit. a-c MLC 2006.

⁸⁵ Guidelines B5.1.5 para 2 lit. e MLC 2006.

⁸⁶ Guidelines B5.1.5 para 2 lit. f MLC 2006.

⁸⁷ Standard A 5.1.5 para.4 MLC 2006.

⁸⁸ Regulation 5.1.5 para.2 MLC 2006.

⁸⁹ Standard A 5.1.5 para.3 MLC 2006.

⁹⁰ Ibidem.

⁹¹ Regulation 5.2.1 para.1 MLC 2006.

⁹² Regulation 5.2.1 para.2 MLC 2006.

⁹³ Regulation 5.2.1 para.3 MLC 2006.

⁹⁴ Standard A5.2.1 para. 1 MLC 2006.

⁹⁵ Standard A5.2.1 para. 1 lit. a MLC 2006.

⁹⁶ Standard A5.2.1 para. 1 lit. c MLC 2006.

⁹⁷ Standard A5.2.1 para. 1 lit. b MLC 2006.

provisions of the Convention, the port authority shall prohibit the ship from leaving the port⁹⁸. The prohibition remains in place until the non-compliance is remedied or until the official has agreed to a plan that involves remediation and is satisfied that the plan will be implemented expeditiously⁹⁹. In the exercise of their control duties, Member States are obliged to avoid the detention or undue delay of the ship¹⁰⁰. Any loss or damage suffered by an inspected ship that is unduly detained must be adequately compensated¹⁰¹. Member States should cooperate in the adoption of internationally recognised inspection policy guidelines, in particular with regard to the circumstances justifying the detention of a ship¹⁰².

A more detailed inspection is also carried out when a complaint has been lodged on the grounds that certain working and living conditions on board the ship are not being respected in accordance with the provisions of the Convention¹⁰³. The inspection shall, in such circumstances, be limited to the subject matter of the complaint, provided that the complaint or investigation provides sound grounds for a more detailed inspection¹⁰⁴. Complaint means according to the provisions of the Convention, "any information submitted by a seafarer to a professional body, an association, a trade union or, in general, any person having an interest in the safety of the ship, including the risks to the safety or health of seafarers on board the ship"¹⁰⁵.

Following a detailed inspection revealing non-conformities, the authorised officer is required to notify the master of the ship of the deficiencies found and the time limit within which they must be rectified¹⁰⁶. The port State has the right to forward to the Director-General of the International Labour Office a copy of the inspection report accompanied, where appropriate, by a reply communicated within the time limit laid down by the competent authorities of the State whose flag the ship is flying¹⁰⁷. Disclosure is necessary in order to take steps to ensure that the information is recorded and brought to the attention of the parties who may use the means of redress available to them¹⁰⁸.

If the deficiencies found are significant or if they are related to the complaint lodged with the ship, the authorised officer shall bring them to the attention of the shipowners' and seafarers' organisations present in the territory of the port State¹⁰⁹. The authorised officer may inform a representative of the flag State and communicate relevant information to the competent authorities of the ship's next port of call¹¹⁰.

Member States are required to ensure that the officials carrying out the inspections receive the necessary instructions concerning the nature of the circumstances justifying the detention of the ship¹¹¹. In this regard, States should develop a policy to guide inspection and enforcement activities related to the provisions of this Convention, including seafarers' rights¹¹². In developing the policy on detention, States should take into account that the seriousness of the violation may be due to the nature of the deficiency in question¹¹³. Detention of the ship shall apply in cases of violation of fundamental rights and principles or employment and social rights of seafarers as set out in Articles III and IV. In other cases, it is recommended that the Member States take into account the number of different deficiencies found during an inspection for this to constitute a serious infringement¹¹⁴.

⁹⁸ Standard A5.2.1 para. 6 MLC 2006.

⁹⁹ Ibidem.

¹⁰⁰ Standard A5.2.1 para. 8 MLC 2006.

¹⁰¹ Ibidem.

¹⁰² Guidelines B5.2.1 para. 3 MLC 2006.

¹⁰³ Standard A5.2.1 para. 1 lit. d. MLC 2006.

¹⁰⁴ Standard A5.2.1 para. 3 MLC 2006.

¹⁰⁵ Ibidem.

¹⁰⁶ Standard A5.2.1 para. 4 MLC 2006.

¹⁰⁷ Standard A5.2.1 para. 5 MLC 2006.

¹⁰⁸ Ibidem.

¹⁰⁹ Standard A5.2.1 para. 4 MLC 2006.

¹¹⁰ Ibidem.

¹¹¹ Standard A5.2.1 para. 7 MLC 2006.

¹¹² Guidelines B5.2.1 para. 1 MLC 2006.

¹¹³ Guidelines B5.2.1 para. 2 MLC 2006.

¹¹⁴ Ibidem.

Member States are required to ensure that procedures are in place to allow seafarers on board foreign ships calling at their territory to lodge a complaint when they are subject to a breach of the Convention¹¹⁵. Following receipt of the complaint, the authorised officer at the port of call undertakes an initial investigation¹¹⁶. Depending on the situation, the authorised officer should encourage the resolution of the complaint on board the ship. The initial investigation checks compliance with on board complaint procedures and may be followed by a more detailed inspection¹¹⁷. The initial investigation checks compliance with on-board complaint procedures and may be followed by a more detailed inspection¹¹⁸. States must take measures to ensure the confidentiality of seafarers' complaints¹¹⁹.

The authorized officer must first determine whether the complaint is of a general nature, concerning all seafarers on board a ship or a category of seafarers, or whether it concerns a particular case of a seafarer¹²⁰. Inspecting in further detail should be done if the complaint is of a general character¹²¹. A review of the results of any on-board examination procedures should be done with a view to resolving the complaint if it applies to a specific case¹²². It should be recommended for seafarers to use all available shipboard protocols first¹²³. Consideration of a complaint before all on-board complaint procedures have been exhausted must be based on well-founded grounds¹²⁴. The reasons relate to the complainant's fear of reprisals for lodging a complaint or inadequate internal procedures¹²⁵. The master, shipowner or any other person involved in the complaint must be allowed to make their views known in any investigation of a complaint¹²⁶.

If the investigation or inspection reveals non-compliance with the provisions of the Convention and the conditions on board the ship presents an obvious danger to the health or safety of seafarers, or if the non-compliance found constitutes a serious or repeated violation of the provisions of the Convention, including seafarers' rights, the authorised officer shall detain the ship¹²⁷. Except in the situation described above and where the complaint has not been resolved on board the ship, the authorised officer must notify the flag State of the ship in order to obtain, within a specified time, advice and a corrective action plan¹²⁸. In the event that the flag State of the ship, in responding to the notification of the port State, demonstrates that it is able to address the problem and has adequate procedures in place to do so, and has submitted an acceptable action plan, the authorized officer may refrain from intervening further in the resolution of the complaint¹²⁹. The port State is required to communicate a copy of the report drawn up by the authorised officer to the Director-General of the ILO¹³⁰.

5. Labour-supplying states responsibilities

Member States are responsible for guaranteeing the application of the MLC 2006 regulations relating to the recruitment, placement, and social security protection of seafarers who are nationals, permanent residents, or domiciled in their territory¹³¹. In accordance with the requirements of the Convention, Member States are required to establish an effective system of inspection and

¹¹⁵ Regulation 5.2.2 para 1 MLC 2006.

¹¹⁶ Standard A 5.2.2 para 1 MLC 2006.

¹¹⁷ Standard A 5.2.2 para 3 MLC 2006.

¹¹⁸ Standard A 5.2.2 para 2 MLC 2006.

¹¹⁹ Standard A 5.2.2 para 7 MLC 2006.

¹²⁰ Guidelines B5.2.2 para 1 MLC 2006.

¹²¹ Guidelines B5.2.2 para 2 MLC 2006.

¹²² Guidelines B5.2.2 para 3 MLC 2006.

¹²³ Ibidem.

¹²⁴ Ibidem.

¹²⁵ Ibidem.

¹²⁶ Guidelines B5.2.2 para 4 MLC 2006.

¹²⁷ Standard A 5.2.2 para 4 MLC 2006., Standard A 5.2.1 para. 6 MLC 2006.

¹²⁸ Standard A 5.2.2 para 5 MLC 2006.

¹²⁹ Guidelines B 5.2.2 para 5 MLC 2006.

¹³⁰ Standard A 5.2.2 para 6 MLC 2006.

¹³¹ Regulation 5.3 para. 1 MLC 2006.

supervision to fulfil their responsibilities as labour-supplying states¹³². The responsibility of ensuring that shipowners adhere to the provisions of the employment contracts they enter into with seafarers should fall to private services for the recruiting and placement of seafarers¹³³. Monitoring of the compliance of the activities of the seafarers' recruitment and placement services with the Convention shall also be carried out through legal procedures applied in the event of non-compliance with the licensing and other operational provisions¹³⁴. Information on the inspection and surveillance system, including the method used to assess its effectiveness, should be included in the reports submitted by the Member States under Article 22 of the ILO Constitution¹³⁵.

6. Compliance at the EU level with the standards laid down in the MLC 2006

EU legislation adopted under the social policy provisions addressing workers on merchant ships either coincides with or is based on ILO conventions and standards¹³⁶. The EU has recognised that the MLC 2006 makes a big difference in the international shipping industry by making sure that seafarers have a good standard of living and good working conditions. It also makes it easier for ship operators and shipowners to compete fairly. By Council Decision of June 7, 2007, Member States were authorised to ratify the Convention¹³⁷. The transposition of the MLC 2006 into Union law was done by Council Directive 2009/13/EC of February 16, 2009, implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 and amending Directive 1999/63/EC¹³⁸. By means of Directive 2009/13/EC, EU legislation has been brought into line with the international standards laid down in Titles I, II, III, and IV of the MLC 2006¹³⁹. Directive 2009/13/EC does not include provisions on social security, flag states' responsibilities, Maritime Labour Certificate, Declaration of Maritime Labour Compliance, inspection and enforcement, labour-supplying states' responsibilities, or shore handling complaint procedures¹⁴⁰. The Directive was amended by Council Directive (EU) 2018/131 introducing the 2014 amendments to the MLC 2006¹⁴¹.

There are disparate provisions in Union law on the flag State's or port State's duties to ensure EU-wide compliance with the compliance standards laid down in Title 5 of the MLC 2006. Port State control is regulated by Directive 2009/16/EC, as revised by Directive 2013/38/EU, which includes the MLC 2006 among the conventions whose application is evaluated by the authorities of Member States in their ports¹⁴².

Member States are obligated to verify conformity with the terms of the MLC 2006 by all ships calling at their ports and anchorages, regardless of the flag State flying on their sterns¹⁴³. The provisions of Directive 2013/38/EU reaffirm exactly the criteria of the MLC 2006 pertaining to port State inspections and the procedure for handling seafarers' complaints onshore as outlined in the MLC 2006. States must recognise the Maritime Labour Certificate and the Declaration of Maritime Labour

¹³² Regulation 5.3 para. 3 MLC 2006.

¹³³ Guidelines B 5.3 para 1 MLC 2006.

¹³⁴ Standard A 5.3. MLC 2006.

¹³⁵ Regulation 5.3 para. 4 MLC 2006.

¹³⁶ Lavelle, Jennifer, *op. cit.*, p. 3.

¹³⁷ Council Decision of 7 June 2007 authorising Member States to ratify, in the interests of the European Community, the Maritime Labour Convention, 2006, of the International Labour Organisation.

¹³⁸ Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC.

¹³⁹ Explanatory Memorandum to COM (2012)134 - Flag State responsibilities for the enforcement of Council Directive 2009/13/EC implementing the Agreement concluded by the social partners on the Maritime Labour Convention, 2006.

¹⁴⁰ Dimitrova, Desislava Nikolaeva, & Blanpain, Roger, *op. cit.*, p. 98.

¹⁴¹ Council Directive (EU) 2018/131 of 23 January 2018 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014 (Text with EEA relevance).

¹⁴² Article 1 Directive 2013/38/EU of the European Parliament and of the Council of 12 August 2013 amending Directive 2009/16/EC on port State control (Text with EEA relevance).

¹⁴³ Preamble 10 Directive 2013/38/EU.

Compliance as *prima facie* proof of compliance with the MLC 2006 standards when conducting port State control inspections pursuant to Directive 2009/16/EC¹⁴⁴.

As a general rule, ships flying the flag of a State which is not a Party to the Convention shall not be subject to a more favourable treatment during port State control than that applicable to ships flying the flag of a State which is a Party to the Convention¹⁴⁵.

Deficiencies found, following a more detailed inspection, relating to the living and working conditions on ships, as regulated by the MLC 2006, must be brought to the immediate attention of the master of the ship, together with the mandatory deadlines for their rectification¹⁴⁶. When the deficiencies are substantial or they are linked to a potential complaint, the inspector must also notify the appropriate seafarers' and shipowners' organisations in the Member State where the inspection takes place¹⁴⁷. The inspector may address a representative of the flag State and submit the pertinent information to the next port of call's competent authorities¹⁴⁸. The Member State conducting the inspection has the right to send the Director-General of the International Labour Office a copy of the inspector's report along with any responses the relevant authorities of the flag State provide within the stipulated time frame¹⁴⁹.

At the ship's ports of call, seafarers may lodge a complaint about a violation of the requirements of the MLC 2006, including seafarers' rights¹⁵⁰. The inspector carries out a preliminary investigation followed, as appropriate, by a more detailed inspection¹⁵¹. In the case of complaints lodged by seafarers which have not been resolved at the ship level, the inspector shall request advice and a corrective action plan from the flag State within a set time limit¹⁵². The port State shall forward a copy of the inspector's report to the Director-General of the International Labour Office in the event that the complaint is not resolved by the flag State¹⁵³. The report shall be accompanied by any replies received from the competent authority of the flag State within the deadline¹⁵⁴. Statistics and information on resolved complaints shall be transmitted periodically by the port State to the Director-General of the International Labour Office. The transmission of information shall be done in order to enable such information to be kept on record and to facilitate the exercise of remedies by the parties concerned¹⁵⁵.

Ships are detained by the port State administration when living and working conditions on board present a clear danger to the safety, health, or security of seafarers or in the case of deficiencies constituting a serious or repeated violation of the requirements of the MLC 2006, including seafarers' rights¹⁵⁶.

The detention order shall be maintained until the deficiencies found have been rectified or until the competent authority accepts an action plan to rectify the deficiencies of the ship and is satisfied that the plan shall be implemented expeditiously¹⁵⁷. In the event of detention, the port State authority shall immediately notify the flag State administration or a diplomatic or consular representative of all the circumstances in which intervention was deemed required, in writing and attaching the inspection report¹⁵⁸.

The competent authority shall invite a representative of the flag State to be present when detention is considered necessary due to serious or persistent violations of the MLC 2006

¹⁴⁴ Preamble 12 Directive 2013/38/EU.

¹⁴⁵ Article 1 para. 2 Directive 2013/38/EU.

¹⁴⁶ Article 1 para. 7 Directive 2013/38/EU.

¹⁴⁷ Ibidem.

¹⁴⁸ Ibidem.

¹⁴⁹ Ibidem.

¹⁵⁰ Article 1 para. 9 Directive 2013/38/EU.

¹⁵¹ Ibidem.

¹⁵² Ibidem.

¹⁵³ Ibidem.

¹⁵⁴ Ibidem.

¹⁵⁵ Ibidem.

¹⁵⁶ Article 1 para. 10 Directive 2013/38/EU.

¹⁵⁷ Ibidem.

¹⁵⁸ Ibidem.

requirements (including seafarers' rights) or due to living and working conditions on board that clearly endanger the safety, health, or security of seafarers¹⁵⁹. The competent authority shall, in addition, inform the recognised organisations responsible for issuing class or statutory certificates and the competent seafarers' and shipowners' organisations in the port State¹⁶⁰.

Directive 2013/54/EU lays down rules to ensure that the Member States effectively comply with their obligations as flag States in implementing the relevant parts of the MLC 2006¹⁶¹. Directive 2013/54/EU introduces compliance and enforcement provisions for those parts of the MLC 2006 for which the necessary provisions have not been adopted¹⁶².

Member States are required to introduce effective and appropriate enforcement and monitoring mechanisms, including inspections at the intervals laid down in the MLC 2006, to ensure that seafarers on board ships flying their flag are provided with living and working conditions that comply with the requirements of the MLC 2006¹⁶³. Inspectors are empowered to take appropriate action to prohibit a ship from leaving port until the necessary action has been taken¹⁶⁴.

Member States may authorise public institutions or other organisations, including those of another Member State, which they recognise as having sufficient capacity, competence, and independence to carry out inspections¹⁶⁵. Responsibility for inspecting the living and working conditions of seafarers on ships flying the flag of the Member State concerned lies with that State¹⁶⁶. Authorisations to carry out inspections shall, as a minimum, give the recognised organisation the right to require the rectification of identified deficiencies in seafarers' living and working conditions and to carry out inspections in this respect at the request of the port State¹⁶⁷.

In accordance with national law, Member States must make sure that appropriate on-board complaint procedures are in place¹⁶⁸. A Member State which receives a complaint or obtains evidence that a ship flying its flag is not complying with the provisions of the relevant parts of the MLC 2006, or that there are serious deficiencies in its implementation measures, must investigate and rectify the deficiencies found¹⁶⁹. The source of any complaint or allegation of a hazard or deficiency related to seafarers' living and working conditions or of a breach of laws and regulations must be kept confidential¹⁷⁰.

7. Conclusions

The Maritime Labour Convention 2006 is the most comprehensive international instrument on working and living conditions and the protection of seafarers' rights. Member States are obligated to develop a system of inspection and certification of ships, as well as procedures for handling complaints made ashore or on board ships in order to certify compliance with the provisions of Title 5, "Compliance and enforcement." ILO, Guidelines for Port State Control Officers carrying out Inspections under the Maritime Labour Convention, 2006, and ILO, Guidelines for Flag State inspections under the Maritime Labour Convention, 2006, provide assistance to the Member States by promoting international uniformity in the inspections carried out by flag states and port states, respectively. Although the Member States are obliged to ensure that seafarers' fundamental rights are respected, they are not subject to port State control inspections. Seafarers have to invoke national

¹⁵⁹ Ibidem.

¹⁶⁰ Ibidem

¹⁶¹ Article 1 Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006, OJ L 329, 10.12.2013, p. 1-4 available at <https://eur-lex.europa.eu/eli/dir/2013/54/oj>.

¹⁶² Idem, Preamble (8).

¹⁶³ Idem Article 3 para 1.

¹⁶⁴ Idem Article 4 para 1

¹⁶⁵ Idem Article 3 para 3.

¹⁶⁶ Ibidem.

¹⁶⁷ Idem Article 4 para. 2.

¹⁶⁸ Idem Article 5 para. 1

¹⁶⁹ Idem Article 5 para. 2.

¹⁷⁰ Idem Article 5 para. 3.

enforcement mechanisms or supervisory procedures established under the ILO Constitution to be able to ensure that the rights violated are respected. Some aspects of the Convention are considered controversial, such as the lack of a dispute settlement mechanism between the Member States in the case of illegal detention of ships at port State control. Another unresolved issue concerns the lack of provisions in the Convention determining which courts may be seized by seafarers in respect of unresolved complaints, in particular where the on-board or shore-based complaints procedure has been used. At the EU level, a number of directives align EU legislation with the provisions of the 2006 MLC on compliance and enforcement.

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