

Phoenix Register of Shipping (PH.R.S.)

**NL 82/13 - UNION OF COMOROS FLAGGED VESSELS
MINIMUM REQUIREMENTS FOR THE APPROPRIATE ISSUANCE OF
MLC 2006 STATEMENT OR DOCUMENT OF COMPLIANCE**

General Information

Refer to : Comoros Ship Owners - Operators, PHRS Representatives
Ship Type : All applicable ships over 500 gross tons, engaged in domestic or International voyages
References : 1.23/05/2013 Notice from Union of Comoros / National Transport Authority
2.Attached PHRS Instructions for MLC 2006 Inspection & Certification Scheme
Effective from : Immediate

Dear All,

We would like to inform you about Union of Comoros / National Transport Authority (NTA) Notice, regarding NTA forthcoming adoption of the Maritime Labour Convention 2006 (MLC). Please refer to the below email message received from Union of Comoros / National Transport Authority (NTA) in order all concerned parties (Ship Owners - Operators) to comply with the provisions of the MLC 2006, where a process of MLC 2006 Certification could be started from now on, by the use of the following minimum requirements as indicated on below NTA guidance.

For your further information and guidance on the MLC certification process you can also refer to attached PhRS Instructions for MLC 2006 Inspection & Certification Scheme.

At this point, we would like to thank you for your kind attention remaining at your disposal for any further clarification and/or further assistance you may need, without hesitating to contact with our Technical Dpt. (mail@phrs.gr).

PHRS External Dpt. - June 07th 2013, Piraeus, Greece

From: INFO NTA [<mailto:info@nta.gov.km>]
Sent: Πέμπτη, 23 Μαΐου 2013 3:28 μμ
To: PHRS External Dpt. / Ioannis Chados
Cc: 'Ahmed'; ahmed@nta.gov.km
Subject: MLC 2006

Phoenix Register of Shipping (PH.R.S.)

Dear Sir,

Kindly be advised that:

The Government of Union of Comoros has not signed yet the convention MLC 2006. Hence, we can authorize the classification societies (RO) to issue the Document of Compliance or Statment of fact on behalf of Union of Comoros case by case. And this kind of certificates should have the minumum requirments for the MLC 2006. We are preparing to sing the convention, we will keep you informed, when it is signed.

The requirments as follow (minumum requirments for the MLC 2006)

- all seafarers must have a signed original of their employment agreement which is signed by both the seafarer and the shipowner (or the shipowner's representative);
- seafarers' employment agreements must, as a minimum, contain all the information required under Standard A2.1, paragraph 4 of the MLC, 2006;
- where a collective bargaining agreement forms all or part of the seafarers' employment agreement, the agreement must be on board the ship with relevant provisions in English (except on ships engaged only in domestic voyages);
- a copy of all applicable seafarers' employment agreements must be kept on board ship and available for review;
- a seafarer must be given a document containing a record of his or her employment on the ship. That document could be a seafarers' discharge book;
- minimum notice periods must be established, in laws or regulations, for early termination of a SEA (Seafarer Employment Agreement) by either the seafarer or the shipowner

Best Regards,

National Transport Authority

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CONTROLLED COPY	Issue:01 - Rev.:00 - Date: December 2011
Subject:	Instructions for Maritime Labour Convention 2006 Inspection & Certification Scheme
Addressed to:	ALL PhRS REPRESENTATIVES / SURVEYORS

Index

- 1 Introduction**
- 2 Scope and Application**
- 3 Terminology**
- 4 Inspection / Certification**
- 5 Inspection Process**
- Annex - Frequently Asked Questions**

1 Introduction

This document provides PHRS surveyors with the methods and criteria for the survey and issuance of Maritime Labour Certificate according to Maritime Labour Convention, 2006.

This Instructional Booklet is addressed to surveyors already trained and certified, as such by PHRS or any other appropriate authority, on MLC 2006, so there is no any specific reference on generic terms or abbreviations used in MLC 2006, unless this is necessary for the proper understanding and implementation of these instructions. Therefore, Definitions and Scope of Application are subject to compliance with Article II of MLC 2006.

2 Scope and Application

This procedure is to be followed by PHRS surveyors for the issuance of Maritime Labour Certificate to ships whose flag have recognized PhRS to act on their behalf for the purpose of certification under the MLC, 2006.

Application: Maritime Labour Convention 2006 applies to ALL ships and ALL seafarers, unless otherwise instructed by a competent authority / flag state.

Scope: This document establishes the basic provisions for:

- Procedural requirements for certification by PhRS according to MLC, 2006
- Working out the appropriate steps with Flag State and Owners / Managers for the Full Term Certification Scheme.
- A proper assessment of seafarers & ship's compliance (as applicable) in the principal areas covered by MLC, 2006

A Maritime Labour Certificate is required for all ships with GT>500 tones. Ships with a GT<500 are not subject to certification, but shall still be subject to full inspection against the same requirements as for certified ships. However, further details with regard to the identification of inspection requirements and record keeping for such non-certified vessels are to be supplied by the Flag State of each Flag having recognized PhRS to act on their behalf.

3 Terminology

Even applicable terms & definitions concerning MLC 2006, are properly defined into the convention itself, you may find here below additional definitions / determinations for the better understanding of these procedural instructions, as below:

"Convention" or **"MLC 2006"** or **"Consolidated Maritime Labour Convention, 2006"** means the Maritime Labour Convention adopted in February of 2006. The convention supersedes all previous applicable ILO conventions from the time that will be put in force for the ratified countries, thus may be seen as **"Consolidated..."** also. For those countries that they will be not signatory members when MLC 2006 will be put in force but have ratify previous ILO conventions then such ILO ratified conventions will still remain applicable.

"Flag state" or **"competent authority"** mean the flag that flies a ship subject to inspection and / or certification.

“Seafarer” means any person who is employed or engaged or works in any capacity on board a ship to which the MLC, 2006 applies.”

4 Inspection / Certification

General (reg. 5.1.3)

The inspection process should be in accordance with the NATIONAL legislation of ship's flag state which incorporates MLC 2006 into national legislation and not directly with the convention itself. MLC 2006 imposes the minimum requirements for compliance and each flag state has to adopt / ratify MLC 2006 either as it is or modified in the extent that MLC permits to do so. Therefore, the Declaration of Maritime Labour Compliance (DMLC) part I, is the regulatory document provided by the flag state, with respect to MLC 2006 implementation, for the proper survey performance & consequent certification.

Inspection and/or certification according to MLC 2006 pre-assume ships & seafarers compliance with the five titles of the convention and enforcement is regulated by Title 5. The inspection is aiming to verify compliance with the 14 areas as listed in Appendix A5-I, page 91 of the convention. The 14 areas are:

- Minimum Age
- Medical Certification
- Qualifications of Seafarers
- Seafarers' 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

The certification is mandatory for all ships engaged in international voyages with GT>500. For ships with GT<500, inspection for compliance is still mandatory but certification is not. However, as PHRS policy is strongly suggested in consultation with ship's flag state a Statement of Compliance to be issued, once every five years. This practice is quite reasonable for ships' owners and may facilitate the ships' operation during PSC inspections.

Seafarers

The MLC, 2006 applies to all seafarers on all ships to which the MLC, 2006 applies. For this purpose, as defined in Article II, paragraph 1(f) of the MLC, 2006, a “seafarer means any person who is employed or engaged or works in any capacity on board a ship to which the MLC, 2006 applies.”

The MLC, 2006 recognizes in Article II, paragraph 3, that there may be doubts whether a particular category or categories of persons who may perform work on board a ship covered by the MLC, 2006 should be regarded as seafarers for the purposes of the MLC, 2006.

In considering how to resolve such doubts, the Flag State of the ship is to be consulted for clear clarifications after their consultation with the shipowners' and seafarers' organizations.

Certification Scheme (reg. 5.1.3)

The certification is implemented into 2 steps while two occasions of survey are required as a minimum. The certification includes the **Maritime Labour Certificate** supplemented by the **Declaration of Maritime Labour Convention – Part I, (DMLC- Part I)** and the **Declaration of Maritime Labour Convention – Part II, (DMLC- Part II)**.

The MLC certificate and DMLC part I & II shall be written in English and if it is written in another language, then a translation to English should be provided unless the ship is not engaged to international voyages. A copy should be posted in a conspicuous place on board where it is available to seafarers. Upon request, same should be available to flag state inspectors, authorized officers in PSC and ship owners' and seafarers' organizations.

In the first step, an **interim certification** scheme may apply when:

- A ship is new on delivery
- A ship change flag
- A ship change management (is new under the operational responsibility of a ship owner)

Such interim certificate has a maximum validity of 6 months and is **not** extendable.

The interim certificate is **not** supplemented by a DMLC form part I or II and it is issued provided that:

- Verification of matters listed in Appendix A5-I of the convention to the most reasonable and practicable extent.
- The ship owner is able to demonstrate that adequate procedures are in place thus to comply with the convention.
- The master is familiar with its part of responsibilities and required implementation.
- Necessary information has been submitted to the competent authority or RO for the preparation of DMLC.

Prior the expiration of interim certificate, a full **Initial inspection** on the 14 areas listed in Appendix A5-I of the convention shall be carried, as a mandatory requirement for the issue of the full term certificate.

Within the validity period of the interim certificate a DMLC part I shall be produced by ship's flag state which shall identify:

- The list of matters to be inspected as per Appendix A5-I of the convention;
- Identify the national requirements embodying the relevant provisions of the Convention by providing a reference to the relevant national legal provisions as well as, to the extent necessary, concise information on the main content of the national requirements;
- Refer to ship-type specific requirements under national legislation;
- Record any substantially equivalent provisions adopted pursuant to paragraph 3 of Article VI;
- Clearly indicate any exemption granted by flag state as provided by Title 3.

A DMLC part II shall be drawn up by the ship owner and shall identify the measures adopted to ensure ongoing compliance with the national requirements of flag state in the period between inspections and the measures proposed to ensure that there is continuous improvement.

The DMLC part II shall be duly authorized by the flag state or the RO (if so authorized) and ship owner should provide DMLC part II.

The MLC certificate and DMLC part I & II cease to be valid in the circumstances mentioned in MLC, 2006 convention Reg. 5.1.3, A5.1.3 (14).

5 Inspection Process

Inspections

Initial inspection

Initial inspections shall be conducted to ensure compliance with the national requirements implementing the MLC, 2006.

To verify that the national requirements are being complied with and that the shipowners measures have been correctly implemented and are being followed, the inspector shall obtain supporting objective evidence by:

- ✓ A copy of the MLC, 2006 shall be verified on board the ship and to confirm that it is made available to all seafarers.
- ✓ inspecting the relevant areas of the ship;
- ✓ examining further documentation such as passports or other official documents, medical certificates, training records, crew lists and payroll records, seafarer employment agreements, safe manning documents and work and rest schedules; and
- ✓ interviewing, in private, a representative number of seafarers, taking account of the need to preserve confidentiality and of the seafarers' work and rest schedules.

Intermediate Inspections

Intermediate inspections shall be conducted to ensure continuing compliance with the national requirements implementing the MLC, 2006. An intermediate inspection shall be conducted between the second and third anniversary dates¹ of the ML Certificate.

The scope and depth of the intermediate inspection shall be equal to an inspection for renewal of the ML Certificate.

The MLC Certificate shall be endorsed following satisfactory intermediate inspection.

Renewal Inspections

Renewal inspections shall encompass inspections for all requirements (as per initial inspection) and be completed as follows:

- ✓ When the renewal inspection is completed within three (3) months before the expiry of the existing ML Certificate, the new ML Certificate shall be valid from the date of completion of the renewal

inspection for a period not exceeding five (5) years from the date of expiry of the existing ML Certificate.

- ✓ When the renewal inspection is completed more than three (3) months before the expiry date of the existing ML Certificate, the new ML Certificate shall be valid for a period not exceeding five (5) years starting from the date of completion of the renewal inspection.

Inspection process

The inspection should be always made using DMLC part I as the regulatory regime first and the MLC 2006 secondly.

The inspection is focusing to the 14 areas as listed in Appendix A5-I, however PHRS surveyors shall always remember that the purpose of MLC 2006 is to provide ongoing decent working and living conditions on board, therefore proper professional judgment should be always exercised by the surveyors wherever they are on board for any occasion of survey.

Some of the areas subject to inspection are already checked for compliance with other requirements like ISM Code or STCW Convention, so the surveyors shall be well prepared for their surveys thus to perform efficiently and saving time onboard. The inspection for MLC 2006 involves a considerable time for documentation review, apart from the usual one that surveyors were so far checking on board, including areas which are not technical. So, in any case of doubt you should seek advice from this HO.

As mentioned before, PhRS shall issue or renew an MLC Certificate to a ship after completion of a satisfactory inspection of the national requirements for the 14 areas listed below for implementing the MLC, 2006 in the manner as detailed in the Declaration of Maritime Labour Compliance (DMLC) and given below.

MINIMUM AGE (Reg. 1.1, A1.1) – (INSPECTION & CERTIFICATION area)

What are the key points for attention by surveyors?

- Persons below the age of 16 shall not be employed or engaged or work on a ship (A1.1, par.1)
- Seafarers under 18 years old shall not be employed or engaged or work where the work is likely jeopardizes their health or safety.
- Special attention should be paid to any particular national law concerning employment of seafarers under 18 years old.
- Night work of seafarers under 18 years old is prohibited unless there is an exemption from the competent authority under A1.1, para.3 in the case of training program (A1.1, para.2).

What surveyors should check?

- ✓ Check a crew list or passports or other official documents for seafarers' birthing dates.
- ✓ Check work schedule to determine nature & hours of work of seafarers under the age of 18.
- ✓ Check type of works on board that may jeopardize safety of seafarers under 18 years old.
- ✓ Check any accident reports and safety committee reports to determine if seafarers under 18 years old are involved.

MEDICAL CERTIFICATE (Reg. 1.2, A1.2) (Inspection & Certification /Check DMLC Part I)

What are the key points for attention by surveyors?

- Seafarers are not allowed to work on board a ship unless they are certified as medically fit to do so. Certificates issued under STCW are accepted for this purpose.
- The medical certificate of seafarers working on board ships engaged on international voyages should be written in English.
- The medical certificate must be issued by a duly qualified medical practitioner and must be valid.
- The period of validity of medical certificate is determined under the national law as per below:
 - 2-year maximum validity except for seafarers, under 18 years old, where shall be 1-year.
 - 6-year maximum validity for a color vision certificate.

What surveyors should check?

- ✓ Check the crew list.
- ✓ Check for appropriate valid medical certificates.
- ✓ Check for valid color vision medical certificates, where appropriate.
- ✓ Check that medical restrictions on work, if any, for individual seafarers are being respected and those seafarers are not assigned or carrying out any work in contrary to these restrictions.
- ✓ In urgent cases where the competent authority of the flag State has permitted a seafarer to work without a valid or with an expired certificate, the authorization or permit should be checked to ensure it is still valid (subject to a three-month maximum).
- ✓ In cases where a medical certificate has expired while at sea, the certificate must be obtained within a maximum period of three months.
- ✓ Check that the medical certificates of seafarers on ships ordinarily engaged in international voyages are in English.
- ✓ Check that the medical certificate has been issued by a duly qualified medical practitioner.

TRAINING AND QUALIFICATIONS (Reg. 1.3) (Inspection & Certification /Check DMLC Part I)

What are the key points for attention by surveyors?

- Seafarers must be trained or certified* as competent or otherwise qualified to perform their duties in accordance with flag State requirements.
- Seafarers must have successfully completed training for personal safety on board ship.

What surveyors should check?

- ✓ Check the minimum safe manning document (SMD) to verify the required qualifications of the seafarers.
- ✓ Check certificates and endorsements for STCW personnel confirming seafarers' competency with respect to their duties (check crew list to determine duties).
- ✓ Check documentary evidence (from a ship owner or, if relevant to the position concerned, a national authority or otherwise) confirming that seafarers have any qualifications that may be required under national law for those performing other duties on board ship (for example, ships' cooks – see below, Regulation 3.2).
- ✓ Check for evidence confirming that all seafarers have successfully completed training for personal safety on board ship.
- ✓ Check a copy of the appropriate training material that is available to the crew.
- ✓ Confirm training through interviews, in private, with a representative number of seafarers.

**SEAFARERS' EMPLOYMENT AGREEMENTS (Reg. 2.1)
(Inspection & Certification /Check DMLC Part II)**

What are the key points for attention by surveyors?

All seafarers must have a copy of their seafarers' employment agreement (SEA) signed by both the seafarer and the ship owner or ship owner's representative (or, where they are not employees, other evidence of contractual or similar arrangements).

A SEA must, at a minimum, contain the matters set out in Standard A2.1, paragraph 4(a)–(k) of the MLC, 2006 (Standard A2.1, paragraph 4).

Seafarers must also be given a document containing a record of their employment on the ship (such as a discharge book) (Standard A2.1, paragraph 1(e)).

Where a collective bargaining agreement forms all or part of the SEA, the agreement must be on board the ship with relevant provisions in English (except for ships engaged only in domestic voyages) (Standard A2.1, paragraph 2).

What surveyors should check?

Check a copy of the SEA and any applicable collective bargaining agreements for seafarers and, at a minimum, a standard form of the SEA (in English) for the ship.

Check, where possible, given the timing of the inspection relative to employment period, possession by seafarers of a record of their employment (or request that such records are submitted to the inspector at a later date).

Check that seafarers' records of employment do not contain statements as to the quality of their work or as to their wages.

Interview, in private, a representative number of seafarers to confirm that, on signing a SEA, seafarers were given an opportunity to examine and seek advice and freely accepted the agreement before signing.

**RECRUITMENT AND PLACEMENT STANDARD (Reg. 1.4)
(Inspection & Certification /Check DMLC Part II)**

What are the key points for attention by surveyors?

- Where a ship owner has used a private seafarer recruitment and placement service,* it must be licensed or certified or regulated in accordance with the MLC, 2006.

Seafarers shall not be charged for use of these services.

Ship owners using services based in States not party to the MLC, 2006, must ensure, as far as practicable, that these services meet the requirements of the MLC, 2006 (Standard A1.4, paragraph 9).**

* If private seafarer recruitment and placement services are operating in their territory, flag States are responsible for establishing an effective inspection and monitoring system with respect to those services (Regulation 5.3; Standard A5.3, paragraph 1).

** Flag States are responsible for ensuring that shipowners have a proper system for verifying that the recruitment and placement services conform to the national requirements implementing Standard A1.4 if they use recruitment and placement services based in States not party to the MLC, 2006. This responsibility may be fulfilled by continuously monitoring shipowners compliance with those requirements, by monitoring recruitment and placement services in relevant non-MLC countries through a quality management system, and by providing information on the extent to which services in such countries have been found to meet the requirements of Standard A1.4.

What surveyors should check?

- Check the national web sites of the competent authority regarding the licensing or regulation of seafarer recruitment and placement services (manning agencies).
- Check documentation or other information to allow the inspector to ascertain the following:
 - Direct engagement: Seafarers were recruited and engaged by the ship owner. If this is the case, this fact should be noted and no further action is necessary.
 - Recruited through a public service: In this case seafarers were engaged through a public seafarer recruitment and placement service in either the flag State or in another State to which the MLC, 2006, applies. If this is the case, this should be noted and no further action is necessary.
- Recruited through a private service (or a service operated by a seafarers' organization) in a country that has ratified the MLC, 2006. If the seafarers were engaged through a private seafarer recruitment and placement service in the flag State, check for documentary evidence confirming that the service concerned is operating in accordance with the national laws or regulations or other measures implementing the MLC, 2006, requirements. Where the supervision of such services is entrusted to another national authority in the flag State, a statement by that authority that the service has been found to be operating in accordance with the relevant law is sufficient for this purpose.
- If the seafarers were engaged through a private seafarer recruitment and placement service in another State that has ratified the MLC, 2006, no action need be taken unless the inspector has received a clear indication that basic rights have been violated (such as charging seafarers for use of services).
- Recruited through a service that is based in a country that has not ratified the MLC, 2006. If the seafarers were engaged through a seafarer recruitment and placement service based in a country that has not ratified the MLC, 2006, check documentation showing that the shipowner has, as far as practicable, verified through a proper system that the service is operated consistently with the MLC, 2006. This system may, for example, take account of information collected by the flag State, as well as any audits or certifications concerning the quality of services operating in countries that have not ratified the MLC, 2006. Other evidence which shipowners could provide might be checklists against the MLC requirements or an RO audit of a recruitment and placement service based in a country that has not ratified the MLC, 2006.
- Check, through interviews, in private, with a representative number of seafarers, that they have not paid a fee or other charge to a recruitment or placement service and have been informed of their rights and duties.
- Check, through interviews, in private, with a representative number of seafarers, that the recruitment and placement service used does not operate a blacklist.

HOURS OF WORK AND HOURS OF REST (Reg. 2.3) (Inspection & Certification /Check DMLC Part II)

What are the key points for attention by surveyors?

- The minimum hours of rest* must not be less than ten hours in any 24-hour period and 77 hours in any seven-day period, if the relevant national law relates to hours of rest, or, if the relevant national law relates to hours of work, the maximum hours of work** must not exceed 14 hours in any 24-hour period and 72 hours in any seven-day period (Standard A2.3, paragraph 5, as implemented in national standards).***
- Hours of rest may be divided into no more than two periods, one of which must be at least six hours; the interval between consecutive periods of rest must not exceed 14 hours (Standard A2.3, paragraph 6, as implemented in the national standards).***
- Account must be taken of the danger posed by the fatigue of seafarers (Standard A2.3, paragraph 4).

* "Hours of rest" means time outside hours of work; this term does not include short breaks (Standard A2.3, paragraph 1(b)).

** "Hours of work" means time during which seafarers are required to do work on account of the ship (Standard A2.3, paragraph 1(a)).

*** With respect to the national standards implementing Standard A2.3: Standard A2.3, paragraph 3 provides that "Each Member acknowledges that the normal working hours' standard for seafarers, like that for other workers, shall be based on an eight-hour day with one day of rest per week and rest on public holidays. However, this shall not prevent the Member from having procedures to authorize or register a collective agreement which determines seafarers' normal working hours on a basis no less favorable than this standard."

Standard A2.3, paragraph 13 provides that "Nothing in paragraphs 5 and 6 of this Standard shall prevent a Member from having national laws or regulations or a procedure for the competent authority to authorize or register collective agreements permitting exceptions to the limits set out. Such exceptions shall, as far as possible, follow the provisions of this Standard but may take account of more frequent or longer leave periods or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ships on short voyages."

What surveyors should check?

- Check that there is an approved standardized table of shipboard working arrangements setting out the national requirements for maximum hours of work or the minimum hours of rest and the schedule for service at sea and in port, posted in an easily accessible place on the ship.
- Check the working arrangement listed in the table.
- Check documents (the SEA or the relevant collective agreement and other documents, such as the bridge and engine room logbooks, that can also be checked) to confirm compliance with the basic requirements concerning minimum hours of rest or maximum hours of work.
- Check for a table of working arrangements or schedule in the working language or language of the ship and in English.
- Check that there are up to date records of work or rest, as required under national standards, for each seafarer serving on the ship.
- Check for seafarer fatigue, possibly indicated by hours of work that are consistently at the upper limits and by other contributory factors, such as disrupted rest periods. If there are seafarers that show symptoms such as lack of concentration, irrelevant and inconsistent replies to questions, yawning and slow reaction times, further investigation may be considered.

**MANNING LEVELS (Reg. 2.7)
(Inspection & Certification /Check DMLC Part II)**

What are the key points for attention by surveyors?

- Ship must have a sufficient number of seafarers employed on board to ensure that ships are operated safely, efficiently and with due regard to security under all conditions, taking into account concerns about fatigue and the particular nature and conditions of voyage.
- Ship must comply with the manning levels listed on the Safe Manning Document (SMD) or equivalent issued by the competent authority

What surveyors should check?

- Check safe manning document (SMD) or applicable equivalent.
- Check crew list for number, category (such as cooks and those responsible for food preparation and those who are responsible for medical care) and qualifications of seafarers working on board.
- Check on-board table of working arrangements to confirm that safe manning requirements are being implemented.
- Interview, in private, a representative number of seafarers to confirm that requirements are met.

**ACCOMMODATION & RECREATIONAL FACILITIES (Reg. 3.1)
(Inspection & Certification /Check DMLC Part II)**

What are the key points for attention by surveyors?

- Ships must be in compliance with the minimum standards established by the MLC, 2006, providing and maintaining decent accommodation and recreational facilities for seafarers working or living on ships, or both, consistent with promoting seafarers' health and well-being.
- Seafarer accommodation must be safe and decent and must meet national requirements implementing the MLC, 2006 (Standard A3.1, paragraph 1).
- Frequent inspections of seafarer accommodation areas are carried out by the master or a designate (Standard A3.1, paragraph 18) and are recorded and the records are available for review.

For ships coming into service:

- The attending flag State inspector should be aware of the plan approval process undertaken during the construction of the ship with respect to the seafarer accommodation arrangements. As part of the first inspection of a ship the inspector will need to verify that the accommodation and recreational facilities have been constructed in accordance with the approved drawings. The same applies to ships that have been substantially altered. This process need not be repeated for subsequent inspections.

For ships that were in existence before entry into force of the MLC, 2006, for the flag State:

- Account must be taken of any national provisions that may have been adopted (see Chapter 2 of these guidelines) with respect to this issue. These ships will still need to be inspected in connection with seafarers' accommodation and recreational facilities to verify that the ship:
 - meets the standards set out in either ILO Conventions No. 92, 133, 147 or the Protocol of 1996 to Convention No. 147 (if applicable in the flag State); and/or
 - Provides and maintains decent accommodation and recreational facilities for seafarers working or living on board, or both, consistent with promoting the seafarers' health and well-being in accordance with national legislation.

What surveyors should check?

- Check the construction plan of the ship that shows dimensions and identifying the use to be made of each room or other area.
- Check the crew list compared to the number of sleeping rooms and berths.
- Carry out a visual observation of seafarers' on-board accommodation and recreational facilities with particular attention paid to the following requirements in the MLC, 2006:
 - general requirements (Standard A3.1, paragraph 6);
 - the size of rooms and other accommodation spaces (Standard A3.1, paragraphs 9 and 10);
 - heating and ventilation (Standard A3.1, paragraph 7);
 - noise and vibration and other ambient factors (Standard A3.1, paragraph 6(h));
 - sanitary and related facilities (Standard A3.1, paragraphs 11 and 13);
 - lighting (Standard A3.1, paragraph 8);
 - hospital accommodation (Standard A3.1, paragraph 12);
 - recreational facilities (Standard A3.1, paragraphs 14 and 17);
 - occupational safety and health and accident prevention requirements on ships, in light of the specific needs of seafarers who both live and work on ships (Standard A3.1, paragraphs 2(a) and 6(h)).
- Check the on-board records to confirm that frequent inspections are carried out by, or under the authority of, the ship's master, as well as (for ships that carry a Maritime Labour Certificate) that other inspections or actions provided for in the ship owners' approved measures found in the DMLC, Part II, have been carried out.
- Check that measures are being taken on the ship to monitor noise and vibration levels in seafarers' working and living areas.

FOOD & CATERING (Reg. 3.2)
(Inspection & Certification /Check DMLC Part II)

What are the key points for attention by surveyors?

- Food and drinking water must be of appropriate quality, nutritional value and quantity, taking into account the requirements of the ship and the differing cultural and religious backgrounds of seafarers on the ship.
- Food is to be provided free of charge to seafarers during the period of engagement.
- Seafarers employed as ship's cooks* with responsibility for preparing food must be trained and qualified for their positions.
- Seafarers working as ship's cooks must not be less than 18 years old (Standard A3.2, paragraph 8).
- Frequent and documented inspections of food, water and catering facilities are carried out by the master or a designate (Standard A3.2, paragraph 7).

*"Ship's cook" means a seafarer with responsibility for food preparation (Regulation 3.2, paragraph 3; Standard A3.2, paragraphs 3 and 4).

What surveyors should check?

- Check documents (see Regulation 1.1 on minimum age) to confirm that the ship's cooks are 18 years old or older and that the ship's cooks are trained, qualified and competent for their positions in accordance with national requirements. In cases where a fully qualified cook is not required, check

- that seafarers processing food in the galley are trained or instructed in food and personal hygiene and handling and storage of food on board ships.
- Check on-board records to confirm that frequent and documented inspections are made of:
 - supplies of food and drinking water;
 - spaces used for handling and storage of food;
 - Galleys and other equipment used in the preparation and service of meals.
 - Visual observation of catering facilities, including galleys and store rooms, to check that they are hygienic and fit for purpose.
 - Check that food and drinking water are of an appropriate quality (for example, not out of date) and quantity and nutritional value by:
 - checking drinking water quality and ascertaining how the quality is monitored;
 - Reviewing menu plans together with visual observation of food supplies and storage areas to ensure that the food supplied is varied in nature.
 - Check, by interviewing, in private, a representative number of seafarers that they are not charged for food and are provided with drinking water and that food and drinking water are of appropriate quality and quantity.

**HEALTH AND SAFETY PROTECTION AND ACCIDENT PREVENTION (Reg. 4.3)
(Inspection & Certification /Check DMLC Part II)**

What are the key points for attention by surveyors?

- The working, living and training environment on ships must be safe and hygienic and conform to national laws and regulations and other measures for occupational safety and health protection and accident prevention on board ship. Reasonable precautions are to be taken on the ships to prevent occupational accidents, injuries and diseases including risk of exposure to harmful levels of ambient factors and chemicals as well as the risk of injury or disease that may result from the use of equipment and machinery on the ship (Standard A4.3, paragraph 1(b)).
- Ship must have an occupational safety and health policy and program to prevent occupational accident injuries and diseases, with a particular concern for the safety and health of seafarers under the age of 18 (Standard A4.3, paragraphs 1(c) and 2(b)).
- A ship safety committee, that includes participation by the seafarer safety representative, is required (for ships with five or more seafarers) (Standard A4.3, paragraph 2(d)).
- Risk evaluation is required for on-board occupational safety and health management (taking into account relevant statistical data) (Standard A4.3, paragraph 8).

What surveyors should check?

- Check relevant documents, such as the on-board occupational accident reports, and the reports of risk evaluations undertaken for the management of occupational safety and health on the ship.
- Check for documents evidencing membership and meetings of the safety committee (e.g. records and minutes of the meetings, etc.) if the ship has more than five seafarers.
- Check documents related to the ship's on-board ongoing occupational safety and health policy and program, to confirm that:
 - it is available to seafarers;
 - it is consistent with national provisions;
 - it includes risk evaluation, training and instruction for seafarers;
 - it pays special attention to the health and safety of young seafarers;
 - adequate preventive measures are being taken;
 - Appropriate personal protective equipment is being used and maintained correctly.

- Check that relevant occupational safety and health and accident prevention notices and official instructions with respect to particular hazards on the ships are posted on the ship in a location that will bring it to the attention of seafarers (Standard A4.3, paragraph 7).
- Check that appropriate protective equipment is available for seafarers to use.
- Check that a reporting procedure for occupational accidents is in place.
- Interview, in private, a representative number of seafarers to confirm on-board occupational safety and health program and practices.
- Check that, with respect to health and safety protection and accident prevention, special consideration is given to any national requirements covering:
 - the structural features of the ship, including means of access and asbestos-related risks;
 - machinery;
 - the effects of the extremely low or high temperature of any surfaces with which seafarers may be in contact;
 - the effects of noise in the workplace and in shipboard accommodation;
 - the effects of vibration in the workplace and in shipboard accommodation;
 - the effects of ambient factors (other than noise and vibration) in the workplace and in shipboard accommodation, including tobacco smoke;
 - special safety measures on and below deck;
 - loading and unloading equipment;
 - fire prevention and fire-fighting;
 - anchors, chains and lines;
 - dangerous cargo and ballast;
 - personal protective equipment for seafarers;
 - work in enclosed spaces;
 - physical and mental effects of fatigue;
 - the effects of drug and alcohol dependency;
 - HIV/AIDS protection and prevention;
 - Emergency and accident response.

MEDICAL CARE ON BOARD SHIP AND ASHORE (Reg. 4.1) (Inspection & Certification /Check DMLC Part II)

What are the key points for attention by surveyors?

- Seafarers must be covered by adequate measures for the protection of their health and have access to prompt and adequate medical care, including essential dental care, whilst working on board.
- Health protection and care are to be provided at no cost to the seafarer, in accordance with national law and practice.
- Ship owners are to allow seafarers the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable (Standard A4.1, paragraph 1(c)).

What surveyors should check?

- Check documents (such as the SEA) to confirm that, to the extent consistent with national law and practice, medical care and health protection services while seafarers are on board ship or landed in a foreign port, are provided free of charge (see Standard A4.1, paragraph 1(d)).
- Check documents (such as the SEA) to confirm that seafarers are given the right to visit a qualified medical doctor or dentist, without delay, when calling at a port, where practicable (see Standard

- A4.1, paragraph 1(c).
- Check records and equipment to confirm that general provisions on occupational health protection and medical care are being observed (Standard A4.1, paragraph 1(a)).
 - Undertake visual observation to confirm that the ship is equipped with sufficient medical supplies including a medicine chest and equipment, including either the most recent edition of the International Medical Guide for Ships or a medical guide as required by national laws and regulations.
 - Check documents (such as the SMD and crew list) to confirm that a qualified medical doctor is working on board ships that carry 100 or more people and that are ordinarily engaged in voyages of more than three days' duration.
 - Check that, where ships are not required to carry a medical doctor, they have at least one seafarer on board (who is trained and qualified to the requirements of STCW) to be in charge of medical care or is competent to provide medical first aid as part of their regular duties.
 - Check that medical report forms are carried on board the ship.
 - Interview, in private, a representative number of seafarers to confirm that seafarers have access to medical care on board without charge and are given leave to obtain medical and dental care services when calling in a port, where practicable.
 - Check that procedures are in place for radio or satellite communications for medical assistance.

**ON BOARD COMPLAINT PROCEDURE (Reg. 5.1.5)
(Inspection & Certification /Check DMLC Part II)**

What are the key points for attention by surveyors?

- Ships must have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of the MLC, 2006 (including seafarers' rights).
- All seafarers must be provided with a copy of the on-board complaint procedures applicable on the ship. This should be in the working language of the ship.
- Victimization of seafarers for filing complaints under the MLC, 2006, is prohibited.

What surveyors should check?

- Check the document outlining the on-board complaint procedures to confirm that the procedures are functioning on the ship, paying particular attention to the right of representation and to the required safeguards against victimization.
- Check that seafarers are provided with a copy of the on-board complaint procedures in the working language of the ship.
- Check a document outlining the on-board complaint procedures to confirm that seafarers are able to complain directly to the ship's master or an external authority.
- Interview, in private, a representative number of seafarers to confirm that seafarers are given a copy of the procedures and that they are able to complain directly to the ship's master or an external authority and that there is no victimization

**WAGES (Reg. 2.2)
(Inspection & Certification /Check DMLC Part II)**

What are the key points for attention by surveyors?

- Seafarers must be paid at no greater than monthly intervals and in full for their work in accordance with their employment agreements.*
- Seafarers are entitled to an account each month indicating their monthly wage and any authorized

- deductions such as allotments.
- No unauthorized deductions, such as payments for travel to or from the ship.
- Charges for remittances/allotment** transmission services must be reasonable and exchange rates in accordance with national requirements.

*Flag States may wish to consider requiring ship-owners to carry on board their ships' documents such as a copy of payroll or electronic record sheets.

** An allotment is an arrangement whereby a proportion of seafarers' earnings are regularly remitted, on their request, to their families or dependants or legal beneficiaries whilst the seafarers are at sea (Standard A2.2, paragraphs 3 and 4).

What surveyors should check?

- Check the SEA and documentation, such as the payroll records to confirm wages are being paid at intervals no greater than one month as specified in their SEA or relevant collective agreements.
- Check relevant documents showing service charges and exchange rates applied to any remittances made to the seafarers' families or dependants or legal beneficiaries at their request.
- Check relevant documents to confirm the payment of wages including the requirement that a monthly account (such as a wage slip) is provided to the seafarers. Copies of individual accounts should be available to inspectors at their request.
- Check that the wages set out in the SEA are consistent with national wages for seafarers, if national laws or regulations or collective bargaining agreements governing seafarers' wages have been adopted.
- Interview, in private, a representative number of seafarers to confirm compliance with requirements on the payment of wages.

Additional areas to be examined:

**ENTITLEMENT TO LEAVE (Reg. 2.4)
(Inspection & Certification /Check DMLC Part II)**

What are the key points for attention by surveyors?

- Seafarers must be allowed paid annual leave* in accordance with national laws and regulations implementing the MLC, 2006.
- Unauthorized agreements to forgo the minimum annual leave with pay are prohibited (Standard A2.4, paragraph 3).
- Seafarers are to be granted shore leave to benefit their health and well-being and consistent with the operational requirements of their positions.

* The MLC, 2006, allows for differing calculations but establishes a minimum annual paid leave calculated on the basis of 2.5 calendar days per month of employment. In addition to the minimum period of annual leave, seafarers may also be entitled to a number of public and customary holidays recognized by the flag State. This is regardless of whether they fall within the individual seafarer's period of annual leave. For additional guidance see Guideline B2.4.1, paragraph 4.

What surveyors should check?

- Check documents, such as the SEA or the relevant collective agreement, to confirm that seafarers are provided with the annual leave with pay entitlement required by the flag State (at a minimum, to be calculated on the basis of 2.5 calendar days per month of employment).
- Check that seafarers' employment and wage records confirm that this requirement is met.

- Interview, in private, a representative number of seafarers to confirm that they receive paid annual leave and are allowed an appropriate level of shore leave by the ship owner.

PREPATRIATION (Reg. 2.5) (Inspection)

What are the key points for attention by surveyors?

- Seafarers are to be repatriated, at no cost to themselves, in accordance with the national provisions implementing the MLC, 2006.
- Ship owners are required to provide financial security to ensure that repatriation will occur.
- A copy of the applicable national provisions regarding repatriation must be carried on ships and available to seafarers in an appropriate language (Standard A2.5, paragraph 9).
- At a minimum seafarers are entitled to repatriation in the following circumstances:
 - if the seafarers' employment agreement expires while they are abroad;
 - when their seafarers' employment agreement is terminated:
 - by the ship owner; or
 - by the seafarer for justified reasons; and
 - When the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances (Standard A2.5, paragraphs 1 and 2).

What surveyors should check?

- Check relevant documents confirming that ship owner has provided financial security.
- Check that a copy of the national provisions or SEA or relevant collective bargaining agreement regarding repatriation is available (in an appropriate language) to seafarers.
- Check for compliance with any national provision that seafarers under the age of 18 are to be repatriated after a prescribed period if it is apparent that they are unsuited to a career at sea (Guideline B2.5.2, paragraph 3).
- (Standard A2.7, paragraph 1).

SHIPOWNERS' LIABILITY (Reg. 4.2) (Inspection)

What are the key points for attention by surveyors?

- Seafarers have a right to material assistance and support from the ship owner with respect to the financial consequences of sickness, injury or death occurring while they are serving under a SEA or arising from their employment under such agreement.
- Ship owners are liable to defray the expense of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured seafarer has recovered, or until the sickness or incapacity has been declared of a permanent character (Standard A4.2, paragraph 1(c)).
- Ship owners are to provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the SEA or collective agreement (Standard A4.2, paragraph 1(b)).
- Measures are to be taken to safeguard the property of seafarers left on board by sick, injured or deceased seafarers (Standard A4.2, paragraph 7).

What surveyors should check?

- Check the SEA and/or relevant collective bargaining agreement to verify that seafarers have the coverage required by national law implementing the MLC, 2006.
- Check documents confirming that the ship owner has provided financial security to assure compensation as required.
- Check for on-board procedures with respect to property that is left on board by sick, injured or deceased seafarers.

**SOCIAL SECURITY (Reg. 4.5)
(Inspection)**

What are the key points for attention by surveyors?

- Seafarers who are subject to the flag State's social security legislation, and, to the extent provided for in its national law, their dependants, are entitled to benefit from social security protection no less favorable than that enjoyed by shore workers.

Note: The MLC, 2006, requires that all seafarers be provided with social protection. This covers a number of complementary requirements including prevention-based approaches in connection with occupational safety and health, medical examinations, hours of work and rest and catering. Social protection is mainly addressed in the Title 4 with respect to Medical care (Regulation 4.1); Shipowner liability (Regulation 4.2); and Social security (Regulation 4.5). Regulation 4.5 and the related Standard A4.5 reflect an approach that recognizes the wide range of national systems and schemes and differing areas of coverage with respect to the provision of social security. Under Standard A4.5, paragraph 3, a ratifying country is required to "take steps according to its national circumstances to provide the complementary social security protection referred to in paragraph 1 of this Standard to all seafarers ordinarily resident in its territory". The resulting protection must be no less favorable than that enjoyed by shore workers resident in its territory. The main responsibility of flag States is to ensure that the shipowners' social security obligations are respected for seafarers on their ships, particularly those set out in Regulations 4.1 and 4.2 (see Standard A4.5, paragraph 5). A more general duty, referred to in Standard A4.5, paragraph 6, and Guideline B4.5, paragraph 5, is also applicable to flag States. ILO member States are to give consideration to ways in which comparable benefits could be provided to seafarers who do not have adequate social security coverage and to possibly themselves arrange for the needed protection to be provided. This responsibility reflects the fact that all States have an important role in promoting the protection of all seafarers and in cooperating to help ensure such protection. In this way flag States can make an important contribution to the achievement of adequate social security protection for seafarers worldwide.

In the context of flag State inspection of ships the main concern lies with confirming the complementary protection to be provided by shipowners and stated in the SEA (Standard A2.1, paragraph 4(h)).

What surveyors should check?

- Check for evidence that, for seafarers covered by the national social security system, the appropriate contributions are being made if it is a contributory system.
- Check the SEA to confirm the protection to be provided by the ship owner.
- Interview, in private, a representative number of seafarers to confirm that mandatory contributions, if any, are made.

Action to be taken if deficiencies are identified:

General

It is recalled that the national laws and regulations or other measures implementing the MLC, 2006, provisions remain the overriding authority on the applicable requirements for inspections.

The MLC, 2006, sets out a number of possible responses available to inspectors to help ensure that ships comply with those national requirements. In the surveying process, MLC 2006 surveyors should involve an exercise of professional judgment by identifying deficiencies (including those identified during the course of investigating a complaint (see Chapter 2) as set out in Standard A5.1.4, paragraph 5).

In determining the action to be taken, an important consideration is the question of who is to take the action. It is important to remember that the flag State remains fully responsible for the inspection and certification of working and living conditions of seafarers on ships that fly its flag (Regulation 5.1.1, paragraph 3). So, PHRS surveyors must, however, as a minimum be empowered to require the rectification of deficiencies that it identifies in seafarers' working and living conditions and to carry out inspections in this regard at the request of a port State (Standard A5.1.2, paragraph 2). This capacity has to be verified with PHRS HO concerning particular flag states authorizing PHRS to act on their behalf with respect to MLC 2006.

Before a certificate can be issued or endorsed or a ship allowed sailing, in case of deficiencies, PHRS inspector would need to have confirmation either that all deficiencies noted during the inspection have been rectified or that a rectification action plan has been provided by the owner and agreed by the inspector and Head Office. **In such case the consent of the flag should be requested.**

Availability of Information

As noted in Chapter 2, under Standard A5.1.3, paragraph 11, in the case of a ship that is certified, the results of subsequent inspections (after the first inspection) or verifications and any significant deficiencies found during the verification are to be recorded together with the date when the deficiencies were found to be remedied. This record, in English (or an English translation when it is not written in English), is to be either written on the on-board copy of the DMLC or appended to it or otherwise made available in some way for the information of seafarers, flag State inspectors, authorized officers in a port State and ship owners' and seafarers' representatives.

Guidance on making determinations as to action

Depending upon the number and severity of any deficiencies, PHRS surveyor may consider the following actions:

- Give appropriate advice;
- List, with appropriate timescales, the deficiencies to be rectified, for example, before departure; within 14 days; or before the issue of a Maritime Labour Certificate, under the consent of the flag state;
- Prevent the ship from leaving port until necessary actions are taken;
- In the case of ships that are certified:
 - withdraw the Maritime Labour Certificate;
 - Refuse to endorse the Maritime Labour Certificate following an intermediate inspection or refuse to renew the certificate.

When considering which action or actions to take, PHRS inspectors should use their professional judgment. In addition, when reaching a decision on whether or not to accept a rectification plan or prevent a ship from leaving port and/or recommend withdrawal of Maritime Labour Certificate shall consider:

- ❖ whether or not the non-conformities can be rapidly remedied in the port of inspection;
- ❖ whether the deficiencies constitute a significant danger to seafarers' safety, health or security;
- ❖ the seriousness of the breach of the requirements of the MLC, 2006;
- ❖ length and nature of the intended voyage or service;
- ❖ size and type of ship and equipment provided;
- ❖ whether or not the appropriate rest period for seafarers is being observed;
- ❖ nature of the cargo;
- ❖ prior history of similar deficiencies;
- ❖ number of deficiencies identified on the inspection;
- ❖ safe manning requirements;
- ❖ prior history with respect to rectifications.

ANNEX

Frequently Asked Questions (FAQ)

Note: The below text of Questions & Replies is originated from ILO / MLC 2006 web site and it has been copied here for surveyors' easy reference. This text does not regulate actually some procedural issues but it serves as a tool for the better understandings of new or existing requirements addressed through MLC 2006.

What is the Maritime Labour Convention, 2006?

It is an important new international labour Convention that was adopted by the International Labour Conference of the International Labour Organization (ILO), under article 19 of its Constitution at a maritime session in February 2006 in Geneva, Switzerland. It sets out seafarers' rights to decent conditions of work and helps to create conditions of fair competition for ship owners. It is intended to be globally applicable, easily understandable, readily updatable and uniformly enforced. The Maritime Labour Convention, 2006 has been designed to become a global legal instrument that, once it enters into force, will be the "fourth pillar" of the international regulatory regime for quality shipping, complementing the key Conventions of the International Maritime Organization (IMO) such as the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), the International Convention on Standards of Training, Certification and Watch keeping, 1978, as amended (STCW) and the International Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL).

Why is it also sometimes called the consolidated Maritime Labour Convention, 2006?

The Maritime Labour Convention, 2006 contains a comprehensive set of global standards, based on those that are already found in 68 maritime labour instruments (Conventions and Recommendations), adopted by the ILO since 1920. The new Convention brings almost all of the existing maritime labour instruments together in a single new Convention that uses a new format with some updating, where necessary, to reflect modern conditions and language. The Convention "consolidates" the existing international law on all these matters. The Conventions addressing the seafarers' identity documents were recently revised in 2003 (Convention Nos. 108 and 185) and are not included in the new Convention. In addition, the Seafarers' Pension Convention, 1946 (No. 71) and one Convention (The Minimum Age (Trimmed and Stokers) Convention, 1921 (No. 15)), which is no longer relevant to the sector, are not consolidated by the Maritime Labour Convention, 2006.

When will the Maritime Labour Convention, 2006 come into force and what will happen to the existing Conventions?

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 per cent.»

This is a much higher than the usual ratification level (for ILO Conventions) and it uses a new formula that is intended to assure greater actual impact of the Convention. It reflects the fact that the enforcement and compliance system established under the Convention needs widespread international cooperation in order to

be effective. Since many of the obligations under the Convention are directed to ship owners and flag States it is important that ILO Members with a strong maritime interest and a high level of tonnage operating under their legal jurisdiction ratify the Convention.

The existing ILO maritime labour Conventions will be gradually phased out as ILO Member States that have ratified those Conventions ratify the new Convention, but there will be a transitional period when some parallel Conventions will be in force. Countries that ratify the Maritime Labour Convention, 2006 will no longer be bound by the existing Conventions when the new Convention comes into force for them. Countries that do not ratify the new Convention will remain bound by the existing Conventions they have ratified, but those Conventions will be closed to further ratification.

Why was a new Convention needed?

The decision by the ILO to move forward to create this major new maritime labour Convention was the result of a joint resolution in 2001 by the international seafarers' and ship owners' organizations later supported by governments. They pointed out that the shipping industry is "the world's first genuinely global industry" which "requires an international regulatory response of an appropriate kind – global standards applicable to the entire industry". The industry called on the ILO to develop "an instrument which brings together into a consolidated text as much of the existing body of ILO instruments as it proves possible to achieve" as a matter of priority "in order to improve the relevance of those standards to the needs of all the stakeholders of the maritime sector". It was felt that the very large number of the existing maritime Conventions, many of which are very detailed, made it difficult for governments to ratify and to enforce all of the standards. Many of the standards were out of date and did not reflect contemporary working and living conditions on board ships. In addition, there was a need to develop a more effective enforcement and compliance system that would help to eliminate substandard ships and that would work within the well-established international system for enforcement of the international standards for ship safety and security and environmental protection that have been adopted by the International Maritime Organization (IMO).

Does the new Convention deal with any new subjects?

The Convention is organized into three main parts: the **Articles** coming first set out the broad principles and obligations. This is followed by the more detailed **Regulations** and **Code** (with two parts: Parts A and B) provisions. The Regulations and the Standards (Part A) and Guidelines (Part B) in the Code are integrated and organized into general areas of concern under 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 security protection

Title 5: Compliance and enforcement.

These five Titles essentially cover the same subject matter as the existing 68 maritime labour instruments, updating them where necessary. It occasionally contains new subjects, particularly in the area of

occupational safety and health to meet current health concerns, such as the effects of noise and vibration on workers or other workplace risks.

The provisions relating to flag State inspections, the use of “recognized organizations” and the potential for inspections in foreign ports (port State control) in Title 5 are based on existing maritime labour Conventions; however, the new Convention builds upon them to develop a more effective approach to these important issues, consistent with other international maritime Conventions that establish standards for quality shipping with respect to issues such as ship safety and security and protection of the marine environment.

Why do we need effective international standards for seafarers’ conditions of work?

In ships flying the flags of countries that do not exercise effective jurisdiction and control over them, as required by international law, seafarers often have to work under unacceptable conditions, to the detriment of their well-being, health and safety and the safety of the ships on which they work. Since seafarers’ working lives are spent outside the home country and their employers are also often not based in their country, effective international standards are necessary for this sector. Of course these standards must also be implemented at a national level, particularly by governments that have a ship registry and authorize ships to fly their countries’ flags. This is already well recognized in connection with ensuring the safety and security of ships and protecting the marine environment. It is also important to understand that there are many flag States and ship owners that take pride in providing the seafarers on their ships with decent conditions of work.

These countries and ship owners face unfair competition in that they pay the price of being undercut by ship owners which operate substandard ships.

Are the standards in the new Convention lower than existing maritime labour standards?

No, the aim is to maintain the standards in the current maritime labour Conventions at their present level, while leaving to each country a greater discretion in the formulation of their national laws establishing that level of protection.

How will the Maritime Labour Convention, 2006 protect more of the world’s seafarers?

The Convention aims to achieve worldwide protection for all seafarers. It seeks to meet this goal in a number of ways. It is estimated that there are over 1.2 million people working at sea in the world. Until now it had not been clear that all of these people, particularly for example, those that work on board ships but are not directly involved in navigating or operating the ship, such as many personnel that work on passenger ships, would be considered seafarers. The new Convention clearly defines a seafarer as any person who is employed or engaged or works in any capacity on board a ship that is covered by the Convention. Except for a few specific exclusions and areas where flexibility is provided for national authorities to exempt smaller ships (200 gross tonnage and below) that do not go on international voyages from some aspects of the Convention, the Convention applies to all ships (and to the seafarers on those ships) whether publicly or privately owned that are ordinarily engaged in commercial activities.

The Convention does not apply to:

- ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;
- ships engaged in fishing;
- ships of traditional build such as dhows and junks;
- Warships or naval auxiliaries.

Many existing maritime labour Conventions have a low ratification level. The new Convention has been designed specifically to address this problem. More protection of seafarers will be achieved by the early ratification and national-level implementation of the new Convention by the vast majority of ILO nations active in the maritime sector, as is the case of the key Conventions of the International Maritime Organization (IMO): SOLAS, STCW and MARPOL.

How does the new Convention make it easier for countries to ratify it and to implement its requirements?

Both the Constitution of the ILO and many ILO instruments seek to take account of national circumstances and provide for some flexibility in application of Conventions, with a view to gradually improving protection of workers, by taking into account the specific situation in some sectors and the diversity of national circumstances. Flexibility is usually based on principles of **tripartism, transparency and accountability**. When flexibility with respect to a Convention is exercised by a government it usually involves consultation with the workers' and employers' organizations concerned, with any determinations that are made reported to the ILO by the government concerned. This is seen as a necessary and important approach to ensuring that all countries, irrespective of national circumstances, can engage with the international legal system and those international obligations are respected and implemented, to the extent possible, while also making efforts to improve conditions. This is particularly important for an international industry such as shipping.

The Maritime Labour Convention, 2006 generally follows this approach as well as also providing for additional flexibility, relevant to the sector, at a national level. The Convention seeks to be "firm on rights and flexible on implementation". A major obstacle to the ratification of existing maritime labour Conventions is the excessive detail in many of them. The new Convention sets out the basic rights of seafarers to decent work in firm statements, but leaves a large measure of flexibility to ratifying countries as to how they will implement these standards for decent work in their national laws.

The areas of flexibility in the Convention include the following:

- 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, national implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice;
- Implementation of the mandatory standards in Part A of the Code (other than Title 5) may also be achieved through measures which are "substantially equivalent";

- Many of the prescriptive or detailed requirements in existing Conventions which had created difficulties for some governments interested in ratifying the Convention are now found in the Guidelines, which are in Part B of the Code. The provisions of Part B of the Code are not mandatory and are not subject to port State inspections, however governments are required to give "due consideration" to their content when implementing their obligations;
- The requirements of the Convention, other than the ship certification system, will apply to most ships (it does not apply to fishing vessels, ships of traditional build or warships); however, the application of details in the Code may be relaxed for some smaller ships – 200 gross tonnage (GT) and below – that do not go on international voyages. This determination would be made in consultation with ship owners' and seafarers' organizations concerned;
- All ships covered by the Convention would be subject to the inspection system developed by the flag State but the certification system is only mandatory for ships of 500 gross tonnages and above that are engaged in international voyages (or are operating between ports in a foreign country). The certification system will certify that the ship is being operated in conformity with the Convention's requirements as implemented in the laws or regulations of the flag State concerned (in the case of other ships, the ship owners can also request their flag State to include their ships in the certification system so as to avoid or reduce the likelihood of their being inspected in foreign ports);
- the Convention expressly recognizes that some flag States may make use of recognized organizations such as classification societies to carry out aspects of the ship certification system on their behalf;
- Provisions affecting ship construction and equipment (Title 3) will not apply to ships constructed before the Convention comes into force for the country concerned. Smaller ships (200 gross tonnage and below) may be exempted from specific accommodation requirements;
- Specific allowance is made for making determinations at a national level through consultation with ship owners' and seafarers' organizations "in case of doubt" as to the application of the Convention to categories of persons or ships or a particular ship. A Resolution was adopted along with the Convention which provides guidance to national authorities on the question of who would be considered "seafarers" in this context;
- Provision is made for the situation of countries that may not have national organizations of ship owners or seafarers to consult;
- Provision is made for national circumstances and for bilateral, multilateral and other arrangements in connection with social security coverage.

Will the ship owners' duties and responsibilities cover seafarers whose work does not relate to the navigation or safe operation of the ship?

Yes, ship owners (or ship operators) have the overall responsibility as employers with respect to all seafarers working on their ships. It is understood that they could make arrangements with persons who may also have responsibility for the employment of particular seafarers, enabling the ship owners to recover the costs involved, for example.

Why is the new Convention likely to achieve the aim of near universal ratification?

Because the Convention was adopted by a record vote of 314 in favour and none against (two countries abstained for reasons unrelated to the substance of the Convention), after nearly two weeks of detailed review by over 1,000 participants drawn from 106 countries. This almost unprecedented level of support reflects the lengthy tripartite consultation exercise and the unswerving support that has been shown for it by the governments and workers and employers who have worked together since 2001 to develop the Convention text. It will also achieve near universal ratification because of its blend of firmness on rights and flexibility with respect to approaches to implementation of the more technical requirements and because of the advantages it gives to the ships of countries that ratify it.

What will be the advantages for ships of ratifying countries?

The ships of ratifying countries that provide decent conditions of work for their seafarers will have protection against unfair competition from substandard ships and will benefit from a system of certification, avoiding or reducing the likelihood of lengthy delays related to inspections in foreign ports.

How will the Maritime Labour Convention, 2006 improve compliance and enforcement?

The Maritime Labour Convention, 2006, aims to establish a continuous “compliance awareness” at every stage, from the national systems of protection up to the international system. This starts with the individual **seafarers**, who – under the Convention – have to be properly informed of their rights and of the remedies available in case of alleged non-compliance with the requirements of the Convention and who’s right to make complaints, both on board ship and ashore, is recognized in the Convention. It continues with the **ship owners**. Those that own or operate ships of 500 gross tonnage and above, engaged in international voyages or voyages between foreign ports, are required to develop and carry out plans for ensuring that the applicable national laws, regulations or other measures to implement the Convention are actually being complied with. The **masters** of these ships are then responsible for carrying out the ship owners’ stated plans, and for keeping proper records to evidence implementation of the requirements of the Convention. As part of its updated responsibilities for the labour inspections for ships above 500 gross tonnage that are engaged in international voyages or voyages between foreign ports, the **flag State** (or recognized organization on its behalf) will review the ship owners’ plans and verify and certify that they are actually in place and being implemented. Ships will then be required to carry a **maritime labour certificate** and a **declaration of maritime labour compliance** on board. Flag States will also be expected to ensure that national laws and regulations implementing the Convention’s standards are respected on smaller ships that are not covered by the certification system. Flag States will carry out periodic quality assessments of the effectiveness of their national systems of compliance, and their **reports to the ILO under article 22** of the Constitution will need to provide information on their inspection and certification systems, including on their methods of quality assessment. This general inspection system in the flag State (which is founded on ILO Convention No. 178) is complemented by procedures to be followed in countries that are also or even primarily the source of the world’s supply of seafarers, which will similarly be reporting under article 22 of the ILO Constitution. The system is further reinforced by voluntary measures for inspections in **foreign ports (port State control)**.

What are the maritime labour certificate and the declaration of maritime labour compliance?

The Appendices to the Convention contain key model documents: a **maritime labour certificate** and a **declaration of maritime labour compliance**. The certificate would be issued by the flag State to a ship that flies its flag, once the State (or a recognized organization that has been authorized to carry out the inspections), has verified that the labour conditions on the ship comply with national laws and regulations implementing the Convention. The certificate would be valid for five years subject to periodic inspections by the flag State. The declaration is attached to the certificate and summarizes the national laws or regulations implementing an agreed-upon list of 14 areas of the maritime standards and setting out the ship owner's or operator's plan for ensuring that the national requirements implementing the Convention will be maintained on the ship between inspections. The lists of the 14 areas that must be certified by the flag State and that may be inspected, if an inspection occurs, in a foreign port are also set out in the Appendices to the Convention.

What is meant by "no more favorable treatment" for ships of non-ratifying countries?

These words appear in Article V, paragraph 7, of the Convention. The idea, which is also found in IMO Conventions, is that ships must not be placed at a disadvantage because their country has ratified the new Convention. The practical consequence comes out clearly in the port State control provisions of Title 5 of the Convention, under which ships of all countries (irrespective of ratification) will be subject to inspection in any country that has ratified the Convention, and to possible detention if they do not meet the minimum standards of the new Convention.

How will respect for the new Convention actually be enforced?

The new Convention is intended to achieve more compliance by operators and owners of ships and to strengthen enforcement of standards through mechanisms which operate at all levels.

For example, it contains provisions for:

- Complaint procedures available to seafarers;
- Ship owners' and shipmasters' supervision of conditions on their ships;
- Flag States' jurisdiction and control over their ships;
- Port State inspections of foreign ships.
- By requiring ratifying Members not only to implement the Convention in the national laws but also to document their implementation, the Convention should also enhance the effectiveness of the supervision carried out at the international level, especially by the competent bodies of the ILO.

How will the new Convention be kept more up to date than the existing Conventions?

The part of the Convention which is expected to need updating from time to time, namely the two-part Code relating to the technical and detailed implementation of the basic obligations under the Convention, can be amended under an accelerated procedure ("tacit acceptance") (provided for in Article XV) enabling changes

to come into effect, for all or almost all ratifying countries, within three to four years from when they are proposed.

Will ratifying Members be bound by all new amendments?

A ratifying Member will not be bound by an amendment to the Code entering into effect in accordance with Article XV of the Convention if it expresses formal disagreement within a period of normally two years. Amendments under Article XIV, which lays down a procedure to be followed in the case of amendments to the basic provisions, i.e. the Articles and Regulations, can only take effect for countries that ratify the amendment concerned.

How do the amendment procedures differ from those in the IMO Conventions?

Both types of amendment procedure – under Article XIV for the Convention as a whole, and Article XV for amendments only to the Code – are based to a certain extent on procedures that are already well established in another agency of the United Nations, the International Maritime Organization (IMO). However, the Article XIV express ratification procedure is closer to the present ILO procedure for revising Conventions. The accelerated or tacit acceptance procedure under Article XV follows the IMO procedures especially with respect to the submission of amendments to Member States and their entry into effect; the main difference relates to the adoption of amendments: here (unlike under the IMO procedures) non-ratifying Members play a role and amendments have to be approved by the International Labour Conference, open to all ILO Members.

What are the novel features of the new Convention?

There are several novel features as far as the ILO is concerned. The whole structure of the new Convention differs from that of traditional ILO Conventions. It consists of the basic provisions, i.e. the **Articles and Regulations**, followed by a **two-part Code** and divided into **five Titles**, one of which is devoted to compliance and enforcement. The Regulations and the Code, which contains **Standards and Guidelines**, are organized under the 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 security protection
- Title 5: Compliance and enforcement.

There is also an **Explanatory** note to further assist Members implementing the Convention. The Convention also uses a new "**vertically integrated**" format with a numbering system that links the Regulations, Standards and Guidelines. Each Regulation also has a "plain language" purpose clause.

Other innovations are the amendment procedures and the system for the certification of ships. However, most of these novel features are based on those of the instruments of other organizations, especially the

IMO. One unique feature relates to the special status of the non-mandatory Part B of the Code and its relationship with the mandatory Part A.

What is meant by the special status of Part B of the Code and why was it needed?

The status of Part B of the Code is based on the idea of firmness on principle and rights combined with flexibility in implementation. Without this innovation the new Convention could never aspire to wide-scale ratification: many of the provisions of existing maritime labour Conventions, which relate to the method of implementing basic seafarers' rights (rather than to the content of those rights), have been transferred to the non-mandatory Part B Guidelines of the Code. Their placement in the mandatory Regulations and Part A (Standards) could have resulted in clear obstacles to ratification.

The special status is reflected in the following agreed set of questions and answers:

Is Part B of the Code mandatory?

Answer: No.

Can Part B be ignored by ratifying Members?

Answer: No.

Is implementation of Part B verified by port State inspectors?

Answer: No.

Does the ratifying Member have to follow the guidance in Part B?

Answer: No, but if it does not follow the guidance it may – vis-à-vis the competent bodies of the International Labour Organization – need to justify the way in which it has implemented the corresponding mandatory provisions of the consolidated Convention.

Since Part B is not mandatory, why is it part of the Convention and not the subject of an international labour Recommendation?

Part A and Part B of the Code are interrelated. The provisions of Part B, called Guidelines, while not mandatory, are helpful and sometimes essential for a proper understanding of the Regulations and the mandatory Standards in Part A. In some cases, the mandatory Standards in Part A are so generally worded it may be difficult to implement them without the guidance in the corresponding provisions of Part B.

Can an ILO Convention legally contain non-mandatory provisions?

There is no reason why mandatory provisions should not be complemented by non-mandatory ones. There are precedents in international labour Conventions where the non-mandatory "should" is used rather than the mandatory "shall".

Why does there sometimes appear to be some duplication between the Regulations and Part A of the Code of the Convention?

The Regulations, which will be approved by parliaments or legislatures during the national ratification processes, not only set out the basic rights of seafarers but also govern the content of the Code, including its possible future content after amendment under the accelerated procedure. Every provision of Part A of the Code must come within the general scope of the Articles or Regulations to be valid. This requirement sometimes leads to a measure of duplication.

Will the Convention also require ratifying countries to apply the ILO's core human rights Conventions or other Conventions mentioned in the new Convention?

No, but they will – under Article III of the Convention – have to satisfy themselves that their laws and regulations respect, in the context of the Convention, the fundamental rights, such as freedom of association, that are embodied in the core Conventions (there would be no requirement concerning the actual provisions of those Conventions).

The fact that other international Conventions are referred to in the Preamble or other parts of the Convention does not create a legal obligation, with respect to those Conventions, for a country that ratifies the Maritime Labour Convention, 2006.

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