Maritime Labour Convention Seminar

30 & 31 May 2013

Day One 1st Session – General Introduction

1230 – 1240 – The Role of the Shipping Industry

I am always struck that discussion in the regulatory bodies about new conventions always considers the desired end state – what is the new convention intended to do - but does not so much focus on the transition from status quo to that end state. It doesn't matter what Convention you consider – in the IMO context very obvious examples of my hypothesis are the entry into force of MARPOL Annex VI and also the Ballast Water Convention – the real unknowns are; how timely are the preparations being made by owners, and how will the convention be enforced? In my view the transition to MLC implementation should be worrying us all right now.

You could argue that the industry has had since the adoption of the MLC text in 2006 to make itself ready. However I will argue that the special feature of the MLC is its reliance on individual flag States to set out their requirements and in this respect even today – just a few weeks before entry into force - the industry lacks clear national guidance on compliance requirements from some flag States.

In the case of most IMO conventions the preparations are often physical; compliance depends on the fitting of a new piece of equipment such as ballast water treatment or in the case of MARPOL on the physical nature of the fuel being bunkered and used. In the case of the MLC, the preparations' are largely documentary and/or procedural. This means that evidence of preparation for entry into force is hard to come by and even harder to analyse. Ask me if I am worried at this stage about the preparedness of both industry and national administrations then the answer is - yes - I certainly am. I am not here to defend either party but I do want to take this

opportunity to examine briefly some for the special characteristics of the MLC and to generate a renewed impetus to smooth the entry into force with proposals for industry, for flag States and for port State control.

The Convention was deliberately made flexible in application. If you look back at ILO maritime instruments that predate the MLC, there was often a low record of ratification for the understandable reason that different nations have different social welfare and employment legislation. This impeded their ability to ratify even before their will to do so was challenged. The MLC deliberately addressed this problem by providing flexibility through the notion of 'substantial equivalence'. The detailed requirements of Part A of the Code can be achieved by a means determined by the administration that result in an outcome that is at least as effective as the general object and purpose of the Code. Part B continues the theme of flexibility by describing a method of compliance but not prescribing it as the only means of compliance. On the other hand it provides specific guidance on issues that are perhaps more vaguely described in Part A. Finally not everything in the Code has to be set in stone in national legislation – other measures may be used.

I think that Cleo will excuse me observing that the ILO Convention has - with complete justification - thrust the mechanisms for compliance firmly onto the flag State. This inherent and welcome flexibility is the very reason that States were able to sign up to the Convention with relative ease. But at the same time this has had the effect of delaying the outward signs of readiness for entry into force and this makes me question how ready we – owners, operators and States - really are for entry into force?

The demonstration of readiness is entirely documentary – the Declaration of Maritime Labour Compliance (DMLC). I do not think that it is widely understood in the industry and amongst those that have made new business out of 'advising' the industry that it is not the MLC that you must comply with but the laws, regulations and other measures that bring the Convention into force n each and every State Party. It is the DMLC that validates those measures. The DMLC describes the national legislation and other measures that determine how the Convention must be applied in each and every ship. Herein lies the root of much current confusion – an owner of a fleet whose ships are spread across a number of flag States will find that the detail of compliance will vary from flag to flag following the national social and employment law. These national requirements are laid down in the DMLC Part I. It is inadequate of classification societies to assume that compliance will be the same across a multi-flagged fleet. That this situation is arising is because some flag States have so far failed to provide guidance on national requirements for Part I. Part II of the DMLC is the company's declaration of the measures it is using to ensure compliance with the requirements of Part 1 in each and every individual ship. This is potentially complex and is at the root of part of my concern as we do not yet have a good picture of preparation for compliance through this mechanism.

The second area of concern is over port State control and its exercise after 20th August this year. ISF has been continuously monitoring actual ratification and through bilateral discussion with governments and with national shipowner associations we can therefore paint a picture of expectations - 39 States have already registered their ratification and a further 15 are expected to do so before the end of 2013. An impressive picture!

It does not seem to be widely recalled but at the Diplomatic Conference that gave life to the MLC, a resolution was adopted that not only recognised the difficulty of issuing the MLC and the DMLC to all ships immediately following entry into force but also requested governments to develop plans to phase in certification, starting with bulk carriers and passenger ships. Further, port and flag States were requested to give due consideration to allow ships to operate without the MLC and DMLC for a period of one year – provided of course that inspectors have no evidence that the ship does not conform to MLC requirements. This is not a plea for any delay in compliance but it is my plea for a pragmatic approach from all port State control authorities during the challenging first year of operation of the MLC. I fear that without a show of pragmatism we are in for a difficult period that could challenge the very foundation of the MLC - without just cause.

For those flagged in EU member States and for those trading to European ports, it is important to note the significance of the European Council Directive 2009/13/EC that enters into force on the same day as the Convention. It is welcome that this Directive transposes many elements of the MLC which must be followed by member States. In particular the Directive has inspection implications for ships of all flags including those from outside Europe. Please note that even if an EU member State has not submitted its ratification to ILO it can still inspect ships under the EU Directive. It is a good thing when regional regulation requires ratification of the parent international Convention - but it is not a good thing if the regional regulation acts to make ratification less relevant and therefore less likely.

My final point is about the way ahead. None of us should be surprised that problems will be revealed in the coming months. Flag States will doubtless be discovered whose advice to shipowners and operators has been less than perfect; doubtless

some owners and operators will be caught out by the policing of the Convention and surprised by the multiple agencies that may be engaged to conduct MLC inspections. Some of these agencies in some countries will have no former background in shipping matters perhaps being recruited from amongst land-based health and safety authorities for example. We have all experienced the difficulties associated with the transition into force of conventions as I outlined at the beginning of my remarks – I repeat that none of us should be surprised. But in the MLC we have a mechanism established with great foresight to deal with these problems at the international level – it is the Special Tripartite Committee. It is established under Article XIII of the Convention and cannot therefore convene until entry into force. It will meet for the first time in April 2014 and it has three tasks to fulfil:

- To keep the working of the Convention under continuous review,
- To propose amendments to the Code under Article XV, and
- To decide consultation under Article VII.

These tasks are about monitoring the working of the Convention and proposing amendments – not incidentally to monitor compliance, although the two are clearly related.

ISF is the organisation that coordinates the world's maritime employers in the Tripartite discussion at ILO comprising governments, employees and employers. ISF will be playing that role to the very best of its capability – using its network of member national employer associations to gather views on the working of the Convention, determining worldwide consensus and taking those views to the Special Tripartite Committee. We do not expect that the provisions of the Convention will be set in stone and immoveable from 20th August. We will see controls being exercised

on work and rest hours – but these will not to be so very different to those already in place through STCW - this is no accident as we participated in both discussions.

It will take some time for the MLC to settle down and for States to fully grasp what needs to be done in their legislation and on board ships flying their flag. It will take time for the shipping industry to fully understand that the MLC is not just another piece of legislation but a living, working document that will bring seafarers' working and living conditions to a common and acceptable standard and reduce the unwanted unfair competition from substandard operators.

ISF will ensure that issues are drawn to the attention of the ILO, of the Parties to the Convention and of the industry to drive toward that much needed goal.