

Maritime Labour Convention 2006

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GENERAL INTRODUCTION

Maritime Labour Convention 2006

Content:

- ❖ Background
- ❖ Why was the MLC, 2006 developed and adopted?
- ❖ Innovative features
- ❖ Underlying purposes & flexibility
- ❖ Structure
- ❖ The Articles
- ❖ Advantages of the MLC

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Maritime Labour Convention 2006

Important dates

- **January 2001** - 29th session of the Joint Maritime Commission (JMC)
 - ❖ Report of the ILO on The impact on seafarers' living and working conditions of changes in the structure of the shipping industry
 - ❖ Acknowledged the **need of global standards** applicable to the entire industry and ensuring decent shipping fleets, decent social and safety standards for all seafarers
- **March 2001** - 280th session of the ILO Governing Body - endorsed the JMC Resolution "**Geneva Accord**" on **consolidation and updating** the majority of existing maritime Conventions in **a new framework Convention**
- **February 2006** - 94th (Maritime) Session of the International Labour Conference **adopted the Maritime Labour Convention (MLC, 2006)**
- **20 August 2012** - Ratification requirement was met
- **20 August 2013** - **Entry into force** of the Convention

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Maritime Labour Convention 2006

WHY?

- Need to update many of the existing ILO instruments
- Changes in ownership
- Development of consciously composed mixed nationality crews
- Internationalization of ship registries
- Increased stress and complexity in the maritime work
- Large number of Conventions
 - ❖ problems related to their compliance and enforcement; and
 - ❖ relatively low ratification level

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Maritime Labour Convention 2006 Global Legal Instrument



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- **Updates** and **consolidates 68** existing instruments (37 Conventions and 31 recommendations)
- **Keeps** the **core rights** and **fundamental principles unchanged**
- Becomes **"fourth pillar"** of the international regulatory regime for quality shipping, completing the key IMO conventions – SOLAS, MARPOL, STCW

Maritime Labour Convention 2006 Innovative features

no more
favourable
treatment
clause

- ensures a *"level playing field"*
- prevents the exploitation of workers

combines the
"best of the
old with the
new"

- the *existing core standards*
- *innovative format* to achieve universal acceptance and *new approach* to secure on-going compliance and more rapid updating

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builds upon
well -
established
approaches

- *STCW*
- *SOLAS*

introduces
effective
enforcement
& compliance
system

- *certification system* for conditions of *"decent work"*
- provides for *inspections* under *PSC*

Maritime Labour Convention 2006 Underlying purposes

- To lay down in its Articles and Regulations a **firm set of rights and principles**;
- To allow, through the Code, a **considerable degree of flexibility** in the way Members **implement** these rights and principles; and
- To ensure through Title 5, that the rights and principles are **properly complied with** and **enforced**.

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Maritime Labour Convention 2006 Flexibility for National Governments

Why is flexibility needed?

- To create a **level playing field**

In what areas the flexibility may be used?

- Applying **substantial equivalence**; and
- Formulating mandatory requirements of many provisions in Part A of the Code in a **more general way**

What does the flexibility imply?

- The repeated use of words like "**adequate**"; "**sufficient**"; "**competent authority may permit**"; "**appropriate**"; "**suitable**"; etc.

How should the flexibility be used by national governments?

- Formulating **clear** and **precise national provisions**

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Maritime Labour Convention 2006 Substantial equivalence (Article VI)



When a flag State **is not** in a position to implement a particular requirement in *Titles 1, 2, 3 & 4* of the Convention **in the manner** set out in Part A of the Code, **it is permitted** to adopt a **substantially equivalent provisions** in its national laws, regulations or other measures.

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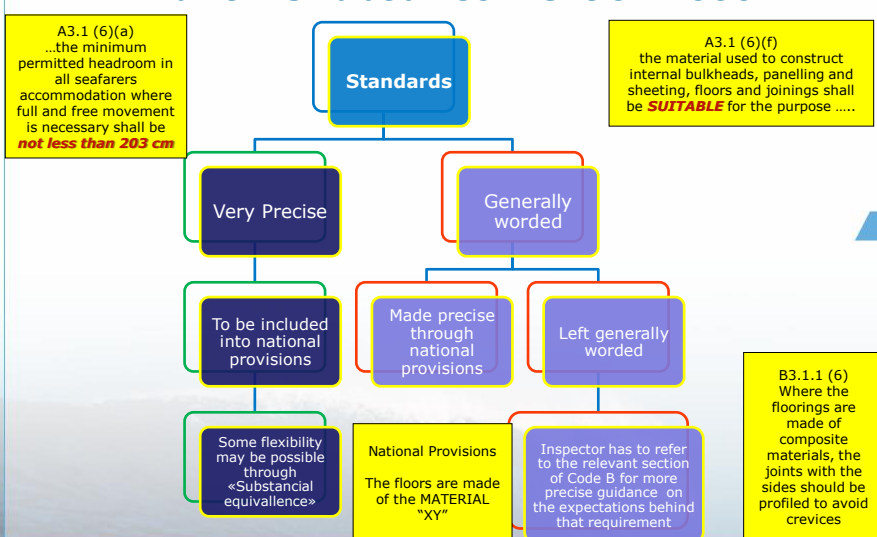
When considering the adoption of substantially equivalent provisions, flag State **must have satisfied itself that:**

- It is **conductive** to the **full achievement** of the general objective and purpose of the provisions; and
- It **gives effect** to the provisions

of Part A of the Code

Any substantially equivalent provisions that relate to matters that are subject to certification **must be noted in Part I of the DLMC.**

Maritime Labour Convention 2006



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Maritime Labour Convention 2006

Be a **FLAG STATE**
in capital letters

*Why is it necessary to define clear and precise
National standards?*

- To **fulfil the commitment** to give **full** and **proper effects** to the Convention
- To **play** appropriately the **role of Flag State**
- Because of the **delegation of tasks to ROs**

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Maritime Labour Convention 2006 Structure

- 1st level:** Articles (16)
core rights and principles
- 2nd level:** Regulations (38)
basic obligations
- 3rd level:** A two-part Code
 - **Part A: Mandatory Standards**
 - **Part B: Non-mandatory Guidelines**
(setting out technical details related to the obligations)

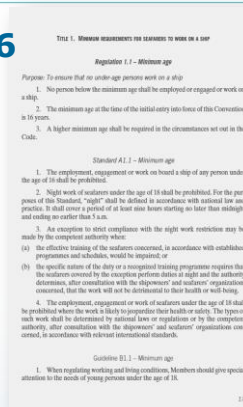
Explanatory note

- ☐ does not form part of the Convention
- ☐ is intended as a general guide to the Convention

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Maritime Labour Convention 2006 Structure

- **Vertically integrated structure**
- **Provisions** - organised under **5 titles** with a numbering system linking the related regulations, standards and guidelines.
 - ❖ **Title 1** – Minimum requirements for seafarers to work on a ship
 - ❖ **Title 2** – Conditions of employment
 - ❖ **Title 3** – Accommodation, recreational facilities, food and catering
 - ❖ **Title 4** – Health protection, medical care, welfare and social security protection
 - ❖ **Title 5** – Compliance and enforcement



Maritime Labour Convention 2006 Example of vertically integrated structure

Regulation 1.2 – Medical certificate

Purpose: To ensure that all seafarers are medically fit to perform their duties at sea

Establishes basic principle: Seafarers shall not work on a ship unless they are certified as medically fit to perform their duties.

Standard A1.2 – Medical certificate

(Mandatory standard, supplementing the Regulation, requesting parties to act)

- Issued by a duly authorised practitioner
- Maximum validity two years – one year under the age of 18
- Attesting hearing and sighting
- Colour vision if relevant (certificate can cover up to six years)
- Etc.

Guideline B1.2 – Medical certificate

(Non-mandatory guideline, recommending actions to parties)

The competent authority ... should follow the ILO/WHO Guidelines for conducting pre-sea and periodic medical fitness examinations for seafarers...

Maritime Labour Convention 2006 The Articles

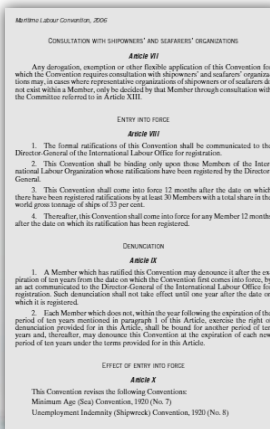
Articles provide an overall framework for the specific requirements set out in Titles 1 to 5

Article I **GENERAL OBLIGATIONS**



Ratifying Members shall:

- **give complete effect** to the Convention; and
- **co-operate** with other States for its effective implementation and enforcement



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Maritime Labour Convention 2006 Definitions & Scope (Article II)

Who or what does it apply to?

Sets out:

- **General definitions** (paragraph 1) of terms occurring in different parts of the Convention like: competent authority; seafarer, ship, shipowner, etc.;
- **General scope of application** of the Convention (paragraphs 2 & 4); and
- **Some flexibility related options** (paragraphs 3, 5, 6 & 7)
 - ❖ to deal with particularly *difficult application problems*; and
 - ❖ to address *borderline cases including exemptions* where *determination* is required in/after consultation with the seafarers' & shipowners' organisations concerned

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Maritime Labour Convention 2006 Key Definitions: SEAFARER (worker)

Definition:

Seafarer means **any person** who is employed or engaged or works **in any capacity** on board a ship to which this Convention applies (Article II.1(f))

- **Gender neutral** (moves away from 'seaman');
- Covers a **wide range of working arrangements**
- Covers workers **previously not considered 'seafarers'** (entertainers, hairdressers, hotel staff, etc.)

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Scope:

- Except as expressly provided otherwise, the Convention **applies to all seafarers** (Article II.2)
- In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Convention, the question shall be **determined by the competent authority** in each Member **after consultation** with the **shipowners'** and **seafarers' organizations** concerned with this question." (Article II.3)

Maritime Labour Convention 2006 Key Definitions: SEAFARER (worker)

- Resolution VII concerning information on **occupational groups**

(**CRITERIA** to determine who shall be considered seafarer)

- MLC, 2006 covers all workers, including:
 - ✓ cabin and cleaning personnel,
 - ✓ bar staff,
 - ✓ waiters,
 - ✓ entertainers,
 - ✓ singers,
 - ✓ kitchen staff,
 - ✓ casino personnel, and
 - ✓ estheticians
- Cadets?
- PSCOs & FSIs boarding the ship?
- Cases requiring determination



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Maritime Labour Convention 2006 Key Definitions: SHIP (workplace)

Definition:

SHIP means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply

- ❖ **Modified version** of the IMO's STCW Convention for 'seagoing ship'
- ❖ Covers much **larger group of ships**, including those **generally not covered by international regulatory regime**

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Scope:

- ❖ Applies to **all ships**, publicly or privately owned and ordinarily engaged in commercial activities
- ❖ In the event of doubt as to whether this Convention applies to a ship or particular category of ships, the **question shall be determined** by the competent authority in each Member **after consultation** with the **shipowners'** and **seafarers' organizations** concerned.

➤ **No general tonnage limitation**

➤ **No exclusion of ships that do not go on international voyages**

Maritime Labour Convention The Articles

Article III

Fundamental rights & principles

- Freedom of association
- Elimination of forced/compulsory labour
- Abolition of child labour
- Elimination of discrimination



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Article IV

Seafarers' Employment & Social rights to:

- a safe and secure workplace that complies with safety standards
- Decent working & living conditions on board ship
- Health protection, medical care, welfare measures & other forms of social protection

Maritime Labour Convention Implementation and Enforcement Responsibilities

Article V

Three Levels of international responsibilities:

- **Flag State** - shall implement and enforce laws or regulations or other measures that it has adopted to fulfill its commitments under this Convention with respect to ships and seafarers under its jurisdiction (**Title 5, Regulation 5.1**)
- **Port State** - may, in accordance with international law inspect a ship to which this Convention applies to determine whether the ship is in compliance with its requirements (**Title 5, Regulation 5.2**)
- **Labour Supplying State** - shall effectively exercise its jurisdiction and control over seafarer recruitment and placement services, if these are established in its territory (**Title 5, Regulation 5.3**)

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Maritime Labour Convention 2006 The Articles

Article VII

Consultation with shipowners' & Seafarers' Organisations

Filling a gap in tripartite consultation – if a ratifying Party has no ***representative organisations of the shipowners and seafarers***, decisions involving the exercise of the flexibility are taken through consultation with the ***Special Tripartite Committee***

Article XIII

Special Tripartite Committee

Keeping the Convention ***under continuous review***

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Maritime Labour Convention 2006

The Articles

Article VIII

Entry into force

➤ Initial entry into force

12 months after registration by ILO Director-General of the ratifications from at least **30 countries** with a *total share in the world gross tonnage of ships of at least 33%*

20 August 2013

➤ Entry into force for any other Member State, ratifying the Conventions after its initial entry into force

12 months after the ratification is registered

Article X

Effect of entry into force

The listed existing ILO Conventions which will be revised by the new Convention will be **gradually phased-out**

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Maritime Labour Convention 2006

Status of ratifications

as on 10 November 2013

- Total number of ratifications: **55**
- Since 20 August 2014 the MLC, 2006 is **in force** for **30 ratifying Members**
- For **22 ratifying Members** it **will enter into force** during **2014**, and
- The ratifications of **3 ratifying Members** are **pending registration** by the ILO Director-General

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Maritime Labour Convention 2006 The Articles

Article XIV Amendment of the Convention

Amendments to any of the provisions of the Convention – adopted by the General Conference of the ILO

- In the framework of Art.19 of the ILO Constitution; and
- The rules and procedures of the Organisation

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Article XV Amendment to the Code

- accelerated amendment procedure for **the Code only** - **keeping pace** with developments in the industry

Maritime Labour Convention 2006 Advantages

A global reference on maritime labour issues

- 4th pillar of quality shipping (with SOLAS, STCW, MARPOL)
- Strong enforcement regime, backed by a certification system
- Application to all ships including those of non-ratifying Members
- Improved social dialogue at all levels
- Improved supervision at all levels: the ship, the company, the flag state, the port state, and the ILO
- Global and uniform compliance and verification
- Improved possibilities of keeping labour conditions up to date
- Positive impact on safety at sea and the protection of the environment


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Maritime Labour Convention 2006 Advantages For Shipowners

- A more level playing field to help ensure fair competition and to marginalize substandard operations
- Will benefit from a system of certification, including a certification system possible for ships less than 500 GT, if the Shipowner so requests
- Help ensure that ships are operated safely and securely with few problems and few delays in ports
- New Convention contains minimum standards that are well within the current industry practice and should easily be met by most shipowners

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Maritime Labour Convention 2006 Advantages For Seafarers

- Convention spells out in one place and clear language seafarers' basic employment rights
- Seafarers better informed of their rights and of remedies available
- Improved enforcement of minimum working and living conditions
- Right to make complaints both on board and ashore
- Clear identification of who is the shipowner with overall responsibility, for the purposes of this Convention

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Questions ?