Maritime
Labour
Convention
2006

Detailed Overview

The ILO - 86 years of working with the maritime sector

Seafarers have always been of special concern to the International Labour Organization.

- One of the first legal instruments that the ILO adopted was the National Seamen's Codes Recommendation, 1920 (No.9)), a year after the ILO was created.
- It called for the establishment of an international seafarers' code, which would clearly set out the rights and obligations relevant to this sector.
- Matters relating particularly to the situation of seafarers have also, from the beginning, normally, been considered at a special session, a maritime session, of the International Labour Conference.

The ILO - adoption of the Maritime Labour Convention, 2006

- At its 94th Session (the 10th Maritime Session), 7- 23 February 2006, the International Labour Conference adopted an important new legal ILO instrument, the Maritime Labour Convention, 2006.

- It was adopted by a record vote of 314 in favour/none against, involving 106 ILO Member States* and Shipowners and Seafarers drawn from these countries. (*2 countries abstained for reasons unrelated to the substance of the Convention).

- The Maritime Labour Convention, 2006 has been described as "historic" and "a way forward", using international labour standards, to establish decent work and fair competition and to help to achieve "fair globalization".

The ILO - adoption of the Maritime Labour Convention, 2006

- The Maritime Labour Convention, 2006 has two primary purposes:
  - to bring the system of protection contained in existing labour standards closer to the workers concerned, in a form consistent with the rapidly developing, globalized sector (ensuring “decent work”);
  - to improve the applicability of the system so that shipowners and governments interested in providing decent conditions of work do not have to bear an unequal burden in ensuring protection (“level-playing field” - fair competition).
- It is often called the “fourth pillar” of international maritime regulatory regime, because it will, when it enters into force, stand beside the key IMO Conventions (SOLAS, MARPOL & STCW) that support quality shipping and help to eliminate substandard shipping.

The ILO - adoption of the Maritime Labour Convention, 2006

- The substance of most*, of the existing 70 maritime labour instruments (Conventions and Recommendations) adopted by the ILO since 1920 have been updated and are now included - “consolidated” - in the new Convention.

  (* *The ILO Conventions on seafarers’ identity documents (Nos.108, 185), and on seafarers pensions (No.71) and one already shelved Convention (No.15) are not included in the new Convention.)*

- The 37 maritime labour Conventions that are now consolidated (revised) will be gradually phased out as States that are now party to these Conventions ratify the new Convention.

Why did the ILO decide to develop a new Convention?

- In response to phenomenon of “globalization” the ILO began, in the late 1990s, to review all of its standard setting and supervisory activity to better ensure that its Conventions are designed to achieve *universal acceptance* and that issues such as *effective enforcement* and *compliance* are better addressed.

- In 2001 the Shipowners and Seafarers in the Joint Maritime Commission (JMC), jointly proposed a new approach and preferred solutions (the “Geneva Accord) to the existing maritime labour instruments in order to better provide:

  - comprehensive and effective protection of the seafarers' rights to decent work;

  - a level playing field for Governments and Shipowners, with flexibility as to the means of delivering this protection and accommodating diversity.

Reasons for change

- many of the existing ILO instruments need to be updated to reflect the working conditions in the industry
- changes in ownership, financing and the rise of ship management companies resulting in significant shifts in the labor market for seafarers.
- development of consciously composed mixed nationality crews in highly organized global network linking shipowners, ship managers, crew managers, labour supplying agencies
- increased internationalization of ship registries and “flags of convenience”
- a need to provide a “level playing field” and avoid exploitation of workers
- increased stress and complexity in the maritime work place that has an impact on the health and social security of workers
- the high level of detail combined with the large number of Conventions led to problems for compliance and enforcement and a relatively low ratification level for some key Conventions

Tripartite consultation and the development of the Maritime Labour Convention 2006

- In 2001 the ILO Governing Body took a decision, based on the “Geneva Accord”, to develop a new instrument that would:
  - consolidate nearly all existing maritime labour standards
  - meet current and future needs
  - address barriers to achieving universality in the acceptance of the standards
  - ensure better and more effective implementation of the standards.
- An extensive international consultation exercise, including a Preparatory Technical Maritime Conference (2004), involving up to as many 88 countries and Shipowners’ and Seafarers’ organizations, and stretching over more than four years developed a proposed Convention text.
- The proposed Convention text was then scrutinized and further refined by the more 1000 participants drawn from the 106 ILO Member countries attending the February 2006 Conference, before it was finally adopted.

Overview & innovative features of Maritime Labour Convention 2006

- The new Convention is seen as combining the “best of the old with the new”.
- It combines the core standards found in the existing maritime Labour Conventions with an innovative format aimed at achieving universal acceptance and a new approach to securing ongoing compliance and to more rapidly updating of the technical provisions.
- It also builds upon and incorporates many of the well- established approaches developed in other major conventions in the maritime sector such as STCW and SOLAS.
- Unlike other ILO Conventions it will not have a Convention number assigned to it because its text will be amended in the future (rather than being revised by another subsequent Convention).

Overview & innovative features of Maritime Labour Convention 2006 Format

- The Convention adopts an approach similar to the IMO's STCW Convention with three different but related parts,
  - Articles,
  - Regulations
  - a two- part Code (Part A mandatory Standards, Part B non-mandatory Guidelines)
- There is an important "Explanatory Note" found after the Articles which is intended to provide further information and assistance, especially to Governments about the relationship between the parts of the Code.

Overview & innovative features of Maritime Labour Convention 2006 Format

- "vertically integrated" in presentation with the Regulations and Code (Parts A and B) provisions organised under 5 Titles with a numbering system that links 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 protection

  Title 5: Compliance and enforcement

Overview & Innovative Features of Maritime Labour Convention 2006 – Format & Content

Each **Title** comprises a number of Regulations, Standards and Guidelines relating to various topics

Title 1. Minimum requirements for seafarers to work on a ship

Regulation 1.1 – Minimum age
Regulation 1.2 – Medical certificate
Regulation 1.3 – Training and qualifications
Regulation 1.4 – Recruitment and placement

Overview & Innovative Features of Maritime Labour Convention 2006 – Format & Content

Title 2 Conditions of employment

Regulation 2.1 - Seafarers' employment agreements
Regulation 2.2 - Wages
Regulation 2.3 - Hours of work and hours of rest
Regulation 2.4 - Entitlement to leave
Regulation 2.5 - Repatriation
Regulation 2.6 - Seafarers' compensation for the ship's loss or foundering
Regulation 2.7 - Manning levels
Regulation 2.8 - Career and skill development and employment opportunities for seafarers

Overview & Innovative Features of Maritime Labour Convention 2006 – Format & Content

Title 3 Accommodation, recreational facilities, food and catering

Regulation 3.1 - Accommodation and recreational facilities
Regulation 3.2 - Food and Catering

Title 4 Health protection, medical care and social security protection

Regulation 4.1 - Medical care on board ship and ashore
Regulation 4.2 - Shipowners' liability
Regulation 4.3 - Health and safety protection and accident prevention
Regulation 4.4 - Access to shore-based welfare facilities
Regulation 4.5 - Social security

Overview & Innovative Features of Maritime Labour Convention 2006 – Format & Content

Title 5 Compliance and Enforcement

Introductory paragraphs

Regulation 5.1- Flag State responsibilities

Regulation 5.2 - Port State responsibilities

Regulation 5.3 – Labour-supplying responsibilities

In addition, Title 5, Part A of the Code has three Appendices and Part B has one appendix.

Overview & Innovative Features of Maritime Labour Convention 2006 – Format & Content

- Appendix A5-1, List of matters for flag State inspection
- Appendix A5-III, List of areas subject to detailed inspection in a port State
- Appendix A5-II "model" documents relating to the inspection and certification system established in Title 5:
  - a Maritime Labour Certificate
  - a Declaration of Maritime Labour Compliance
- Appendix B5-I – an Example, to provide guidance as to the way a Declaration might be filled out.

Overview & innovative features of Maritime Labour Convention 2006 –Features

Innovative features of the new Convention include:

- a new system for effective enforcement and compliance - a certification system for conditions of “decent work”
  - a Maritime Labour Certificate & a Declaration of Maritime Labour Compliance will issued by the flag State or a Recognized Organization on behalf of the flag State
  - the flag State certification and port State inspection system applies only to ships above 500 GT engaged in international voyages or voyages between foreign ports, however the certificate system is available, on request by shipowners, to other ships
  - the Certificate and Declaration will provide prima facie evidence of compliance with the requirements of this Convention (Articles, Regulations and the Code, Part A)

Overview & innovative features of Maritime Labour Convention 2006 –Features

innovative features include (con't):

- The certification system (con't):
  - except in specific situations where a detailed inspection is warranted, any inspections in a foreign port (port State control) will be limited to a review of the Certificate and Declaration
- a "no more favourable treatment" provision to help ensure a level-playing field (in the context of port State control measures)

Overview & innovative features of Maritime Labour Convention 2006 –Features

innovative features include (con't):

- Specific areas for national flexibility
  - the detailed provisions of Part B of the Code are not mandatory however Governments are required to give "due consideration" to their content when implementing their obligations
  - the "Seafarers Employment and Social Rights" set out in Article IV are to be fully implemented, "in accordance with the requirements of this Convention" (in accordance with the relevant provisions of the Articles, Regulations and Part A of the Code), however,
    ".. unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice."

Overview & innovative features of Maritime Labour Convention 2006 –Features

- Specific areas for national flexibility (con't)
  - implementation of Part A of the Code (other than Title 5) may also be achieved through measures which are "substantially equivalent"
  - the requirements of the Convention, other than the certification system, will apply to most other ships (it does not apply fishing vessels, ships of traditional build or warships)
  - the application of details in the Code may be relaxed for some smaller ships - 200 GT and below that do not go on international voyages. This determination would be made in consultation with shipowners and seafarers organizations concerned
  - provisions affecting ship construction and equipment (Title 3) will not apply to ships constructed before the Convention comes into force for the country concerned.

Overview & innovative features of Maritime Labour Convention 2006 –Features

Other innovative features include:

- onboard and onshore complaint procedures to encourage rapid resolution of problems, if possible
- a complaint and inspection system that is linked to with the ILO supervisory system
- provisions setting international standards for flag State delegation of some functions to a Recognized Organization
- a modernized management based approach to occupational safety and health
- accelerated amendment procedures to update Code provisions more rapidly and with less cost in order to address changes in the sector

The Maritime Labour Convention 2006
When will it begin to apply?

- The Convention will enter into force

  "12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of 33 percent. "

- This is a much higher than usual ratification level (for ILO Conventions) and is intended to assure greater actual impact

- a Resolution was adopted at the Conference (largely for national administrative reasons), which, in the case of specific ships, would allow the first 30 ratifying ILO Member States extra time, after the initial entry into force of the Convention, to issue Maritime Labour Certificates to their ships. It also relaxes the port State control measures established by Convention on this matter.

Detailed outline of the Maritime Labour Convention, 2006
The Preamble

- indicates a clear intention that the new Convention should embody the fundamental principles to be found in the ILO's fundamental Conventions
- recalls the *ILO Declaration on Fundamental Principles and Rights at Work, 1998*
- provides information as to the overall context and the intention of the Convention in relation to other relevant international law such as 1982 United Nations Convention on the Law of the Sea and the Conventions of the International Maritime Organization
- does *not* create legal obligations for ratifying countries

Detailed outline of the Maritime Labour Convention, 2006 – The Articles (& Regulations)

- The *Articles* and the *Regulations* set out the core rights and principles and the basic obligations of Members ratifying the Convention.
- The *Articles* (and the *Regulations)* can only be changed by the General Conference in the framework of article 19 of the Constitution of the International Labour Organisation.
- The Convention has 16 (XVI) Articles dealing with issues such as: definitions, scope of application of the Convention, entry into force, and amendments to the Convention.
- The Articles provide the overall legal framework for the increasingly detailed provisions found first in the *Regulations* and then in Part A (mandatory *Standards*) and Part B (non-mandatory*Guidelines*) of the *Code*.

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- Article I General obligations
  - the general obligations of “Each Member” that has ratified the Convention to give effect to the Convention and to cooperate.
- Article II Definitions and scope of application
  - Article II sets out general *definitions (paragraph 1)* of terms occurring in different parts of the Convention, as well as the general *scope of application* of the Convention *(paragraphs 2* and *4)*
  - both concepts are used to address the question of *who or what activities* – in this case ships, shipowners and seafarers – are governed by the Convention’s provisions, BUT they are distinct ideas
  - the approach adopted in the Convention is to provide *inclusive* or broad *definitions,* combined with some *flexibility* at a national level, to address particular situations and circumstances at a national level, through consultation

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- Article II
  - in addition, the *scope-related* provisions (Article II, *paragraphs 2* and *3* (for seafarers) and *paragraphs 4* , *5* and 6 (for ships) allow for some tailoring of the application of provisions to allow for specific situations
  - this is indicated by the phrase “except as expressly provided otherwise” in paragraphs 2 and 4.
- The term “Seafarer” is defined in Article II as:

  “1. (f) *seafarer* means any person who is employed or engaged or works in any capacity on a ship to which this Convention applies;

  ...

  2. Except as expressly provided otherwise, this Convention applies to all seafarers”.

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- reflects the greater awareness of the full range of people employed at sea (especially, for example, workers on passenger ships)

- some *national flexibility* is provided for in *paragraph 3* ("in the event of doubt " as to categories of persons to be regard as seafarers) which would allow exclusion of some people from the entire Convention: A Resolution was adopted by the Conference to provide guidance to national authorities when making decisions on this matter.

- *additional national flexibility* relating to full and partial exclusions of ships (and, therefore, the seafarers on them) from the requirements of the Convention is also provided, based on the determinations made in connection with particular "ships" Article II, paragraphs 1(i),(4) (5) (6).

Detailed outline of the Maritime Labour Convention, 2006
The Articles

- The term “ship” is defined in Article II as:

  “1. (i) *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;

  …

4. Except as expressly provided otherwise, this Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. It does not apply to warships or naval auxiliaries.

5. 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.

Detailed outline of the Maritime Labour Convention, 2006
The Articles

Article II – *ships (con't)*

6. "Where the competent authority determines that it would not be reasonable or practicable at the present time to apply certain details of the Code referred to in Article VI, paragraph 1, to a ship or particular categories of ships flying the flag of the Member, the relevant provisions of the Code shall not apply to the extent that the subject matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures. Such a determination may only be made in consultation with the shipowners' and seafarers' organizations concerned and may only be made with respect to ships of less than 200 gross tonnage not engaged in international voyages.

7. Any determinations made by a Member under paragraph 3 or 5 or 6 of this Article shall be communicated to the Director-General of the International Labour Office, who shall notify the Members of the Organization".

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- The term "*shipowner*" is defined in Article II as:

> "1(j) *shipowner* means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner."

  - based on the definition in ILO Convention No. 179 and is similar to the definition of a "company" adopted by the IMO in SOLAS (in the ISM Code) and STCW
  - reflects the principle that shipowners are the responsible employers under the Convention with respect to all seafarers on board their ships
  - shipowners would still have the right to recover the costs involved from others who may also have responsibility for the employment of a particular seafarer.

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- *Article II, paragraph 1 (e)* defines the term “requirements of this Convention”
  - makes it clear that this term, when used in the Convention, only refers to the mandatory provisions of the Convention, i.e., those found in the Articles, Regulations and Part A of the Code.
  - reflects the “understanding” set out in the Explanatory Note and in Article VI.
  - Article VI requires that Members give “due consideration” to implementing their responsibilities in the manner provided for in Part B of the Code.
  - is linked to Regulation 5.1.2, paragraph 3 (port State control inspections).

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- Article III Fundamental rights and principles
  - *Articles III* and *IV* set out fundamental rights and principles and seafarers' employment and social rights pursuant to the Decent Work Agenda.
  - the purpose of Article III is to achieve recognition of the underlying importance of these fundamental rights the obligation of a Member under Article III is to "satisfy itself" that those fundamental rights are reflected in the relevant legislation.
  - Article III does not, however, require that a Member apply the provisions of the Conventions embodying those fundamental rights (which are referenced in the *Preamble*).

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- **Article IV Seafarers' employment and social rights**
  - requires each Member to ensure, within the limits of its jurisdiction, decent conditions of work for seafarers
  - *paragraphs 1- 4* can be seen as setting out the core rights and principles, which are then dealt with in detail in the Titles (in the Regulations and Code provisions)
  - *paragraph 5* makes it clear that the "seafarers employment and social rights" set out in paragraphs 1-4, are to be fully implemented, "in accordance with the requirements of this Convention" - that is - in accordance with the relevant provisions of the Articles, Regulations and Part A of the Code
  - *unless specified otherwise* in the Convention, national *implementation* of the Convention may be achieved:
    - through national laws or regulations,
    - through applicable collective bargaining agreements
    - through other measures
    - in practice.

Detailed outline of the Maritime Labour Convention, 2006
The Articles

- Article V Implementation and enforcement responsibilities
  - provides the legal foundation for the provisions on *compliance* and *enforcement* in *Title 5* of the Convention
  - obligations are drawn from the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and the Labour Inspection Seafarers) Convention, 1996 (No. 178), both of which are consolidated by this Convention
  - *paragraphs 2* and *6* require each Member to *effectively exercise its jurisdiction* and encourage the adoption of a systematic approach to compliance and enforcement of the legal standards
  - *paragraph 4*, based on Article 4, Convention No. 147, provides the foundation for voluntary ("may") inspections of a ship flying a Member's flag by another Member, when that ship is in the other Member's port (port State control measures) to help ensure ongoing compliance with the requirements of the Convention.

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- Article V Implementation and enforcement responsibilities
  - *paragraph 5* draws upon Convention No. 179 and sets out the complementary responsibilities of Members from which the world's seafaring workforce are drawn
    - requires Members to "effectively exercise … jurisdiction and control" over seafarer recruitment and placement services, *if these are established in its territory*
    - also lays the foundation for the requirements in *Title 1* of the Convention) that, except in few specific situations, private sector services must be licensed or certified or regulated in some way and for the obligations under *Title 5, Regulation 5.3*
  - *paragraph 6* sets out a requirement that each Member enforce its laws with sufficient sanctions or other corrective measures, consistent with international law, to discourage violations of the requirements of the Convention.

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- Article V Implementation and enforcement responsibilities
  - *paragraph 7* establishes the principle of "no more favourable treatment", a principle that is also found in the key IMO conventions.
    - it requires a ratifying Member to apply Convention standards to a foreign ship in its port (if it chooses to inspect the ship), even if the flag State of the ship has not ratified the Convention
    - this may provide an incentive for ratification of the Convention and help to secure a level playing field with respect to employment rights.

- Article VI Regulations and Parts A and B of the Code
  - introduces two important innovations for international labour Conventions:
    - the structure of the Convention as an approach to allow for more rapid updating
    - flexibility in implementation to help ensure wide scale ratification without dilution of the labour rights and principles

Detailed outline of the Maritime Labour Convention, 2006
The Articles

- **Article VI Regulations and Parts A and B of the Code**
  - *paragraphs 1* and *2* set out the legal relationship between the parts or *levels* of the Convention
    - **Articles** are at the *first level* of the Convention,
    - binding **Regulations** (Titles 1-5) are the *second level,*

    which are **implemented** through a combination of:
    - mandatory **Standards** (**Code, Part A**, *third level*)
    - and non-binding **Guidelines** (**Code, Part B**, *fourth level).*
  - *paragraph 2* provides for interaction within the Code of the Convention: Members are to give "due consideration" to implementing their responsibilities under Part A of the Code "in the manner provided for in Part B of the Code".

Detailed outline of the Maritime Labour Convention, 2006
The Articles

- **Article VI Regulations and Parts A and B of the Code**

  - during the development of the Convention an important tripartite agreement was reached on the treatment to be given to Part B of the Code, paving the way for the shift of many of the detailed requirements in existing Conventions from the Standards in Part A of the Code to the Guidelines in Part B of the Code.

  - *paragraphs 3* and *4* set out the other main element of flexibility which is the concept of "substantially equivalent" national implementation of the Convention requirements -a concept is already found in the Merchant Shipping (Minimum Standards) Convention, 1976(No. 147)

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- Article VI Regulations and Parts A and B of the Code
  - *paragraph 4*, which reflects extensive discussion, provides a definition of the term "substantially equivalent"
  - a national provision implementing the rights and principles of the Convention in a manner different from that set out in Part A of the Code would be considered as "substantially equivalent" if the Member concerned "satisfies itself" that the relevant legislation or other implementing measure "is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned" and "gives effect to the provision or provisions of Part A of the Code concerned"
  - under *paragraph 3*, the concept of substantial equivalence may be resorted to "unless expressly provided otherwise in this Convention"; its application has been excluded with respect to the Standards in *Title 5 .*

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- **Article VII Consultation with shipowners' and seafarers' organizations**
  - the Convention establishes a mechanism (the Special Tripartite Committee of the Governing Body proposed under Article XIII) to enable Members to respond to the situation where there may be no representative organization of shipowners or seafarers in a jurisdiction to consult with (as required by a number of provisions in the Convention).

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- **Article VIII Entry into force**
  - unlike ILO Convention No.147 there are no preconditions for Members who wish to ratify the maritime labour Convention
  - the Convention will enter into force when:
    3. "This Convention shall come into force 12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of 33 percent.
  - much higher than usual ratification level (for ILO Conventions) with a new formula designed to assure greater actual impact
  - most of the Convention obligations apply to " the flag State" (and its shipowners) - that is, the country which has authorized the ship to fly its flag and has the ship (and its tonnage) listed as part of that Member country's national fleet.

- **Article VIII Entry into force**
  - under *paragraph 4* there is a 12-month period before a registered ratification becomes effective for a Member ratifying after the Convention has come into force
    - this is the normal period for ILO Conventions
    - this is particularly important in the context of the Title 3 transitional provision for older existing ships
    - it may also be relevant to the issue of adjustments within the domestic systems and to ship construction
  - a **Resolution** was adopted at the Conference (largely for national administrative reasons), which, in the case of specific ships, would allow the Members which have ratified the Convention before it enters into force extra time, after the initial entry into force of the Convention, to issue Maritime Labour Certificates to their ships. It also allows for a relaxation of port State control on this matter.

Detailed outline of the Maritime Labour Convention, 2006
The Articles

- **Article IX Denunciation**
  - standard provision regarding the denunciation process and is used in all ILO Conventions.
  - establishes the same period during which denunciation is possible for each ratifying Member, regardless of when the Convention entered into force for the Member
- **Article X Effect of entry into force**
  - *Article X* lists the 37 Conventions which are consolidated (revised) by the new Convention
  - includes all existing maritime labour Conventions except Conventions Nos. 108, 185, 71 and 15
  - Recommendations, as well as the listed Conventions that have not yet entered into force can, in due course, be withdrawn by decision of the International Labour Conference taken in accordance with article 45bis of its Standing Orders.

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- **Article X Effect of entry into force**
  - until the Convention is ratified by all of the States that have ratified the existing maritime labour Conventions, the new Convention will coexist with the obligations under the international maritime labour Conventions that it consolidates
  - on the Convention's entry into force any Member that has already ratified it or subsequently ratifies it will be deemed to have denounced any Convention adopted after 1930 which it has ratified and which is identified in the new Convention in Article X as having been revised
  - on the Convention's entry into force the Conventions revised by the Maritime Labour Convention will remain in force for the Members that have ratified them, but have not ratified the new Convention, but they will be closed to further ratifications.

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- Article XI & Article XII Depositary functions
  - these are standard provisions in ILO conventions
- Article XIII Special Tripartite Committee
  - invites the ILO Governing Body to establish a special tripartite Committee, charged with generally reviewing the working of the new Convention
  - the Committee has specific functions with respect to the accelerated or simplified amendment procedure for the Code (Article XV)
  - consists of representatives of Governments that have ratified the new Convention and of Shipowner and Seafarer representatives chosen by the Governing Body (who might, in practice, be the same as the members of the Joint Maritime Commission)
  - the social dialogue in this case will operate on a global basis, on the model of the Governing Body to reflect the essentially globalized nature of the maritime sector.

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- Article XIII Special Tripartite Committee
  - Government representatives of non-ratifying Members can participate in the Committee, but they have no right to vote although they
    - can take part in the process for the approval of such amendments in the International Labour Conference on the same basis as the Members that have ratified the Convention
    - have a right to propose amendments
  - *paragraph 4* provides for the Governments on the Committee to have twice the voting power of the Shipowner and Seafarer representatives on the Committee
    - in the case of the adoption of amendments to the Code, *paragraph 4(c) of Article XV* protects any one of the three tripartite groups from being outvoted: a vote will not be carried if it does not have the support of at least half the voting power of each of the three groups.

- **Article XIV Amendment of this Convention**
  - Articles XIV and XV set out the procedures for amendment of the new Convention
  - *Article XIV* provides that the *Convention* (all parts) can be amended by the General Conference in the framework of article 19 of the ILO Constitution
  - the *Code* can also be amended by a simplified, accelerated amendment process under *Article XV*, to meet the need for more rapid updating of the technical parts of the Convention, without the need for an entire revision of the Convention.

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- Article XIV Amendment of this Convention
  - sets out the procedures, in the framework of article 19 of the Constitution, for amendment of the Convention as a whole, involving an *express ratification* procedure
  - procedure is an innovation for the ILO but the legal effect of amendment procedure is the same as that of the procedures used in the ILO for the revision or modification of instruments, with one important exception:
    - there will be no separate revising Convention or Protocol; there will be a single amended Convention
- "*express ratification*" amendment procedure under Article XIV
    - *paragraph 1*, amendments will be adopted by the International Labour Conference in accordance with its Standing Orders
    - Members that have already ratified the Convention will receive only the amendment for ratification (*paragraph 2*); Members that have not ratified the Convention will receive a copy of the whole Convention, as amended (*paragraph 3*)

Detailed outline of the Maritime Labour Convention, 2006
The Articles

- *paragraph 4,* "deemed acceptance" of an amendment to the Convention occurs with registered ratifications by at least 30 Members with a total share of the world gross tonnage of at least 33 per cent

- the "deemed accepted" amendment will enter into force 12 months after the ratification level has been reached in the case of Members that have already ratified the Convention *(paragraph 6)*

- relates to the whole Convention, as amended, in the case of Members that previously have not ratified it unless they file a declaration under paragraph 9 before the date of deemed acceptance (*paragraph 7*)

- where a Member ratifies the Convention after adoption of the amendment, but before it is deemed to have been accepted, the Member may indicate, by a Declaration on ratification, whether it is ratifying the Convention as amended *(paragraph 9):* in either case the entry into force for the Member concerned is 12 months after registration of the Member's ratification.

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- **Article XV Amendments to the Code**
  - *Article XV* introduces one of the most important innovations of the new Convention
  - allows for the amendment of certain provisions of the Convention (the **Code**) through an *accelerated amendment* or *tacit acceptance* procedure rather than express ratification
  - developed to enable easier updating of the more technical details in maritime labour standards, one of the original objectives of the consolidation exercise
  - a similar approach to more rapid amendment of the technical parts of a Convention was adopted by the ILO for the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) and is also found in Conventions adopted by the IMO, such as SOLAS.

- **Article XV Amendments to the Code**
  - the procedure has been *adapted to the special features* of the International Labour Organization, such as its tripartite structure and the pre-eminent role, given by the Constitution to the Organization as a whole, through the International Labour Conference, with respect to the adoption and revision of Conventions;
  - *Paragraph 1* maintains the constitutional right of the Governing Body to place an item on the Conference's agenda for the amendment of provisions of the Code under the traditional procedures in Article XIV

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- "accelerated" (tacit acceptance) amendment procedure under Article XV

  - essentially a six- step process set out in *paragraphs 2 – 10 Article XV*

    1. A proposal for an amendment is submitted to the Director-General of the ILO *(paragraph 2)* by the Shipowners' or Seafarers' group on the special tripartite committee or by the government of any Member of the Organization
       - proposals made by governments must be proposed by, or be supported by a at least five a ratifying governments or by a group of Shipowner or Seafarer representatives.

    2. the Director-General of the ILO will check that the proposal has been validly made and then circulate it to all ILO Members, *(paragraph 3)*, inviting the Members to submit their own observations or suggestions.

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- "accelerated" (tacit acceptance) amendment procedure under Article XV

  3. After a period (normally six months) the proposal and a summary of observations or suggestions received is transmitted to the special tripartite committee for consideration with a view to adoption (subject to the approval of the International Labour Conference), (*paragraph 4)*

  - adoption in the special tripartite committee requires the presence of at least half the ratifying Members *(subparagraph (a))* and a two-thirds majority in favour *(subparagraph (b))* of the amendment

  - all Members of the Organization can participate in the discussions, but *only the Committee members* (i.e. the ratifying Members in the case of governments) *can vote*, and the voting rules ensure that none of the tripartite groups can be outvoted *(subparagraph(c)).*

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- "accelerated" (tacit acceptance) amendment procedure under Article XV

4. the adopted amendment is then submitted to the International Labour Conference for approval (by a two-thirds majority) (*paragraph 5*)
   - the Conference would not reformulate the amendment
   - if approval is not obtained, the amendment would be referred back to the special tripartite Committee

5. amendments approved by the Conference are sent to ratifying Members with stated period for reaction (usually two years): other ILO Members receive a copy (*paragraph 6*) and the amendment is deemed to have been accepted unless more than 40 per cent of Members that have ratified the Convention and which represent not less than 40 per cent of the gross tonnage of ships of Members which have ratified the Convention, express their disagreement with the reaction period (*paragraph 7)*.

Detailed outline of the Maritime Labour Convention, 2006 – The Articles

- "accelerated" (tacit acceptance) amendment procedure under Article XV
  6. amendments will enter into force six months after the date of deemed acceptance for all ratifying Members except those that have, within the prescribed period, expressed their disagreement *(paragraph 8)* or have given notice that they will only be bound by their express notification of acceptance *(paragraph 8 (a))*

     - a ratifyng Member may also, before the amendment enters into force, delay its entry into effect for the Member by a period normally not exceeding one year *(paragraphs 8(b)* and *10)*

     - after entry into force of an amendment, the Convention may only be ratified in its amended form (*paragraph 12)* if a ratifying Member decides not to accept an amendment, and its ships enter a port of a Member which is bound by the amendment, *paragraph 13* proposes the SOLAS solution, under which the port State Member will have the right to apply the relevant provision in its amended form (except during any period of exemption under *paragraph 8(b)*).

Detailed outline of the Maritime Labour Convention, 2006
The Articles

Article XVI Authoritative languages

- a standard provision in ILO Conventions

Detailed outline of the Maritime Labour Convention, 2006 – The Explanatory note

- **The *Explanatory Note* to the Regulations and Code of the Maritime Labour Convention, 2006**

  - the Regulations and the Code begin with the "Explanatory note", which distils the tripartite agreement adopted during the development of the Convention concerning the approach and structure of the new Convention and the interrelationship between the Articles, Regulations and the Code and between Part A and Part B of the Code

  - from a legal perspective, it should not be considered a part of the Convention, rather its legal status is similar to that of the *Preamble*: it is an aid to interpretation of the Convention

  - the Explanatory note is intended to be helpful to Members in that it serves to clarify a number of matters (such as the treatment to be given to Part B of the Code) for national authorities moving towards ratification of the Convention.

Detailed outline of the Maritime Labour Convention, 2006
The Titles (Regulations & Code: Standards & Guidelines)

The **Titles** (Regulations and the Code, Part A and Part B)

- Five **Titles**

  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 protection

  Title 5: Compliance and enforcement

Detailed outline of the Maritime Labour Convention, 2006
The Titles (Regulations & Code: Standards & Guidelines)

- each Title is vertically integrated and contains Regulations and Standards and Guidelines which are numerically linked

For example:

- in Title 1 all Regulations, Standards and Guidelines begin with the number 1. The second number then indicates the particular Regulation involved and the letters A and B preceding a number indicate the part of the Code (and the related level of legal obligation):

Title 1
Regulation 1.1; Standard A1.1; Guideline B1.1;
Regulation 1.2; Standard A.1.2; Guideline B1.2

- each Regulation also has below it a purpose statement to indicate, as clearly as possible, the intention of the provisions, as an aid to interpretation

Example:
Regulation 1.1 – Minimum age
Purpose: To ensure that no under-age persons work on a ship

Detailed outline of the Maritime Labour Convention, 2006
The Titles (Regulations & Code: Standards & Guidelines)

Maritime Labour Convention 2006

Further example of vertical integration in presentation (extracts)

Regulation 1.2 – Medical certificate

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

1. Seafarers shall not work on a ship unless they are certified as medically fit to perform their duties.)

…

Standard A1.2 – Medical certificate

1. The competent authority shall require that, prior to beginning work on a ship, seafarers hold a valid medical certificate attesting that they are medically fit to perform the duties they are to carry out at sea.

….

Guideline B1.2 – Medical certificate

Guideline B1.2.1 – International Guidelines…

Detailed outline of the Maritime Labour Convention, 2006
Title 1 Minimum requirements for seafarers to work on a ship

- sets out the minimum standards that must be observed before seafarers can work on board ship:
  - they must be above a minimum age
  - have a medical certificate attesting to fitness for the duties they are to perform
  - have training and qualifications for the duties they are to perform on board
  - and, have an entitlement to access employment at sea through a well-regulated recruitment and placement system
- Regulation 1.1 – Minimum age
- Regulation 1.2 – Medical certificate
- Regulation 1.3 – Training and qualifications
- Regulation 1.4 – Recruitment and placement

Detailed outline of the Maritime Labour Convention, 2006
Title 1 Minimum requirements for seafarers to work on a ship

- Regulation 1.1 – Minimum age
  - sets the minimum age for any kind of work at sea, in accordance with existing maritime labour standards, at 16 years
  - consolidates the Minimum Age (Sea) Convention, 1920 (No. 7), and the Minimum Age (Sea) Convention (Revised),1936 (No. 58), and aspects of the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)
- Regulation 1.2 – Medical certificate
  - deals with medical examinations and certificates
  - consolidates the requirements under the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16), and the Medical Examination (Seafarers) Convention, 1946 (No. 73)
  - explicitly recognizes the medical certification requirements under the STCW Convention, 1978 (see *Standard A1.2 , paragraph 3*).

Detailed outline of the Maritime Labour Convention, 2006
Title 1 Minimum requirements for seafarers to work on a ship

- Regulation 1.3 – Training and qualifications
  - deals with training and qualifications of seafarers and explicitly recognizes other applicable training requirements, such as those under the STCW Convention, (*paragraph 3*)
  - IMO has agreed to take responsibility for seafarers' training requirements (other than ships' cooks)
  - general provisions on training are included in the Convention because of its comprehensive nature
  - to avoid a possible gap in coverage, in the event that the IMO provisions are not sufficiently advanced at the time the Convention enters into force, *paragraph 4* provides that:

" Any Member which, at the time of its ratification of this Convention, was bound by the Certification of Able Seamen Convention, 1946 (No. 74), shall continue to carry out its obligations under that Convention unless and until mandatory provisions covering its subject matter have been adopted by the International Maritime Organization and entered into force, or until five years have elapsed since the entry into force of this Convention in accordance with paragraph 3 of Article VIII, whichever date is the earlier."

Detailed outline of the Maritime Labour Convention, 2006
Title 1 Minimum requirements for seafarers to work on a ship

- Regulation 1.4 – Recruitment and placement
  - sets out the basic right of seafarers to have access, without charge, to "an efficient, adequate and accountable system for finding employment" *(paragraph 1)*
  - requires each Member to regulate recruitment and placement services (both public and private) that may be operating in its territory in accordance with standards set out in the Code *(paragraph 2, Regulation 1.4)*.
  - *paragraph 3* obliges flag States to require shipowners using recruitment and placement services that are based in countries where the Convention does not apply to ensure that those services conform to the requirements in the Code.
    - this would not require that a shipowner use a recruitment and placement service, but, if a service is used, it must be licensed, or certified or regulated in accordance with the Convention
    - the shipowners' obligation in this respect is to ensure "as far as practicable" (*Standard A1.4, paragraph 9*)

- **Regulation 1.4 – Recruitment and placement (con't)**
  - a distinction is drawn in the Code between *publicly* and *privately* operated services (*Standard A1.4)*
  - Members are not obliged to establish private services (*paragraph 3*) but, if they exist, their operations must, at a minimum, be regulated in accordance with the requirements set out in *paragraph 5* of *Standard A1.4*
  - *paragraph 1* of *Standard A1.4* requires that *publicly* operated services be operated in an orderly manner that protects and promotes seafarers' employment rights
  - guidance for Members as to the way in which the obligation with respect to the operation of public service could be implemented is provided in *Guideline B1.4*

Detailed outline of the Maritime Labour Convention, 2006
Title 1 Minimum requirements for seafarers to work on a ship

- **Regulation 1.4 – Recruitment and placement (con't)**
  - paragraph 2, Standard A1.4 requires the development of a standardized system of licensing, certification or other form for regulation, applicable to private services (those which have as their primary purpose recruitment or placement of seafarers or those that recruit and place a significant number of seafarers) and only if these are established in a Member's territory.
  - paragraph 2 also applies, to the extent determined in consultation with shipowners' and seafarers' organizations, to recruitment and placement services operated by seafarers' organizations for the supply of seafarers that are nationals of the Member for work on board ships' flying the Member's flag

Detailed outline of the Maritime Labour Convention, 2006
Title 2 Conditions of employment

- Title 2 Conditions of employment

- deals with the basic terms and conditions for seafarers' employment and sets out the obligations of ratifying Members to help ensure that they are applied

Regulation 2.1 - Seafarers' employment agreements
Regulation 2.2 - Wages
Regulation 2.3 - Hours of work and hours of rest
Regulation 2.4 - Entitlement to leave
Regulation 2.5 - Repatriation
Regulation 2.6 - Seafarers' compensation for the ship's loss or foundering
Regulation 2.7 - Manning levels
Regulation 2.8 - Career and skill development and employment opportunities for seafarers

Detailed outline of the Maritime Labour Convention, 2006
Title 2 Conditions of employment

- **Regulation 2.1 – Seafarers' employment agreements**
  - deals with the conditions under which a seafarer signs a seafarers' employment agreement (SEA) as well as the required minimum elements of an agreement (including incorporation of any applicable collective bargaining agreement)
  - consolidates obligations found in Convention No. 22
  - each Member would be obliged to regulate agreements for seafarers on ships that fly its flag (*Standard A2.1*, *paragraph 1*)
    - for example, Members would be required to adopt laws and regulations providing for basic matters to be dealt with in all SEA covered by their national law, such as: identification of the seafarer and shipowner parties to the agreement, termination provisions and the seafarer's health and social security protection benefits for which the shipowner is responsible (paragraph 4, Standard A2.1)

Detailed outline of the Maritime Labour Convention, 2006
Title 2 Conditions of employment

- **Regulation 2.2 – Wages**
  - deals with wages and sets out the basic and uncontroversial requirement that seafarers are to be paid for their work but does not establish a particular level of wage level
  - *paragraph 1* required payment to be made at “no greater than monthly intervals” and in accordance with any applicable collective agreement
  - some countries regulate the level of seafarers’ wages in national laws while others do not: *Standard A2.2*, *paragraph 6* is worded to make it clear that *Guideline B 2.2*, is addressed only to countries that choose to regulate the level of seafarers’ wages by law
  - *Guideline B2.2.4* provides the basis for the international negotiation of the basic pay or wages of able seafarers

Detailed outline of the Maritime Labour Convention, 2006
Title 2 Conditions of employment

- **Regulation 2.3 – Hours of work and hours of rest**
  - deals with minimum hours of work or rest and consolidates the obligations in the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)
- **Regulation 2.4 – Annual leave**
  - deals with annual leave entitlements and reflects the principle that shore leave should be understood as an important aspect of seafarers' health and well-being
  - to assist governments that encountered difficulties with the 30 calendar days a year in the Seafarers' Annual Leave with Pay Convention, 1976 (No. 146), the Convention takes the monthly equivalent of the annual 30 days as the basis and provides for calculation on the basis of a minimum of 2.5 calendar days per month of employment (Standard A2.4, paragraph 2)
  - provides flexibility with respect to the method of calculating the leave to take into account the special needs of seafarers (paragraph 2)

Detailed outline of the Maritime Labour Convention, 2006
Title 2 Conditions of employment

- Regulation 2.5 – Repatriation
  - consolidates the obligations in the Repatriation of Seafarers Convention (Revised), 1987 (No. 166)
  - the *serious hardship* caused when shipowners or flag States fail to respect their obligations is recognized as a major problem that must be addressed
  - to meet concerns that the level of prescriptive detail in Convention No. 166 was providing difficulties for governments, many of the details regarding repatriation have been placed in Part B of the Code *Guideline B2.5 ,* to provide guidance in implementation
  - in view of the on-going discussions in the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, there is a provision *(Regulation 2.5, paragraph 2)* which obliges each Member to require that ships that fly its flag provide some form of *financial security* to ensure that seafarers are duly repatriated in accordance with the Code
  - *Standard A2.5, paragraphs 3, 4, 5* and *6* deal with recoupment of repatriation costs by shipowners and by Members

Detailed outline of the Maritime Labour Convention, 2006
Title 2 Conditions of employment

- **Regulation 2.6 – Seafarer compensation for the ship's loss or foundering**
  - provides for compensation for seafarers in the event of a ship's loss or foundering
  - Standard A2.6 reflects the requirements for indemnification against unemployment arising from the loss or foundering found in the Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)
- **Regulation 2.7 – Manning levels**
  - updates obligations found in the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)
  - reflects contemporary concerns with seafarer fatigue and with onboard security, as well the need to take account of the requirements for seafarers to work in the onboard catering services

Detailed outline of the Maritime Labour Convention, 2006
Title 2 Conditions of employment

- **Regulation 2.8 – Career and skill development and opportunities for seafarers' employment**
  - deals with employment and career and skill development and opportunities for seafarers
  - consolidates and updates the principles found in the Continuity of Employment (Seafarers) Convention, 1976 (No. 145) to take into account the view of many governments that some of the policies under Convention No. 145 are no longer appropriate for their economies and to also address the need to attract people to work in the sector
  - the provisions promote the inclusion of seafarers in full employment policies at a broader national level by focusing on promotion of employment in the sector and on career development and ongoing training and skill development for seafarers
  - *Guideline B2.8.2* provides guidance for Members that use national registers or lists to govern the employment of seafarers

Detailed outline of the Maritime Labour Convention, 2006
Title 3. Accommodation, recreational facilities, food and catering

- **Title 3. Accommodation, recreational facilities, food and catering**
  - consolidates and updates obligations primarily found in the maritime labour Conventions and Recommendations relating to the accommodation of crews and food and catering.
  - develops some areas not yet addressed in much, if any, detail in the maritime context in connection with the prevention of noise and vibration in work and living areas

Regulation 3.1 - Accommodation and recreational facilities
Regulation 3.2 - Food and Catering

Detailed outline of the Maritime Labour Convention, 2006 Title 3. Accommodation, recreational facilities, food and catering

- Regulation 3.1 – Accommodation and recreational facilities
  - the requirements are primarily drawn from: the Accommodation of Crews Convention (Revised), 1949 (No. 92), the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), and the related Recommendations Nos. 140 and 141
  - among the most detailed and technical provisions in the Convention and contain numerous requirements affecting the physical design or structural layout of ships
  - updated to reflect the advice and agreements of the Shipowner and Seafarer representatives regarding contemporary standards and needs of the industry
  - Regulation 3.1 contains a number of provision related to the scope of application of the Regulation
  - the requirements under Title 3 can have a significant impact on ship design and construction

Detailed outline of the Maritime Labour Convention, 2006
Title 3. Accommodation, recreational facilities, food and catering

- Regulation 3.1 – Accommodation and recreational facilities
  - transitional clauses (*paragraphs 2* & *3*) exclude ships that were constructed before the Convention *comes into force for the Member* from the application of provisions of the Code implementing the Regulation
    - the exclusion in *paragraph 2* covers ships "constructed on or after the coming into force of the Convention for the Member concerned" – i.e. 12 months (or a longer period if the Convention is not yet in force) after the Member's ratification (*Article VIII, paragraphs 3* and *4*)
    - the exclusion in *paragraph 2* concerns the requirements in the Code which relate to "ship construction and equipment"
    - other provisions in the Code implementing Regulation 3.1 will continue to apply to those ships, as will the basic right set out in *paragraph 1* of the Regulation

Detailed outline of the Maritime Labour Convention, 2006 Title 3. Accommodation, recreational facilities, food and catering

- **Regulation 3.1 – Accommodation and recreational facilities**
  - **to avoid any possible reduction in coverage because of this exclusion of existing ships and to clearly define the concept of "ships constructed" *paragraph 2* also provides that:**

> "2. The requirements in the Code implementing this Regulation which relate to ship construction and equipment apply only to ships constructed on or after the date when this Convention comes into force for the Member concerned. **For ships constructed before that date, the requirements relating to ship construction and equipment that are set out in the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), shall continue to apply to the extent that they were applicable, prior to that date, under the law or practice of the Member concerned. A ship shall be deemed to have been constructed on the date when its keel is laid or when it is at a similar stage of construction."**

Detailed outline of the Maritime Labour Convention, 2006
Title 3. Accommodation, recreational facilities, food and catering

- **Regulation 3.1 – Accommodation and recreational facilities**
  - *paragraph 3* deals with the situation of ships constructed on or after an **amendment** to the Code relating to Regulation 3.1 takes effect for the Member concerned – that is, six months after the amendment's deemed acceptance (Article XV, paragraph 8), assuming that the simplified amendment procedure is followed
  - these ships are excluded from the new requirements established by the amendment
  - this exclusion only applies "Unless expressly provided otherwise": this means that the amendment could also establish the extent to which it will apply to existing ships.

Detailed outline of the Maritime Labour Convention, 2006
Title 3. Accommodation, recreational facilities, food and catering

- Regulation 3.1 – Accommodation and recreational facilities
  - Regulation 3.1, Code Part A, also has other scope related provisions
  - further national *flexibility* is included to allow a Member to exempt smaller ships (200 gross tonnage or less) from the application of the provisions listed in the *Standard A3.1 paragraph 20*
    - the exemption requires consultation with the shipowners' and seafarers' organizations concerned, and "taking account of the size of the ship and the number of persons on board"
    - subject to *paragraph 21*, which only allows exemptions with respect to the requirements of the Standard where they are expressly permitted and "only for particular circumstances in which such exemptions can be clearly justified on strong grounds and subject to protecting the seafarers' health and safety."

Detailed outline of the Maritime Labour Convention, 2006 Title 3. Accommodation, recreational facilities, food and catering

- **Regulation 3.1 – Accommodation and recreational facilities**
  - *Standard A3.1* also has **other scope** related provision

For example:

- *paragraph 9 (a) , Standard A3.1*, does not apply to some ships, such as passenger ships or “ships of less than 3,000 gross tonnage” or in the case of special purpose ships
- *paragraph 19* allows, after consultation, for fairly applied variations that may be needed to take account, without discrimination, of the interests of seafarers having *differing and distinctive religious and social* practices.

Detailed outline of the Maritime Labour Convention, 2006
Title 3. Accommodation, recreational facilities, food and catering

- Regulation 3.1 – Accommodation and recreational facilities
  - The Code (Part A, Standard A3.1 and Part B, Guideline B3.1) contains detailed provisions on accommodation and recreational facilities in the following areas:

    Design and construction
    Ventilation
    Heating
    Lighting
    Sleeping rooms
    Mess rooms
    Sanitary accommodation
    Hospital accommodation
    Other facilities
    Bedding, mess utensils and miscellaneous provisions
    Recreational facilities, mail and ship visit arrangements
    Prevention of noise and vibration

Detailed outline of the Maritime Labour Convention, 2006
Title 3. Accommodation, recreational facilities, food and catering

- Regulation 3.1 – Accommodation and recreational facilities
  - *technical details* have been placed in the Guidelines in Part B of the Code, as much as possible, in order to provide *further flexibility* whilst still respecting essential minimum requirements for decent on-board living conditions
  - their placement in the Code (whether in Part A or Part B) will also allow for more *rapid updating* to meet changes in technology and ship design

Detailed outline of the Maritime Labour Convention, 2006
Title 3. Accommodation, recreational facilities, food and catering

- Regulation 3.2 – Food and catering
  - Regulation 3.2 and the related Code provisions consolidate and update the obligations in the Food and Catering (Ships' Crews) Convention, 1946 (No. 68), and the Certification of Ships' Cooks Convention, 1946 (No. 69)
  - deals with food quality, drinking water and catering standards, including the training requirements for ships' cooks

Detailed outline of the Maritime Labour Convention, 2006
Title 4. Health protection, medical care, welfare and social security protection

- comprises the substance of a wide range of international maritime labour standards, covering onboard and onshore matters, including access to and financial responsibility for medical care (broadly defined), occupational safety and health and welfare on shore

- adopts a realistic approach to the promotion of social security protection, which would otherwise have created an obstacle to the wide-scale ratification of the Convention

Regulation 4.1 – Medical care on board ship and ashore
Regulation 4.2 – Shipowners' liability
Regulation 4.3 – Health and safety protection and accident prevention
Regulation 4.4 – Access to shore-based welfare facilities
Regulation 4.5 – Social security

Detailed outline of the Maritime Labour Convention, 2006
Title 4. Health protection, medical care, welfare and social security protection

- Regulation 4.1 – Medical care on board ship and ashore
  - covers seafarers' entitlement to access adequate medical care on board ship and ashore
  - the obligation to provide free medical care under the Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164), has been made *more flexible* by adding the words "in principle" in *paragraph 2*, regarding the requirement that health protection and medical care is to be provided at no cost to the seafarers
  - *paragraph 3* sets out the duty of coastal States in respect of medical facilities on shore; their obligation is limited to allowing access to existing medical facilities (they are not be required to establish such facilities).

- Regulation 4.1 – Medical care on board ship and ashore
  - *Standard A4.1* elaborates upon these entitlements referred to in Regulation 4.1
  - also deals with training required of onboard medical personnel and the contents of medicine chests and other medical assistance matters
  - *Standard A4.1, paragraph 4(c),* addresses the training of personnel in charge of medical care on board who are not medical doctors
  - reconciles the text of Convention No. 164, Article 9, on medical training requirements, with the language of the STCW Code to the STCW Convention, 1978, as amended.

- Regulation 4.2 – Shipowners' liability
  - deals with shipowners' liability for the economic consequences of sickness and injury experienced by seafarers during their engagement
  - addresses the *shorter term* social security protection coverage set out in the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), and the Social Security (Seafarers) Convention (Revised), 1987 (No. 165)
  - *complements* the *longer term* social security protection that is dealt with in *Regulation 4.5*
  - the liability concerned, which covers both the *costs of care* and the *payment of wages,* is not related to any kind of fault on the part of the shipowner;
  - *paragraph 2* makes it clear that the provisions of the Regulation are not intended to affect liability under the general civil/private law for negligence or fault.

Detailed outline of the Maritime Labour Convention, 2006
Title 4. Health protection, medical care, welfare and social security protection

- Regulation 4.3 – Health and safety protection and accident prevention
  - deals with occupational safety and health protection and accident prevention drawing upon the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), and the related Recommendation (No. 142), which focus on ensuring that employees have the appropriate equipment and protection and training to perform their duties safely
  - Regulation 4.3 and the associated Code, Part A, *Standard A4.3* and Part B, *Guidelines B4.3*, reflect the view the requirements needed to be *modernized* to include a wide range of human elements affecting occupational safety and health, such as fatigue, drug and alcohol abuse, HIV/AIDS protection and prevention and other concerns, such as exposure to chemicals, noise and vibration and other workplace risks
  - includes requirements for reporting accidents as part of a system for monitoring ongoing compliance and conditions on board ship
  - encourages more use of risk evaluation and risk management and the collection and use of statistical information.

Detailed outline of the Maritime Labour Convention, 2006
Title 4. Health protection, medical care, welfare and social security protection

- Regulation 4.4 – Access to shore-based welfare facilities
  - deals with seafarers' access to onshore welfare facilities
  - consolidates the obligations in the Seafarers' Welfare Convention, 1987 (No. 163) and incorporates provisions in the related Recommendation No.173
  - a ratifying Member has the *duty to cooperate* and to provide access to onshore relief for seafarers, within the limits, of a country's national requirements relating to, for example, security matters
  - Regulation 4.4 and the related Code provisions reflect the concern expressed by some Governments about the need to ensure that the wording of the provisions focuses on *promoting the development of shore-based welfare facilities* without creating a financial obligation to provide or establish these facilities.

Detailed outline of the Maritime Labour Convention, 2006
Title 4. Health protection, medical care, welfare and social security protection

- Regulation 4.5 – Social security
  - *Regulation 4.5* and the associated Code provisions cover social security protection, primarily with respect to the provision of social security through national security systems
  - it was clearly recognized that a comprehensive Convention must contain provisions on the subject in order to avoid situations where, because of reasons relating to national laws that do not extend coverage to non-residents or non-nationals or to the lack of any system in the country of residence or nationality, seafarers are left without any protection at all for themselves or their dependants
  - draws upon the Social Security (Seafarers) Convention (Revised), 1987 (No. 165) and the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), (Article 2(a)(ii)), but leaves the determination of the particulars of coverage to the national law of the flag State
  - addresses the complex problems in this area relating to the differing range of coverage between national social security systems, where they do exist.

Detailed outline of the Maritime Labour Convention, 2006
Title 4. Health protection, medical care, welfare and social security protection

- Regulation 4.5 – Social security
  - makes it clear that the provisions of the Code are without prejudice to any more favourable conditions that may already be applicable to a Member's seafarers under a national law or international agreements (paragraph 1)
  - requires that ratifying Members take steps, according to their national circumstances, individually and through international cooperation, to achieve progressively comprehensive social security protection (paragraph 2)
  - recognizes the right of seafarers and, to the extent provided for in national law, their dependants, who are subject to a Member's social security legislation, to benefit from social security protection no less favourable than that enjoyed by the Member's shore workers (paragraph 3)

Detailed outline of the Maritime Labour Convention, 2006
Title 4. Health protection, medical care, welfare and social security protection

- Regulation 4.5 – Social security
  - Standard A4.5 , paragraph 1 clarifies that the coverage described in the Regulation and associated Code provisions complements rather than duplicates the social security protection that would be provided by shipowners under Regulations 4.1 and 4.2 for shorter term protection
  - paragraph 4 introduces some additional flexibility by providing the potential for arrangements to be developed on the basis of bilateral and multilateral agreements and through arrangements adopted within the framework of regional economic integration organizations.

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement

- Title 5. Compliance and enforcement
  - deals with compliance and enforcement and is linked to the obligations of ratifying Members under *Article V Implementation and enforcement responsibilities*
  - the real novelty of the Convention in this area resides in its approach to compliance and enforcement, comprising a detailed set of provisions on principles and rights, including a certification system for labour conditions, at the same level of importance as the other four Titles which provide substantive rights, and is inseparable from those Titles
  - Title 5 has several introductory paragraphs and is then divided into three main Regulations, each with related Code Part A and Part B provisions and related appendices

    Introductory paragraphs
    Regulation 5.1 - Flag State responsibilities
    Regulation 5.2 - Port State responsibilities
    Regulation 5.3 - Labour-supplying responsibilities
    Appendices A5-I; A5-II; A5-III; B5-I

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement

- Title 5 draws on *traditional enforcement practices* in the maritime sector such as flag State inspections and corrective action and inspections in foreign ports, found in existing ILO Conventions such as the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147),the Labour Inspection (Seafarers) Convention, 1996 (No. 178), and the Labour Inspection (Seafarers) Recommendation, 1996 (No. 185).

- Title 5 also introduces contemporary practices aimed at ensuring "continual compliance" between inspections based on the well-accepted certificate-based system of the IMO, (developed in significant maritime Conventions such as the SOLAS Convention, 1974, and its Codes e.g., International Safety Management Code (ISM), and in MARPOL 73/78)

- the IMO system was adapted in the Maritime Labour Convention, 2006 to reflect the ILO context and the special concerns raised by international labour standards, by including, *inter alia*:

    - flag State and onboard and onshore complaint provisions
    - reporting mechanisms to support and complement the inspection provisions

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement

- an integrated approach is considered essential to the success of the Convention
- the certification system in Title 5 is closely coordinated with other maritime certifications and inspections, particularly those required under IMO Conventions and under the regional Memoranda of Understanding for port State control
- it has been designed to avoid imposing any significant new administrative burden for governments or shipowners, but instead to operate as much as possible within the existing international maritime inspection and certification framework.

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement

- Introductory paragraphs
  - *paragraph 2* precludes the use of substantial equivalence (under *Article VI*, *paragraphs 3* and *4*) for the implementation of Part A of the Code under Title 5

- Regulation 5.1 – Flag State responsibilities
  - comprises *six sets of Regulations* each with related Code, Part A and Part B provisions and has *three* associated *appendices*: A5-I, A5-II; B5-I
  - deals with a ratifying Member's responsibilities under the Convention with respect to seafarers on board ships that fly its flag

    Regulation 5.1.1 – General principles

    Regulation 5.1.2 – Authorization of recognized organizations

    Regulation 5.1.3 – Maritime labour certificate and declaration of maritime labour compliance.

    Regulation 5.1.4 – Inspection and enforcement

    Regulation 5.1.5 – On-board complaint procedures

    Regulation 5.1.6 – Marine casualties

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement

- Regulation 5.1.1 – General principles
  - *general responsibility* of each Member, for ships that fly its flag, to ensure the implementation of the Convention *as a whole (paragraph 1)*
  - *paragraph 2* states the Member's *specific responsibility* (founded on Conventions No. 147, Article 2(b),and No. 178) to ensure that the working and living conditions for seafarers on ships that fly its flag meet the standards in the Convention
  - to be done through an *effective system* of inspection and certification
  - a distinction is made between the working and living conditions (that are subject to certification) and the broader range of issues covered by the Convention for which flag States are also responsible

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.1 Flag State responsibilities

- Regulation 5.1.1 – General principles
  - Members are allowed to authorize public institutions and other organizations ("recognized organizations") to carry out labour inspections on their behalf, but the Member s*till retains full responsibility* for the inspection and certification of working and living conditions on board ships that fly its flag.
  - *paragraph 4* sets out the basic principle that the certification documents – the *maritime labour certificate*, complemented by a *declaration of maritime labour compliance* – constitute *prima facie* evidence that *the requirements of the Convention* relating to working and living conditions of the seafarers have been met
  - information about the inspection system, including the method used for assessing its effectiveness, would be included in the Member's reports to the International Labour Office pursuant to article 22

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.1 Flag State responsibilities

- Regulation 5.1.2 – Authorization of recognized organizations
  - Regulation 5.1.2 and the related Standards and Guidelines develop, in detail, the principles relating to delegation to recognized organizations
  - the IMO has also developed a framework for such delegations (IMO Resolutions A.739(18) and A.789(19), which provide minimum competency and other requirements for these organizations that Governments should consider in making such a delegation
  - the detailed provisions in Standard A5.1.2 and Guideline B 5.1.2 generally follow the approach adopted in the MO Resolutions and require that the competent authority of the Member ascertain whether the recognized organization meets the Code requirements regarding competency and independence
  - Members are required to provide the International Labour Office with a current list of recognized organizations and the functions that they have been authorized to carry out on behalf of the Member: the Office will make the list publicly available.

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.1 Flag State responsibilities

- Regulation 5.1.3 – Maritime labour certificate and declaration of maritime labour compliance
  - Regulation 5.1.3 and the related Code provisions set out the details of the certification system to be established by each Member under the Convention
  - paragraphs 1 and 2 relates to the scope of application of the Convention:
    - the certification system under this Regulation is mandatory only for ships 500 gross tonnage or over that are either:
    - engaged in international voyages (which is defined)
    - or are operating in or between ports of another country (paragraph 1)
    - shipowners have the right to request certification for ships not covered by the certification requirement.

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.1 Flag State responsibilities

- Regulation 5.1.3 – Maritime labour certificate and declaration of maritime labour compliance
  - under Regulation 5.1.3 *paragraphs 3* and *4*, each Member must require that ships flying its flag (over 500 GT on international voyages) to carry and maintain:
    - a *maritime labour certificate* certifying that the working and living conditions of seafarers on the ship, including measures for ongoing compliance to be included in the declaration of maritime labour compliance, have been *inspected* and meet the requirements of *national laws or regulations or other measures implementing the Convention*
    - a *declaration of maritime labour compliance* setting out *the national requirements* implementing this Convention for the working and living conditions for seafarers and setting out the measures *adopted by the shipowne*r to ensure compliance with the requirements on the ship or ships concerned

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.1 Flag State responsibilities

- Regulation 5.1.3 – Maritime labour certificate and declaration of maritime labour compliance
  - the maritime labour certificate and the declaration of maritime labour compliance must conform to the model documents required under the Code, Part A, Standard A5.1.3 and found in Appendix A5-II
  - a list of the 14 matters that must be inspected and approved is set out in Appendix A5-I
  - the Code, Part A, Standard A5.1.3 sets out the details of the certification system, including concerns such as: the maximum period of validity (5 years), the frequency of inspections, renewals, interim certification, the content of the documentation and the withdrawal of a ship's certification
  - the Code, Part B, Guideline B5.1.3 provides further information and guidance on the kinds of information and measures that might be included in the documentation
  - an example of a Declaration showing the kind of information that might be contained in a declaration of maritime labour compliance is provided in Appendix B5-I

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.1 Flag State responsibilities

- Regulation 5.1.4 – Inspection and enforcement

  - Regulation 5.1.4 requires flag States to have an effective and coordinated system of regular inspections
  - the Code, Part A, Standard A5.1.4 sets out the details of the inspection system including the powers to be given to inspectors
  - inspections are required for certification under Standard A5.1.3 as well as in specified circumstances not related to the validity of a certificate,

  For example

    - Standard A3.1 on accommodation requires inspections under Regulation 5.1.4 to be carried out when a ship is registered or re-registered or the seafarer accommodation on a ship has been substantially altered
    - paragraph 5 , Standard A5.1.4 also requires an investigation in the case of a complaint or evidence of a deficiency in the implementation of the measures set out in the declaration of maritime labour compliance or other non-conformity with the requirements of the Convention.

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.1 Flag State responsibilities

- Regulation 5.1.4 – Inspection and enforcement
  - paragraph 7 ,Standard A5.1.4 specifies the powers that flag State inspectors (including those of “recognized organizations”) must have:
    - under subparagraph (c) they must be able
      “to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of this Convention (including seafarers’ rights), or represent a significant danger to seafarers safety, health or security, to prohibit a ship from leaving port until necessary actions are taken”
  - this Standard is important because it provides the parameters for the complementary inspection and detention provisions in connection with the control measures in foreign ports under Regulation 5.2 and Standard A 5.2.1

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.1 Flag State responsibilities

- Regulation 5.1.4 – Inspection and enforcement
  - paragraphs 15 and 16, Standard A5.1.4 set out the need to avoid a ship being unreasonably detained or delayed, as well as the right to compensation in the case of the wrongful exercise of inspectors' powers
  - paragraph 17 requires that Members to provide for adequate penalties and other corrective measures, inter alia, for breaches of "the requirements of this Convention (including seafarers' rights)"

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.1 Flag State responsibilities

- Regulation 5.1.5 – On-board complaint procedures
  - Regulation 5.1.5 and the related Code provisions introduce a new and important element in the provisions of the Convention designed to help assure ongoing compliance
  - under paragraph 1 flag States must require that their ships have on-board procedures for “the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of this Convention (including seafarers’ rights) “
  - the complaints and the responses to are documented
  - these procedures are without prejudice to other complaint-related rights or procedures that may be available in national laws or regulations or under collective bargaining agreements

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.1 Flag State responsibilities

- Regulation 5.1.6 – Marine casualties
  - Regulation 5.1.6 consolidates Convention No. 147 (Article 2(g))
  - addresses each Member's responsibility to inquire into serious marine casualties involving injury or loss of life on ships that fly its flag and to make public the results of any such inquiry

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.2 Port State responsibilities

- Regulation 5.2 – Port State responsibilities
  - provides a system for the inspection of ships in a foreign port (port State control) and the related onshore procedures for handling seafarers' complaints
  - provisions in Regulation 5.2 originate in part from Article 4 of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), the "port State control" provisions and from practices in the implementation of other maritime Conventions
  - the term "authorized officers" is used to reflect the fact that labour standard inspections may be carried out by a variety of personnel, depending on the practice of each Member
  - comprises *two* Regulations and associated Code provisions and *one* Appendix; A5-III
    - Regulation 5.2.1 – Inspections in port
    - Regulation 5.2.2 – Onshore seafarer complaint-handling procedures

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.2 Port State responsibilities

- Regulation 5.2.1 – Inspections in port
  - deals with inspections in a foreign port
  - the word “may” in paragraph 1 indicates that a Member is not obliged to inspect the ships of another State when they are in its ports (port State control) (see also Article V, paragraph 4)
  - where the Member carries out an inspection of a foreign ship, it is required to accept a valid maritime labour certificate and a declaration of maritime labour compliance as prima facie evidence of compliance by the ship with the “requirements of the Convention (including seafarers’ rights)” (paragraph 2)
  - the initial inspection must be limited to a review of the maritime labour certificate and the declaration of maritime labour compliance, “except in the circumstances specified in the Code”.

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.2 Port State responsibilities

- the inspection is to be carried out in accordance with the provisions of the Code "and other applicable international arrangements governing port State control inspections"; this covers any applicable regional Memorandum of Understanding (paragraph 3)

- the objective of the inspection is to ascertain conformity with the provisions of the Convention, other than Part B of the Code (paragraph 3, second sentence) and account will be taken of any substantial equivalents, which will be identified by ratifying Members in the declaration of maritime labour compliance

- Members that choose to carry out port State inspections will also be required to have an effective inspection and monitoring system (paragraph 4)

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.2 Port State responsibilities

- Regulation 5.2.1 – Inspections in port
  - port State control inspections will usually involve only a review of the certification documents, except in four circumstances dealt with in paragraph 1, Standard A5.2.1)
  - first circumstance: (subparagraph 1(a)) is where the “required documents” are not produced or are not in order; where the documents are not required – e.g.,, in the case of a ship under 500 gross tonnage (indicated by the words “where applicable”)
    - in accordance with the principle of “no more favourable treatment” (paragraph 7,Article V) Regulation 5.2 would apply to the ships flying the flag of States that have not ratified the Convention: such ships would not usually be able to produce the certification and documentation required by the Convention and would be subject to a more extensive inspection

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.2 Port State responsibilities

- Regulation 5.2.1 – Inspections in port
  - second circumstance: (paragraph 1(b)) where, despite the existence of valid documentation, there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention
  - third circumstance: (paragraph 1 (c)) is where there are reasonable grounds for believing that the ship has changed flag to avoid compliance with the Convention
  - fourth circumstance: (paragraph 1(d)) a more detailed inspection may be carried out in the case of a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of the Convention

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.2 Port State responsibilities

- Regulation 5.2.1 – Inspections in port
  - the second part of paragraph 1, Standard 5.2.1, following the enumeration of the four circumstances states that:
    - a more detailed inspection “may” be carried out in any of these circumstances
    - makes a detailed inspection obligatory: “where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers or where the authorized officer has grounds to believe that any deficiencies constitute a serious breach of the requirements of this Convention (including seafarers’ rights).”
    - this wording is similar to paragraph 7(c),Standard A5.1.4 relating to the basis for a flag State inspector prohibiting a ship from leaving port: it reflects the view that the port State regime should, as much as possible, complement and mirror, but not go beyond, the measures available to flag States

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.2 Port State responsibilities

- Regulation 5.2.1 – Inspections in port
  - the detailed inspection under paragraph 1(a)-(c) will “in principle” cover the areas listed in Appendix A5-III (paragraph 2 of the Standard)
  - paragraph 3, Standard A5.2.1 sets the scope of the inspection when carried out as a result of a complaint under paragraph 1(d) (and also contains a definition of “complaint” in this context, based upon that found in Article 4(3) of Convention No. 147).
    - the inspection is not limited to the areas listed in Appendix A5-III, but it “shall generally be limited to matters within the scope of the complaint, although a complaint, or its investigation, may provide clear grounds for a detailed inspection in accordance with paragraph 1(b) of this Standard”;
    - the clear grounds of non-compliance required by paragraph 1(b) could be brought to light as the result of a complaint, in which case, paragraph 1, Standard A5.2.1 would apply and an inspection covering the new elements coming to light could be carried out.

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.2 Port State responsibilities

- Regulation 5.2.1 – Inspections in port
  - under Article 4(1), Convention No. 147, if deficiencies are found with respect to conformity with the Convention, the port State may report the matter to the flag State, with a copy of the notification being sent to the Director-General of the ILO
  - this procedure is expanded in Standard A5.2.1, paragraphs 4 and 5
    - paragraph 4(a) sets out a procedure for reporting to the flag State and in paragraph 4(b), a procedure for providing information to the next port of call
    - paragraph 5 gives an indication of the action that the ILO Director-General would be expected to take if the flag State's response to the problem was inadequate: namely, action "to ensure that a record is kept of such information and that it is brought to the attention of parties which might be interested in availing themselves of relevant recourse procedures" (such as representations or complaints under article 24 or 26 of the ILO Constitution)

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.2 Port State responsibilities

- Regulation 5.2.1 – Inspections in port
  - paragraph 6, Standard A 5.2.1 deals with the circumstances in which a ship might be detained if, during a port state inspection (voluntarily carried out), certain specified deficiencies come to the authorized officer's attention: steps "shall" be taken to ensure that the ship does not proceed to sea until the relevant non-conformities are remedied "or until the authorized officer has accepted a plan of action to rectify such non-conformities and is satisfied that the plan will be implemented in an expeditious manner"
    - paragraph 6(a) draws on Article 4,Convention No. 147, under which the port State "may" detain a ship to the extent necessary to rectify any conditions on board which are "clearly hazardous to safety or health", and adds the criteria "security"
    - paragraph 6(b) provides for detention for "serious or repeated breach of the requirements of the Convention (including seafarers' rights)"

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.2 Port State responsibilities

- Regulation 5.2.1 – Inspections in port
  - the wording in *paragraph 6* is consistent with *paragraph 7(c), Standard A5.1.4* and *paragraph 1, Standard A5.2.1* and reflects the complementary "mirroring" approach to the relationship between port State actions relative to flag State actions
  - *paragraph 6* then specifies similar kinds of follow- up action by the port State as those referred to in paragraph 4, Standard A5.2.1
  - *paragraph 7* contains an important requirement that a Member's authorized officers must be given guidance, of the kind indicated in the Code Part B, Guidelines B5.2.1, as to the kinds of circumstances justifying detention of a ship
    - the Code, Part B, Guideline B5.2.1, *paragraph 3,* envisages the adoption of internationally agreed guidelines on inspection policies, especially those relating to the circumstances warranting the detention of a ship

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.2 Port State responsibilities

- Regulation 5.2.2 – Onshore seafarer complaint-handling procedures
  - deals with onshore handling procedures for complaints by seafarers in foreign ports and, like the provisions covering on-board complaint procedures (*Standard A5.1.5*), are an element in the Convention to help to better assure ongoing compliance
  - builds upon concept of a "complaint" in foreign port, already found in Article 4, Convention No. 147, by providing a practical means of redress for the seafarer, while also clearly recognizing the inherent limitations of port State control:
    - a port State authorized officer would have not be obliged to resolve all complaints, only to investigate and to promote a resolution, at the ship- board level, if possible
  - the provisions also clarify, in *paragraph 2, Standard A5.2.2*, the relationship between this procedure and the inspection and detention procedures under Regulation 5.2.1
    - where an investigation of a complaint reveals a non-conformity that falls within the scope of *paragraph 6,* Standard A5.2.1, those provisions apply

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.2 Port State responsibilities

- Regulation 5.2.2 – Onshore seafarer complaint-handling procedures
  - paragraph 6, Standard A5.2.2 provides for the reporting of unresolved complaints to the flag State, the Director-General of the ILO, and appropriate shipowners' and seafarers' organizations, and for provision of statistics regarding resolved complaints to the Director-General of the ILO
  - these provisions, which were the subject of extensive discussion, avoid any explicit or implicit reference to the legal right of the seafarer to pursue a complaint in a court of law and to similar questions which may give rise to problems for certain countries under national or international law.

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
5.3 Labour- supplying responsibilities

- Regulation 5.3 – Labour-supplying responsibilities
  - Regulation 5.3 deals with what are described as the "labour-supplying responsibilities" of a State and is linked to Article V obligations
  - the opening words of the Regulation ("Without prejudice to …") recognize the primacy of flag State responsibility
  - requires Members to establish an effective inspection and monitoring system for enforcing their labour-supplying responsibilities under the Convention
    - for example, regulation of recruitment and placement services under Regulation 1.4
  - paragraph 3, Regulation 5.3, like paragraph 5 of Regulation 5.1.1, provides a link between the national system of enforcement and the international supervisory system
  - information about the national system would be reported to the International Labour Office in accordance with article 22 of the Constitution (paragraph 4)

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
Appendices

- The four appendices to the Convention all relate to the certification system under Title 5
- Appendix A5-I
  - is a *list* of 14 matters that must be inspected by flag States before a certificate can be issued and is referred to in paragraph 1 of Standard A5.1.3.
  - the list is the same as the list in Appendix A5-III
- Appendix A5-II
  - Comprises 3 model documents required under *paragraph 9,* Standard A5.1.3, the documents
    - the maritime labour certificate
    - the declaration of maritime labour compliance, attached to the maritime labour certificate
    - an interim maritime labour certificate

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
Appendices

- Appendix A5-III
  - is a *list* that covers the general areas that are subject to a detailed inspection, *when* such an inspection of a foreign ship is carried out by a Member (port state control), in accordance with the provisions of Standard A5.2.1
  - the list is the same as the list in Appendix A5-I
- Appendix B5-I
  - provides an Example of a national declaration of maritime labour compliance
  - referred to in paragraph 5, Guideline B5.1.3,
  - provides an example (not a mandatory model) of the kind of information that might be contained in a declaration of maritime labour compliance

Detailed outline of the Maritime Labour Convention, 2006
Title 5. Compliance and enforcement:
Appendices

- Appendix A5-I & Appendix A5-III lists

  Minimum age
  Medical certification
  Qualifications of seafarers
  Seafarer employment agreements
  Use of any licensed or certified or regulated private recruitment and placement service
  Hours of work or rest
  Manning levels for the ship
  Accommodation
  On-board recreational facilities
  Food and catering
  Health and safety and accident prevention
  On-board medical care
  On-board complaint procedures
  Payment of wages

Detailed outline of the Maritime Labour Convention, 2006
Conclusion

The Maritime Labour Convention, 2006 should ratified because it:-

- provides a modern system for improved and enforceable conditions for decent work in the maritime sector

- creates, as much as possible, a level playing field in a globalized industry by ensuring that competition is not based on unjust, exploitive and unfair labour practices.

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