
INTERNATIONAL LABOUR ORGANIZATION

INTERNATIONAL LABOUR STANDARDS DEPARTMENT

Maritime Labour Convention, 2006 (MLC, 2006)

Frequently Asked Questions (FAQ)

Third (revised) edition, 2014
(www.ilo.org/mlc)

INTERNATIONAL LABOUR OFFICE, GENEVA

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First published 2006

Third (revised) edition 2014

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ISBN 978-92-2-128311-9 (print)

ISBN 978-92-2-128312-6 (web pdf)

Maritime Labour Convention, 2006. Frequently Asked Questions. Third (revised) edition, 2014

Also available in French: *Convention du travail maritime, 2006 (MLC, 2006). Questions fréquentes. Troisième édition révisée, 2014* (ISBN 978-92-2-228311-8), Geneva, 2014, in Spanish: *Convenio sobre el trabajo marítimo (MLC, 2006). Preguntas más frecuentes. Tercera edición (revisada), 2014* (ISBN 978-92-2-328311-7), Geneva, 2014.

ILO Cataloguing in Publication Data

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Visit our website: www.ilo.org/publns.

Printed by the International Labour Office, Geneva, Switzerland

Preface

This third edition of the ILO handbook *Maritime Labour Convention, 2006 – Frequently Asked Questions* has been prepared by the International Labour Office as a follow-up activity to the ILO's *Action plan to achieve rapid and widespread and effective implementation of the Maritime Labour Convention, 2006*.

The Maritime Labour Convention, 2006 (MLC, 2006) was adopted at the 94th (Maritime) Session of the ILC on 23 February 2006. Shortly after its adoption, the International Labour Office prepared a promotional brochure, the first edition of the *Frequently Asked Questions*, which focused mainly on the Convention's background and its objectives.

Since 2006, both interest and experience with the MLC, 2006, has grown. In 2012, in order to help promote greater ownership of the MLC, 2006, among ILO constituents and also to facilitate the understanding of the Convention, the International Labour Office prepared an online electronic database of answers to "Frequently Asked Questions" (FAQ), which was also issued in the form of an ILO handbook. It was intended to be an easily accessible source of information that would be regularly updated. The current FAQ, dated 2014, is the third (revised) edition. It has been prepared following the entry into force of the MLC, 2006, on 20 August 2013. The FAQ 2014 is intended to help persons engaged in the study or application of the MLC, 2006, to find answers to numerous questions. The answers provided in the handbook cannot in themselves be cited as authoritative legal opinions. This is because, in the first place, the precise requirements of the Convention are those contained in the national laws or regulations or other measures adopted by each country to implement the MLC, 2006. No authoritative answer can, therefore, be given to any question without reference to the applicable national legal system. In the second place, the answers in the handbook are intended to provide information in the form of concise explanations rather than legal opinions. Such opinions can be provided by the ILO to governments and shipowners' and seafarers' organizations, in particular, upon request and on the understanding that only the International Court of Justice is competent to give authoritative interpretations of international labour Conventions.

This handbook is one of a series that has been developed to assist Members in implementing the MLC, 2006. Other handbooks that may be of assistance are:

- *Handbook. Guidelines on implementing the Maritime Labour Convention, 2006. Model national provisions, ILO, 2012.*
- *Handbook. Guidelines on implementing the Maritime Labour Convention, 2006. Social security for seafarers, ILO, 2012.*

These handbooks and many other resources can be viewed and freely downloaded from the ILO's dedicated website for the MLC, 2006, under the link "Monitoring and implementation tools" at: www.ilo.org/mlc.

Preparation and publication of these handbooks would not have been possible without the technical cooperation support of ILO Members. In particular, support has been provided for this and earlier handbooks by the Government of Sweden through the Swedish International Development Agency (SIDA).

Finally, it is intended that the MLC, 2006, FAQ online database will be updated and subsequent editions/revisions of this handbook will be published from time to time to reflect these updates based on questions that have arisen during the practical and legal implementation of the MLC, 2006.

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Acknowledgements

This handbook has been prepared under the direction of Dr Cleopatra Doumbia-Henry, and Mr Georges Politakis in the International Labour Standards Department of the International Labour Office, with the assistance of special advisers to the ILO on the MLC, 2006, Mr Dominick Devlin and Dr Moira L. McConnell. Special thanks to Ms Angela Fernández Lopez and Ms Irma Godoy, Documentalist of the Department, who managed the editing and processing of the publication.

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How to use this FAQ

The *Maritime Labour Convention, 2006* (MLC, 2006)¹ was adopted at the 94th (Maritime) Session of the International Labour Conference (ILC) on 23 February 2006.

In order to help promote greater ownership of the MLC, 2006, among International Labour Organization (ILO) constituents and also to facilitate the understanding of the Convention, the International Labour Office has prepared this database of answers to “Frequently Asked Questions” (FAQ). It has been prepared in three languages (English, French, Spanish) in a form that is quickly searchable for readers viewing it in electronic format (either online or downloading it as a PDF document) on the ILO dedicated website (portal) for the MLC, 2006.² It has also been published in print form.

This FAQ database is intended to help persons engaged in the study or application of the MLC, 2006, to find answers to numerous questions. The answers provided in the database cannot in themselves be cited as authoritative legal opinions. This is because, in the first place, the precise requirements of the Convention are those contained in the national laws or regulations or other measures adopted by each country to implement the MLC, 2006. No authoritative answer can, therefore, be given to any question without reference to the applicable national legal system. In the second place, the answers in the database are intended to provide information in the form of concise explanations rather than legal opinions. Such opinions can be provided by the ILO to governments and, in particular, shipowners’ and seafarers’ organizations upon request and on the understanding that only the International Court of Justice is competent to give authoritative interpretations of international labour Conventions.

Finally, this database will be periodically updated. For this purpose, governments and shipowners’ and seafarers’ organizations are invited to provide comments on or additions to the answers given, especially in the light of the knowledge gained in their involvement in the preparation of the Convention and/or taking account of their day-to-day experience in the application of laws and regulations or other measures implementing the MLC, 2006. Any comments and suggestions will be taken into consideration when the databases are further updated.

Other useful sources of information

For those seeking a more detailed understanding of the issues or context of provision, it is important to also review the ILO’s official records and reports of the meetings leading to the adoption of Convention text. They are all easily accessible on the ILO’s dedicated website/portal for the MLC, 2006.³ In addition for each meeting over the five-year period 2001 to February 2006, detailed commentaries and other papers were prepared by the ILO or submitted by constituents. These may also be of assistance in understating various

¹ The text of the MLC, 2006, can be viewed (or downloaded in a PDF form) in a number of languages on the ILO MLC, 2006, dedicated website/portal under the link “Text and preparatory reports” at: www.ilo.org/mlc.

² See www.ilo.org/mlc.

³ Under the ILO MLC, 2006, website under the link titled “Text and preparatory reports” at: www.ilo.org/mlc.

provisions and the reasoning behind them. They are also available on the ILO's MLC, 2006, website.⁴

Subsequently, in 2008, two international tripartite meetings of experts were held in response to resolutions⁵ adopted by the ILC when it adopted the Convention regarding the need for more practical guidance in connection with ship inspection and certification. The resulting guidance, the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*,⁶ and the *Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006*,⁷ while not legally binding instruments, are designed to be of practical assistance to governments in developing their national guidelines or policies, to implement, in particular the provision in Title 5 of the MLC, 2006, and also, to some degree, the provisions in Titles 1 to 4. In September 2013 an international tripartite meeting of experts met to adopt *Guidelines on the training of ships' cooks*.⁸ All of these guidelines are easily available on the ILO's MLC, 2006, website.

There are also many other sources of information about the text in the MLC, 2006. For example the *Manual for drafting ILO instruments*,⁹ which can provide assistance particularly as it includes a glossary. The practices in the manual, which was adopted during the development of the Convention, influenced some of the wording in the Convention.

A. General questions about the MLC, 2006

A1. What is the MLC, 2006?

It is a comprehensive international labour Convention that was adopted by the ILC of the ILO, under article 19 of its Constitution, at a maritime session in February 2006 in Geneva, Switzerland. It entered into force – that is, it became binding international law – on 20 August 2013. The MLC, 2006, sets out seafarers' rights to decent conditions of work and helps to create conditions of fair competition for shipowners. It is intended to be globally applicable, easily understandable, readily updatable and uniformly enforced. The MLC, 2006, has been designed to become a global legal instrument that 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

⁴ Under the ILO MLC, 2006, website under the heading “Text and preparatory reports” under the link titled “Preparatory reports” at: www.ilo.org/mlc.

⁵ *idem*.

⁶ Available on the ILO MLC, 2006, website under the heading “Monitoring and implementation tools” under the link “*Guidelines for flag State inspections under the Maritime Labour Convention, 2006*” at: www.ilo.org/mlc.

⁷ Available on the ILO MLC, 2006, website under the heading “Monitoring and implementation tools” under the link “*Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006*” at: www.ilo.org/mlc.

⁸ Meeting of Experts to Adopt Guidelines on the Training of Ships' Cooks. Available at: http://www.ilo.org/sector/activities/sectoral-meetings/WCMS_204810/lang--en/index.htm.

⁹ ILO. 2006. *Manual for drafting ILO instruments*, Online revised version 2011 (Geneva, ILO). Available at: www.ilo.org/public/english/bureau/leg/download/man.pdf.

Convention on Standards of Training, Certification and Watchkeeping, 1978, as amended (STCW), and the International Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL). The MLC, 2006, contains a comprehensive set of global standards, based on those that are already found in the maritime labour instruments (Conventions and Recommendations), adopted by the ILO between 1920 and 1996. It brings all, except four,¹⁰ of the existing maritime labour instruments (international labour standards (ILS)) together in a single Convention that uses a new format, with some updating, where necessary, to reflect modern conditions and language. The Convention “consolidates” and revises the existing international law on all these matters.

Since there were many existing maritime Conventions, a question might be asked as to why a new Convention is needed. There are a number of reasons for adopting the MLC, 2006.

On 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 (called “flag States”). 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 shipowners that take pride in providing the seafarers on their ships with decent conditions of work. These countries and shipowners face unfair competition in that they pay the price of being undercut by shipowners which operate substandard ships. The decision by the ILO to move forward to create the MLC, 2006, was the result of a joint resolution in 2001 by the international seafarers’ and shipowners’ 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 existing international labour standards. Many of the existing maritime labour Conventions were out of date and did not reflect contemporary working and living conditions on board ships. Many had low levels of ratification. 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 adopted in the framework of the IMO. The MLC, 2006, was designed to specifically address these concerns. 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 Members active in the maritime sector.

¹⁰ The Convention addressing seafarers’ identity documents of 2003 (Convention No. 185) and the 1958 Convention that it revises (Convention No. 108) are not consolidated in the new Convention; nor are the Seafarers’ Pensions Convention, 1946 (No. 71), and the (outdated) Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15).

A2. What are the two basic aims of the MLC, 2006

The basic aims of the MLC, 2006, are:

- to ensure comprehensive worldwide protection of the rights of seafarers (the Convention is sometimes called the seafarers' Bill of Rights); and
- to establish a level playing field for countries and shipowners committed to providing decent working and living conditions for seafarers, protecting them from unfair competition on the part of substandard ships.

A3. How will the MLC, 2006, protect more of the world's seafarers?

In the first place, the MLC, 2006, is designed to achieve a higher level of ratification than previous Conventions [see A18. Why is the MLC, 2006, likely to achieve the aim of near universal ratification?] and to also indirectly apply to all shipowners, and serve to protect seafarers working on ships operating under the flag of a country that has not ratified the Convention [see A4. What is meant by the “no more favourable treatment” clause?]. It will also cover all persons working at sea (now estimated at over 1.5 million. 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 [see B1. Who is protected by the MLC, 2006?].

The MLC, 2006, also aims to establish a continuous “compliance awareness” at every stage, from the national systems of protection up to the international system [see C5. Title 5. Compliance and enforcement]. This starts with the individual seafarers, who – under the MLC, 2006 – 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 whose right to make complaints, both on board ship and ashore, is recognized in the Convention. It continues with the shipowners. Those that own or operate ships of 500 gross tonnage (GT) and above, engaged in international voyages or voyages between foreign ports (ports located in a country other than the flag State of the ship), are required to develop and carry out plans for ensuring that the applicable national laws, regulations or other measures to implement the MLC, 2006, are actually being complied with. The masters of these ships are then responsible for carrying out the shipowners' 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 of 500 GT or above that are engaged in international voyages or voyages between foreign ports, the flag State (or a recognized organization on its behalf) will review the shipowners' 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, including those that do not go on international voyages, 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 ILO Constitution (see report form)¹¹ 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

¹¹ Available on the ILO MLC, 2006, website under the heading “Monitoring and implementation tools” under the link entitled “Reporting obligation – Article 22 report form” at: www.ilo.org/mlc.

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 [see C5.3.a. What are labour-supplying responsibilities?], 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 (called port State control) [see C5.2.c. What is port State control?]

A4. What is meant by the “no more favourable treatment” clause?

Article V, paragraph 7, of the MLC, 2006, contains what is often called the “no more favourable treatment clause”. It seeks to ensure a “level playing field” under which the ships flying the flag of countries that have ratified the Convention will not be placed at a competitive disadvantage as compared with ships flying the flag of countries that have not ratified the MLC, 2006. Although it appears that Article V, paragraph 7, could conceivably apply in various situations, in practice it relates essentially to the context of port State control under Regulation 5.2.1, with respect to ships flying a foreign flag and calling at a port of a ratifying country.

A5. What is new in the Maritime Labour Convention, 2006 (MLC, 2006)?

There are several novel features in the MLC, 2006, as far as the ILO is concerned. The whole structure of the Convention differs from that of traditional ILO Conventions. It is organized into three main parts: the Articles coming first set out the broad principles and obligations. They are 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 set out in five Titles, which essentially cover the same subject matter [see A6. What are the subjects of the “Titles”?] as the existing 37 maritime labour Conventions and associated Recommendations, updating them where necessary. There are a few new subjects, particularly in the area of occupational safety and health to meet contemporary concerns, such as the effects of noise and vibration on workers or other workplace risks, but in general the Convention aims at maintaining the standards in the current instruments at their present level, while leaving each country greater discretion in the formulation of their national laws establishing that level of protection. The provisions relating to flag State inspection, including the use of “recognized organizations” builds upon the existing ILO maritime labour inspection Convention (No. 178). The potential for inspections in foreign ports (port State control) [see C5.2.c. What is port State control?] in Title 5 is based on existing maritime Conventions, in particular Convention No. 147 – the Merchant Shipping (Minimum Standards) Convention, 1976 – and the Conventions adopted by the IMO and the regional port State control agreements (PSC MOU). However, the MLC, 2006, 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. One of the most innovative aspects of the MLC, 2006, as far as ILO Conventions are concerned, is the certification of seafarers' living and working conditions on board ships.

A6. What are the subjects of the “Titles”?

The Regulations of the MLC, 2006, and the Standards (Part A) and Guidelines (Part B) in its 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

A7. Does the MLC, 2006, directly apply to shipowners, ships and seafarers?

The MLC, 2006, is an international legal instrument and does not, therefore, apply directly to shipowners, ships or seafarers. Instead like all international law, it relies on implementation by countries through their national laws or other measures [see A.8. What measures must a country take to ensure that the MLC, 2006, is properly applied?]. The national law or other measures would then apply to shipowners, seafarers and ships. The MLC, 2006, sets out the minimum standards that must be implemented by all countries that ratify it. These standards must be reflected in the national standards or requirements and are subject to the usual oversight role taken by the Committee of Experts under the ILO supervisory system (a system established under the Constitution of the ILO) [see A37. Why does the ILO say that it supervises the implementation of Conventions? What does that mean? Does it inspect ships?].¹²

A8. What measures must a country take to ensure that the MLC, 2006, is properly applied?

Article IV, paragraph 5, of the MLC, 2006, provides that implementation of the seafarers' employment and social rights under the Convention may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice, unless the Convention specifies otherwise by, for example, requiring countries to adopt national laws and regulations to implement certain provisions of the Convention.

Thus, each country is free to decide whether a particular MLC, 2006, provision should be contained in a law (such as an Act of Parliament or Congress) or in a regulation or other subsidiary legislation, such as administrative orders or official marine notices. Or, a country may decide – in cases where the MLC, 2006, does not specifically require legislation – that certain matters could be dealt with better through other legal measures or through collective bargaining agreements. Or perhaps, where an MLC, 2006, provision essentially relates to action to be taken by the governments themselves, through internal administrative instructions. In some cases, a country might decide that no further legislative measures need to be devised because, for example, a seafarer's rights under the MLC, 2006, are already adequately covered by the general law applied by the national courts.

¹² Information about the ILO's supervisory system is located on the ILO website under the heading "Labour standards", and the links under the subheading "Supervisory bodies and procedures" at: www.ilo.org/normes.

A9. What is the Code of the MLC, 2006?

The MLC, 2006, is organized into three main parts: the Articles, coming first, set out the broad principles and obligations. The Articles are followed by the Regulations and the Code, which relate to the areas of seafarers' working and living conditions covered by the Convention and to inspection and compliance. The Regulations, which are written in very general terms, are complemented by the more detailed Code. The Code has two parts: Part A contains Standards and Part B Guidelines. The provisions in the Regulations and the Standards (Part A) and Guidelines (Part B) in the Code have been vertically integrated in the Convention: in other words, they have been arranged and linked together according to their subject matter: thus each of the Titles in the MLC, 2006 [see A6. What are the subjects of the "Titles"?] consists of various Regulations covering a particular aspect of the subject, each Regulation being followed first by the Part A Standards and then by the Part B Guidelines that relate to the same aspect.

A10. What is the difference between Articles, Regulations, Standards and Guidelines?

All the provisions of the MLC, 2006, whatever their name, must be complied with by ratifying countries or, in the case of its Guidelines, taken into consideration by them [see A12. What is the status of the Guidelines in Part B of the Code?]. The main difference between these provisions is that the Articles contain more general statements of principles, obligations and rights with the specific details set out in the Regulations and the Code. The Articles also contain provisions relating to the legal aspects of the operation and application of the Convention such as definitions, amendments and entry into force and the establishment of the Special Tripartite Committee under Article XIII [see A22. What is the Special Tripartite Committee?] The difference between the Regulations and the Standards and Guidelines is that the Regulations are normally worded in very general terms, with the details of implementation being set out in the Code (i.e., the Standards and the Guidelines).

A11. What is a "substantially equivalent" provision?

The MLC, 2006, provides in Article VI, paragraphs 3 and 4, that in some circumstances 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 will 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". The Member's obligation is principally to "satisfy itself", which nevertheless does not imply total autonomy, since it is incumbent on the authorities responsible for monitoring implementation at the national and international levels to determine not only whether the necessary procedure of "satisfying themselves" has been carried out, but also whether it has been carried out in good faith in such a way as to ensure that the objective of implementing the principles and rights set out in the Regulations is adequately achieved in some way other than that indicated in Part A of the Code. It is in this context that ratifying members should assess their national provisions from the point of view of substantial equivalence, identifying the general object and purpose of the MLC, 2006, Code, Part A provision concerned (in accordance with paragraph 4(a)) and determining whether or not the proposed national provision could, in good faith, be considered as giving effect to the Part A provision (as required by paragraph 4(b)). Any substantial equivalents that have been adopted must be stated in Part I of the Declaration of Maritime Labour Compliance that is carried on board ships that have been certified [see C5.1.k. How detailed should Part I of the Declaration of Maritime Labour Compliance (DMLC) be?].

A12. What is the status of the Guidelines in Part B of the Code?

Countries that ratify the MLC, 2006, must adopt national laws or take other measures to ensure that the principles and rights set out in the Regulations are implemented in the manner set out by the Standards set out in Part A of the Code (or in a substantially equivalent manner) [see A11. What is a “substantially equivalent” provision?]. When deciding on the details of their laws or other implementing measures [see A.8. What measures must a country take to ensure that the MLC, 2006, is properly applied?], the ratifying countries must give due consideration to following the Guidelines set out in Part B of the Code. Provided that they have given this due consideration, ratifying countries may implement the mandatory provisions in a different way, more suited to their national circumstances. In this case, the government concerned may be asked to explain to the ILO supervisory bodies why it has decided not to follow the guidance in Part B of the Code.¹³ A country’s implementation of Part B will not be verified by port State inspectors.

A13. What was the reason for having the Part B Guidelines?

The special status given to Part B of the Code [see A12. What is the status of the Guidelines in Part B of the Code?] is based on the idea of firmness on principles and rights combined with flexibility in the way those principles and rights are implemented. Without this innovation, the MLC, 2006, 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 as their placement in the mandatory Regulations and Part A (Standards) could have resulted in clear obstacles to ratification.

A14. What is the status of the 2008 ILO Guidelines for flag State inspections and the ILO Guidelines for port State control officers?

The two sets of Guidelines, adopted in 2008, the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*,¹⁴ and the *Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006*,¹⁵ provide authoritative guidance since they were prepared by tripartite meetings of experts to assist countries to implement Title 5 of the MLC, 2006. But they do not have any special legal status. They should not be confused with the Guidelines found in Part B of the Code of the MLC, 2006, which must be given due consideration by ratifying countries [see A12. What is the status of the Guidelines in Part B of the Code?].

¹³ Information about the ILO’s supervisory system is located on the ILO website under the heading “Labour standards”, and the links under the subheading “Supervisory bodies and procedures” at: www.ilo.org/normes.

¹⁴ Available on the ILO MLC, 2006, website under the heading “Monitoring and implementation tools” under the link “*Guidelines for flag State inspections under the Maritime Labour Convention, 2006*” at: www.ilo.org/mlc.

¹⁵ Available on the ILO MLC, 2006, website under the heading “Monitoring and implementation tools” under the link “*Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006*” at: www.ilo.org/mlc.

International guidelines, as well as the related national flag State inspection and certification systems and national guidelines for flag State inspectors, are important aspects of implementation of the MLC, 2006, and essential to ensuring widespread harmonized implementation of the MLC, 2006.

A15. Does the MLC, 2006, require countries to comply with the ILO’s “fundamental Conventions”?

The ILO’s Governing Body has identified eight international labour Conventions as “fundamental”, covering subjects that are considered as fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These Conventions are listed in the Preamble to the MLC, 2006. Countries that ratify the MLC, 2006, are required, under Article III, to satisfy themselves that the provisions of their national legislation respect those fundamental rights, in the context of the MLC, 2006. They are not however required by the MLC, 2006, to observe the provisions of the fundamental Conventions themselves or to report to the ILO on the measures they have taken to give effect to those Conventions. Countries that have ratified the fundamental Conventions are, of course, in any event obliged to report to the ILO on the measures that they have taken to give effect to their obligations under those Conventions in all the sectors of work, including the maritime sector.

A16. How does the MLC, 2006, make it easier for countries to ratify it and to implement its requirements?

Both the Constitution of the ILO¹⁶ and many ILO Conventions seek to take account of national circumstances and provide for some flexibility in the 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 that 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 MLC, 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 MLC, 2006, 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 MLC, 2006, include the following:

¹⁶ To be found on the ILO website (www.ilo.org) under “Labour standards” at “Quick links” at www.ilo.org/normes.

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- unless specified otherwise in the Convention, national implementation may be achieved in a variety of different ways, and not necessarily through legislation [see A8. What measures must a country take to ensure that the MLC, 2006, is properly applied?];
 - many of the details in existing Conventions which had created difficulties for some governments interested in ratifying the Convention have been placed in Part B of the Code [see A12. What is the status of the Guidelines in Part B of the Code?];
 - in certain circumstances, 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” [see A11. What is a “substantially equivalent” provision?];
 - in certain circumstances, the application of details in the Code may be relaxed for some smaller ships – less than 200 GT that do not go on international voyages [see B7. Can a ratifying country make exemptions from certain provisions of the MLC, 2006?];
 - while all ships covered by the Convention must be inspected for compliance with its requirements [see C5.1.g. Must all ships be inspected?], flag State administrations are not required to certify ships less than 500 GT unless the shipowner concerned requests certification [see C5.1.j. Must all ships be certified under Regulation 5.1.3?];
 - the MLC, 2006, expressly recognizes that some flag States may make use of recognized organizations such as classification societies to carry out aspects of the ship inspection and certification system on their behalf [see C5.1.b. Can a flag State delegate its responsibilities?];
 - provisions affecting ship construction and equipment (Title 3) will not apply to ships constructed before the Convention comes into force for the country concerned [see C3.1.a. Do the accommodation requirements of Title 3 apply to existing ships?]. Smaller ships (less than 200 GT) may be exempted from specific accommodation requirements [see C3.1.j. Is there any flexibility provided with respect to the requirements for accommodation and recreational facilities?];
 - provision is made (Article VII) for the situation of countries that may not have national organizations of shipowners or seafarers to consult;
 - in connection with social security coverage under Regulation 4.5, provision is made for national circumstances and for bilateral, multilateral and other arrangements [see C4.5.b. What does the MLC, 2006, require for social security?].

A17. Is the MLC, 2006, already applicable?

The MLC, 2006, entered into force on 20 August 2013, 12 months after the date on which there were registered ratifications by at least 30 Members of the ILO with a total share in the world gross tonnage of ships of at least 33 per cent. This requirement for initial entry into force is set out in Article VIII, paragraph 3 of the MLC, 2006. It means that as of 20 August 2013 (when the requirements were met) the MLC, 2006, is binding as a matter of international law for those 30 countries.¹⁷ For any country that has ratified after

¹⁷ A list of countries that have ratified and the date of entry into force for each country, as well as other national information (click on the country name) is available on the ILO MLC, 2006, website under the heading “Ratification and information on implementation” under the link entitled “MLC database” at: www.ilo.org/mlc.

20 August 2012, as set out in Article VIII, paragraph 4, the Convention will enter into force 12 months after the date that the country's ratification is registered.

As of January 2014, the MLC, 2006, has been ratified by 56¹⁸ countries representing more 80 per cent of the world gross tonnage of ships. Numerous private sector actors and countries have moved forward, sometimes ahead of the international legal situation and have begun to inspect and, if required, certify ships.

A18. Why is the MLC, 2006, likely to achieve the aim of near universal ratification?

There are a number of indicators suggesting that near universal ratification will be achieved: one is the unprecedented vote in favour of the Convention. It was adopted by the ILC by a record vote of 314 in favour and none against (two countries (four votes) abstained for reasons unrelated to the substance of the Convention), after detailed review by over 1,000 participants drawn from 106 countries. This almost unprecedented level of support reflects the lengthy international tripartite consultation that took place between 2001 and 2006 and the unswerving support that had been shown by the governments and workers and employers who worked together since 2001 to develop the Convention text. It has been designed to 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. Finally, the ships of ratifying countries that provide decent working conditions for their seafarers will have an advantage as they will be protected against unfair competition from substandard ships [see A4. What is meant by the "no more favourable treatment" clause?]. By benefiting from a system of certification they will, henceforth, avoid or reduce the likelihood of lengthy delays related to inspections in foreign ports. As of November 2013, the MLC, 2006, has been ratified by 56¹⁹ countries representing more than 80 per cent of the world gross tonnage of ships [see A17. Is the MLC, 2006, already applicable?].

A19. What will happen to the maritime labour Conventions adopted before 2006?

The existing ILO maritime labour Conventions will be gradually phased out as countries that have ratified those Conventions ratify the MLC, 2006, but there will be a transitional period when some Conventions will be in force in parallel with the MLC, 2006. Countries that ratify the MLC, 2006, will no longer be bound by the existing Conventions when the MLC, 2006, comes into force for them. Countries that do not ratify the MLC, 2006, will remain bound by the existing Conventions they have ratified, but those Conventions will be closed to further ratification. Entry into force of the MLC, 2006, will not affect the four maritime Conventions that are not consolidated in the MLC, 2006 [see A20. Which ILO Conventions are consolidated in the MLC, 2006?]. They will remain binding on States that have ratified them irrespective of the MLC, 2006. The ILO maritime Conventions dealing with fishing and dockworkers are also not affected by the MLC,

¹⁸ Three of the instruments of ratification received have not yet been registered pending information on social security coverage of seafarers required under Standard A4.5, para. 10. A list of countries that have ratified and the date of entry into force for each country, as well as other national information (click on the country name) is available on the ILO MLC, 2006, website under the heading "Ratification and information on implementation" under the link entitled "MLC database" at: www.ilo.org/mlc.

¹⁹ *idem*.

2006. To find out which ILO Conventions a country has ratified, check the ILO public website www.ilo.org under heading “Labour standards” and on that page click on the heading for “Maritime Labour Convention, 2006” to find a heading for a database with this information.²⁰

A20. Which ILO Conventions are consolidated in the MLC, 2006?

The 36 Conventions and one Protocol that are consolidated in the MLC, 2006, are listed in its Article X. This list consists of all the previous maritime Conventions, adopted since 1920, except the Convention addressing seafarers’ identity documents of 2003 (Convention No. 185) and the 1958 Convention that it revises (Convention No. 108), as well as the Seafarers’ Pensions Convention, 1946 (No. 71), and the (outdated) Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15).

A21. How can the MLC, 2006, be updated?

The MLC, 2006, has two types of amendment procedures. Both types of amendment procedures – under Article XIV for the Convention as a whole, and Article XV for amendments only to the Code. The Article XIV express ratification procedure is close to the present ILO procedure for revising Conventions. The part of the Convention which is expected to need updating from time to time, namely the Code [see A9. What is the Code of the MLC, 2006?] 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. This procedure, which is based to a certain extent on a procedure already well established in another agency of the United Nations, the IMO, will enable changes to the Code to come into effect, for all or almost all ratifying countries,²¹ within three to four years from when they are proposed. This will result in a Convention that is kept more up to date than the existing ones. 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.

A22. What is the Special Tripartite Committee?

Article XIII of the MLC, 2006, provides for the establishment of a Special Tripartite Committee by the ILO’s Governing Body. The mandate of this Committee is to “keep the working of this Convention under continuous review”. Under the Convention the Committee will consist of two representatives nominated by the Government of each country that has ratified the Convention, and the representatives of Shipowners and Seafarers appointed by the Governing Body. The Committee has an important role with respect to amendments to the Code [see A9. What is the Code of the MLC, 2006?]. If difficulties are identified in the working of the Convention, or if the Convention needs to be updated, the Special Tripartite Committee will, in accordance with Article XV of the Convention, have the power to adopt amendments [see A21. How can the MLC, 2006, be

²⁰ A list of countries that have ratified and the date of entry into force for each country, as well as other national information (click on the country name) is available on the ILO MLC, 2006, website under the heading “Ratification and information on implementation” under the link entitled “MLC database” at: www.ilo.org/mlc.

²¹ *idem*.

updated?]. The Committee will also play an important consultative role under Article VII for countries that do not have shipowners' or seafarers' organizations to consult when implementing the MLC, 2006. This Committee has been established ²² and will meet in Geneva between 7–11 April 2014 to consider proposed amendments to the MLC, 2006, Code that will address the issues of abandonment of seafarers and shipowners' liability for death or long-term disability. Information about this Committee is available on the ILO MLC, 2006, website. ²³

A23. What is the status of the Preamble and the Explanatory Note in the MLC, 2006?

The Preamble to the MLC, 2006, like preambles in other international instruments provides information regarding the aspiration and intentions of the drafters of the Convention, however the preamble does not contain any binding legal obligations. The *Explanatory note to the Regulations and Code of the Maritime Labour Convention*, which is placed after the Articles, is also not binding but is there, as its title suggests, to provide an explanation that will help countries to better understand the relationship between the differing parts of the Convention and the nature of the obligations under each part of the MLC, 2006.

A24. What is meant by the term “Member”?

The MLC, 2006, like other ILO legal instruments uses the terms “Member” or “each Member” throughout the MLC, 2006. The terms are used by the ILO to refer to countries that are Members of the ILO. In the context of this Convention, a reference to “Member” or “Each Member” should be understood as referring to countries that have ratified the Convention, unless the Convention clearly refers to “any Member of the Organization” (as in paragraph 2 of Article XV, for example).

A25. Who is the competent authority?

The MLC, 2006, defines the term “competent authority” in Article II, paragraph 1(a) as “the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned”. It is a term used to indicate the department(s) of a government with responsibility for implementing the MLC, 2006. Practices could vary between countries and often more than one department or agency (e.g., labour or maritime or social security) could be involved in implementing aspects of the MLC, 2006, in a country and could therefore be the “competent authority” for the particular issue. Information about the national competent authority for countries that have ratified [see A26. Where would I get a list of countries that have ratified the MLC, 2006?] the MLC, 2006, along with other national information can be found on the ILO website (www.ilo.org/mlc) under the “MLC database”.

²² The Governing Body has adopted the Standing Orders, the procedural rules that apply to operation of this Committee. They are available on the ILO's MLC, 2006, website under the heading “Special Tripartite Committee” at: www.ilo.org/mlc.

²³ *idem*.

A26. Where would I get a list of countries that have ratified the MLC, 2006?

A list of countries that have ratified, and the date of entry into force for each country, as well as other national information (click on the country name) is available on the ILO MLC, 2006, website under the heading “Ratification and information on implementation” under the link entitled “MLC database” at: www.ilo.org/mlc.

The same information can also be found on the ILO MLC, 2006, website (www.ilo.org/mlc) under the “MLC database”.

A27. Why are some countries listed on the ILO MLC, 2006, website as ratifying but the Convention is not in force for them?

The MLC, 2006, entered into force on 20 August 2013, 12 months after the date on which there were registered ratifications by at least 30 Members of the ILO with a total share in the world gross tonnage of ships of at least 33 per cent. This requirement for initial entry into force is set out in Article VIII, paragraph 3 of the MLC, 2006. It means that as of 20 August 2013 (when the requirements were met) the MLC, 2006, has entered into force and is binding as a matter of international law for those 30 countries.²⁴ [See A17. Is the MLC, 2006, already applicable?]. For countries that have ratified after 20 August 2012, as set out in Article VII, paragraph 4, the Convention will enter into force 12 months after the date of the country’s ratification is registered. Once this 12-month period after its registered ratification has passed, the Convention will enter into force for the country. This is the usual practice for ILO Conventions.

As of January 2014, the MLC, 2006, has been ratified by 56²⁵ countries representing 80 per cent of the world gross tonnage of ships.

A28. Where can I get the contact information for the national competent authority responsible for the MLC, 2006?

Information about the national competent authority [See A25. Who is the competent authority?] for countries that have ratified [see A26. Where would I get a list of countries that have ratified the MLC, 2006?] the MLC, 2006, along with other national information can be found on the ILO MLC, 2006, website (www.ilo.org/mlc) under the heading “MLC database”.

A29. What is the role of the ILO in implementing the MLC, 2006?

The ILO is an international organization that was created in 1919. It was the first specialized agency to be designated by the United Nations. Its Members are countries that

²⁴ A list of countries that have ratified and the date of entry into force for each country as well as other national information (click on the country name) is available on the ILO MLC, 2006, website under the heading “Ratification and information on implementation” under the link entitled “MLC database” at: www.ilo.org/mlc.

²⁵ *idem*.

have joined the Organization and its work is carried out through the International Labour Office. As an international organization, the ILO does not implement international law or directly regulate workers or employers (or shipowners, ships or seafarers) [see A7. Does the MLC, 2006, directly apply to shipowners, ships or seafarers?]. Its role is to facilitate the development of international standards and to promote and assist with implementation by its Members at the national level. Under the MLC, 2006, the Director-General of the ILO has some specific responsibilities related to the receipt and communication of information required by the Convention to be provided to ILO Members. The ILO also undertakes a review of its Members' national implementation of ratified Conventions through the usual oversight role taken by the Committee of Experts under the ILO supervisory system (a system established under the Constitution of the ILO) (ILO supervisory system).²⁶

A30. Is the MLC, 2006, relevant for shipowners registered in a country that has not ratified the MLC, 2006?

The MLC, 2006, requirements do not directly apply to shipowners or ships flying the flag of countries that have not ratified the Convention. However, Article V, paragraph 7, of the MLC, 2006, contains what is often called the “no more favourable treatment clause” [See A4. What is meant by the “no more favourable treatment clause”?] It seeks to ensure a “level playing field” under which the ships flying the flag of countries that have ratified the Convention will not be placed at a competitive disadvantage as compared with ships flying the flag of countries that have not ratified the MLC, 2006. Although it appears that Article V, paragraph 7, could conceivably apply in various situations, in practice it relates essentially to the context of port State control under Regulation 5.2.1, with respect to ships flying a foreign flag and calling at a port of a ratifying country [see C5.2. Port State responsibilities].

A31. Is the MLC, 2006, relevant to seafarers based in countries that have not ratified the MLC, 2006?

With the global nature of the maritime industry and seafaring, many seafarers work on board ships flying the flag of a country other than country in which they ordinarily reside. The MLC, 2006 standards on board ships as implemented nationally would also apply to protect them. If seafarers are working on a ship that is flying the flag of a country that has not ratified the MLC, 2006, then under Article V, paragraph 7, of the MLC, 2006, the “no more favourable treatment clause” [See A4. What is meant by the “no more favourable treatment clause”?] would apply. It seeks to ensure a “level playing field” under which the ships flying the flag of countries that have ratified the Convention will not be placed at a competitive disadvantage as compared with ships flying the flag of countries that have not ratified the MLC, 2006. Although it appears that Article V, paragraph 7, could conceivably apply in various situations, in practice it relates essentially to the context of port State control under Regulation 5.2.1, with respect to ships flying a foreign flag and calling at a port of a ratifying country [see C5.2. Port State responsibilities]. This means that working and living conditions on these ships may be subject to inspection.

Under Regulation 1.4, paragraph 3, and Standard A1.4, paragraph 9, of the MLC, 2006, shipowners who use seafarer recruitment and placement services that are based in

²⁶ Information about the ILO's supervisory system is located on the ILO website under the heading “Labour standards”, and the links under the subheading “Supervisory bodies and procedures” at: www.ilo.org/normes.

countries or territories in which the Convention does not apply must ensure, as far as practicable, that those services meet the requirements of Standard A1.4 [see C1.4.f. What happens if seafarers are recruited from a country that has not ratified the MLC, 2006?] Useful guidance is provided in the section on Regulation 1.4 in Chapter 3 of the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*.²⁷

A32. Where can I get training on MLC, 2006, inspections?

Training on the MLC, 2006, inspection is often available at the national level through either the competent authority or private organizations. The ILO, through its Maritime Labour Academy based at its International Training Centre in Turin, Italy, also provides various training courses and workshops on the MLC, 2006, including training of trainers of maritime labour inspectors and legal implementation and other specialized workshops. They are offered several times a year. Information on the ILO Maritime Labour Academy is available on the ILO MLC, 2006, website (www.ilo.org/mlc) under the heading “Maritime Labour Academy”.²⁸

This programme of workshops and training activities is aimed at further strengthening the capacity of all interested parties in the promotion and application of the MLC, 2006.

A33. Can the ILO certify me to be an inspector for the MLC, 2006, for ports and/or flag States?

No. The ILO provides some training through its Maritime Labour Academy with respect to the MLC, 2006, including certification of people that could be national or regional level trainers of inspectors on the MLC, 2006 [See A32. Where can I get training on MLC, 2006, inspections?]. However the qualifications to be a national flag State inspector or a port State control inspector/officer are matters that are dealt with by ratifying countries and the competent authority for the MLC, 2006, in the relevant country should be contacted for this information [see A25. Who is the competent authority?] and [A28. Where can I get the contact information for the national competent authority responsible for the MLC, 2006?].

A34. Can the ILO help me to recover unpaid wages or deal with other problems I am experiencing on board a ship?

Although the ILO may be able to provide some general information with respect to the ILO Convention such as the MLC, 2006, including contact information for the flag State competent authority that would have responsibility to address these issues if the flag State has ratified the MLC, 2006 [see A25. Who is the competent authority?] and [A28. Where can I get the contact information for the national competent authority responsible for the MLC, 2006?].

²⁷ Available on the ILO MLC, 2006, website under the heading “Monitoring and implementation tools” under the link “*Guidelines for flag State inspections under the Maritime Labour Convention, 2006*” at: www.ilo.org/mlc.

²⁸ See also the Maritime Labour Academy ITC–Turin website: mlc-training.itcilo.org.

However, as an international organization, the ILO does not implement international law or directly regulate workers or employers (or shipowners, ships or seafarers) [see A7. Does the MLC, 2006, directly apply to shipowners, ships or seafarers?]. Its role is to facilitate the development of international standards and to promote and assist with implementation by its Members at the national level. Under the MLC, 2006, the Director-General of the ILO has some specific responsibilities related to the receipt and communication of information required by the Convention to be provided to ILO Members. The ILO also undertakes a review of its Members' national implementation of ratified Conventions through the usual oversight role taken by the Committee of Experts under the ILO supervisory system (a system established under the Constitution of the ILO) (ILO supervisory system).²⁹

A35. Does the ILO have a database of national laws or regulations or other measures implementing the MLC, 2006?

A list of countries that have ratified and the date of entry into force for each country as well as other national information (click on the country name) including, when filed with the ILO, the relevant national legislation or other measures is available on the ILO MLC, 2006, website under the heading "MLC database" at www.ilo.org/mlc.

A36. I believe that working and living conditions on board a ship are not good; can the ILO help me?

The ILO, as an international organization, cannot directly respond to individual situations. However, the ILO may be able to provide some general information with respect to ILO Conventions, such as the MLC, 2006, including contact information for the flag State's competent authority that would have responsibility to address these issues, if the flag State has ratified the MLC, 2006 [see A25. Who is the competent authority?] and [A28. Where can I get the contact information for the national competent authority responsible for the MLC, 2006?].

A37. Why does the ILO say that it supervises the implementation of Conventions? What does that mean? Does it inspect ships?

The ILO is an international organization that was created in 1919. It was the first specialized agency to be designated by the United Nations. Its Members are countries that have joined the Organization and its work is carried out through the International Labour Office. As an international organization, the ILO does not implement international law or directly regulate workers or employers (or shipowners, ships or seafarers) [see A7. Does the MLC, 2006, directly apply to shipowners, ships or seafarers?]. Its role is to facilitate the development of international standards and to promote and assist with implementation by its Members at the national level. Under the MLC, 2006, the Director-General of the ILO does have some specific responsibilities related to the receipt and communication of information required by the Convention to be provided to Members. The ILO also undertakes a review of its Members' national implementation of ratified Conventions through the usual oversight role taken by the Committee of Experts under the ILO

²⁹ Information about the ILO's supervisory system is located on the ILO website under the heading "Labour standards", and the links under the subheading "Supervisory bodies and procedures" at www.ilo.org/normes.

supervisory system (a system established under the Constitution of the ILO) (ILO supervisory system).³⁰

A38. Does the MLC, 2006, address the problem of piracy?

The MLC, 2006, does not directly address the serious problem of piracy. However some provisions in the MLC, 2006, such as those related to occupational health and safety and to repatriation, would apply to help protect seafarers from some of the consequences of piracy.

A39. Does the MLC, 2006, help abandoned seafarers?

The MLC, 2006, does not directly currently address the serious problem of abandonment of seafarers. However some provisions such as those related to repatriation, in the MLC, 2006, would apply to help protect seafarers from some of the consequences of abandonment. In April 2014, the Special Tripartite Committee [see A22. What is the Special Tripartite Committee?] established under the MLC, 2006, will consider proposals for amendments to the Code of the MLC, 2006 [see A21. How can the MLC, 2006, be updated?] to more specifically address the problem of abandonment of seafarers.

A40. Does a country have to adopt national laws in order to ratify the MLC, 2006?

The answer depends on the country's national legal system. The legal system in some countries requires that all legislation be in place before ratification, while other legal systems do not. The 12-month period between registered ratification and entry into force [see A17. Is the MLC, 2006, already applicable?] is intended to allow countries to complete their measures for national implementation before the Convention enters into force for them [see A8. What measures must a country take to implement the MLC, 2006?].

A41. Where can I obtain a copy of the report form for the MLC, 2006, that each ratifying country has to make to the ILO?

The national report form setting out national implementation [see A8. What measures must a country take to ensure that the MLC, 2006, is properly applied?] is required under article 22 of the ILO Constitution. Each country that has ratified the MLC, 2006, will have to make this report to the International Labour Office 12 months after the entry into force date for the country concerned

A copy of the national report form for the MLC, 2006, can be downloaded in PDF form on the ILO MLC, 2006, website under the heading "Monitoring and implementation tools" under the link entitled "Reporting obligation – Article 22 report form" at: www.ilo.org/mlc.

³⁰ Information about the ILO's supervisory system is located on the ILO website under the heading "Labour standards", and the links under the subheading "Supervisory bodies and procedures" at: www.ilo.org/normes.

A42. How can a country ratify the MLC, 2006? What documents need to be filed?

Each country will have its internal procedures for the official transmission of ratifications of international Conventions. Some countries choose to deposit the instrument of ratification in person, others submit by mail or electronic mail. All that is required by the ILO is an official instrument or communication of the ratification to the International Labour Office at 4 route de Morillons, CH-1211 Geneva 22, Switzerland.

This instrument should contain or enclose the information required under the Standard A4.5, paragraph 10, of the MLC, 2006, with respect to the social security obligations under the Convention [see C4.5.b. What does the MLC, 2006, require for social security?].

A standard form for the instrument is available on the ILO MLC, 2006, website at: www.ilo.org/mlc.

B. Questions about the workers and the ships covered by the MLC, 2006

B1. Who is protected by the MLC, 2006?

The MLC, 2006, applies to “seafarers” as defined in its Article II, paragraph 1(f), that is all persons who are employed or are engaged or work in any capacity on board a ship to which the Convention applies [see B4. What ships does the MLC, 2006, apply to?]. This definition thus includes not just the crew involved in navigating or operating the ship but also, for example, hotel personnel working on the ship. There could be cases where it is not clear whether a category of workers are to be regarded as “seafarers” covered by the Convention. Article II, paragraph 3, addresses this situation. In the event of doubt, the national competent authority [see A25. Who is the competent authority?] must make a determination on the question after consultation with the shipowners’ and seafarers’ organizations concerned. In 2006 when it adopted the MLC, 2006, the ILC also adopted a *Resolution concerning information on occupational groups* (see Resolution VII of the 94th ILC MLC, 2006, Resolutions)³¹ which provides international tripartite guidance on factors to consider in making determinations in these cases. Information about any national determinations that have been made must be sent to the Director-General of the ILO. National information that has been communicated by ratifying countries is available in the MLC, 2006, database on the ILO MLC, 2006, website.³²

³¹ Under the ILO MLC, 2006, website menu “Text and preparatory reports” link titled “Preparatory report” and then “Resolutions adopted by the 94th International Labour Conference – Maritime Session” at: www.ilo.org/mlc.

³² A list of countries that have ratified and the date of entry into force for each country as well as other national information such as national determinations (click on the country name) is available on the ILO MLC, 2006, website under the heading “MLC database” at: www.ilo.org/mlc.

B2. Does the MLC, 2006, apply to entertainers and hotel service staff?

Since the MLC, 2006, applies to “any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies” [see B1. Who is protected by the MLC, 2006?], it covers all workers including cabin and cleaning personnel, bar staff, waiters, entertainers, singers, kitchen staff, casino personnel and aestheticians. This conclusion is applicable irrespective of whether the seafarers concerned have been recruited directly by a shipowner or are employed under a subcontracting arrangement. Nevertheless, there are certain categories of workers, who only board the ship briefly and who normally work on land, for example flag State or port State control inspectors, who clearly could not be considered as working on the ship concerned. In other cases, the situation may not be clear, for example when a performer has been engaged to work on a cruise ship for the whole of the cruise or to carry out ongoing ship maintenance or repair or other duties on a voyage. In such cases, a determination will be necessary under Article II, paragraph 3, mentioned in answer to the question [see B1. Who is protected by the MLC, 2006?].

B3. Does the MLC, 2006, apply to cadets?

On the assumption that cadets are performing work on the ship, although under training, they would be considered as “seafarers” in accordance with the provisions and principles indicated in answer to the question [see B1. Who is protected by the MLC, 2006?].

B4. What ships does the MLC, 2006, apply to?

The MLC, 2006, defines a ship in Article II, paragraph (1)(i), as “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” [see B6. What are “sheltered waters” etc.?]. The MLC, 2006, applies to all ships as so defined, whether publicly or privately owned, that are ordinarily engaged in commercial activities except (see Article II, paragraph 4):

- ships engaged in fishing or in similar pursuits;
- ships of traditional build, such as dhows and junks;
- warships or naval auxiliaries.

The MLC, 2006, recognizes (Article II, paragraph 5) that there may be situations where there is doubt as to whether it applies to a ship or particular category of ships. In the event of doubt, the national competent authority [see A25. Who is the competent authority?] must make a determination on the question after consultation with the shipowners’ and seafarers’ organizations concerned. Information about any national determinations that have been made must be filed with the Director-General of the ILO.³³

³³ A list of countries that have ratified and the date of entry into force for each country, as well as other national information such as national determinations (click on the country name) is available on the ILO MLC, 2006, website under the heading “Ratification and information on implementation” under the link entitled “MLC database” at: www.ilo.org/mlc.

B5. When is a ship considered to be “ordinarily engaged in commercial activities”?

The MLC, 2006, does not have a definition of the phrase “ordinarily engaged in commercial activities”, used in Article II, paragraph 4 [see B4. What ships does the MLC, 2006, apply to?]. This would be a matter for good faith determination by the country concerned, and subject to the usual oversight role taken by the Committee of Experts under the ILO supervisory system.³⁴

B6. What are “sheltered waters”, etc.?

The MLC, 2006, does not explicitly define the terms “closely adjacent to” or “sheltered waters” used in Article II, paragraph 1(i) [see B4. What ships does the MLC, 2006, apply to?]. It is impossible to determine this question on an international level for all member States, since this determination could, to a certain extent, depend upon the geographical or geological situations in each State. In principle, it would be for the competent authority of a Member that has ratified the MLC, 2006, to determine, in good faith and on a tripartite basis, taking into account the objectives of the Convention and the physical features of the country, which areas could be considered as covering “sheltered waters” and what distance away from those waters could be considered as “closely adjacent to sheltered waters”. Any questions of doubt are to be resolved on the basis of consultation with the national social partners in accordance with paragraph 5 of Article II.

In 2011, the International Labour Office sought advice from relevant international organizations and members regarding the definition. The answer, as summarized above, is set out in a letter that is available on the ILO MLC, 2006, website under the heading “What it is, what it does”.

B7. Can a ratifying country make exemptions from certain provisions of the MLC, 2006?

Exemptions are possible to a limited extent and only where they are expressly permitted by the Convention (most of the permitted exemptions are found in Title 3, on accommodation). For ships that must be certified, this information must be set out in the ship’s onboard MLC, 2006, documentation [see B4. What ships does the MLC, 2006, apply to?].

³⁴ Information about the ILO’s supervisory system is located on the ILO website under the heading “Labour standards”, and the links under the subheading “Supervisory bodies and procedures” at www.ilo.org/normes.

In addition, for ships less than 200 GT that do not go on international voyages, a country may (under Article II, paragraph 6) determine that it is not reasonable or practicable at the present time to apply certain details of the Code [see A9. What is the Code of the MLC, 2006?] and cover the subject matter of those provisions by different provisions under its national law. This determination must be made by the government in consultation with the shipowners' and seafarers' organizations concerned. Information about any national determinations that have been made must be filed with the Director-General of the ILO. National information that has been filed by ratifying countries is available under the MLC, 2006, database on the ILO MLC, 2006, website.³⁵

B8. Is there a general tonnage limitation on the application of the MLC, 2006?

There is no general tonnage limitation to the MLC, 2006. However there is some flexibility which can be applied by a flag State regarding the application of particular requirements based on the gross tonnage of ships. For example, the requirement for certification (in addition to inspection) of working and living conditions on a ship is not mandatory for ships less than 500 GT that do not go on international voyages or voyage between foreign ports. In connection with onboard accommodation requirements there is some flexibility based on the gross tonnage of the ships concerned. In addition, a determination can be made under Article II, paragraph 6 [see B7. Can a ratifying country make exemptions from certain provisions of the MLC, 2006?].

B9. Are ships that do not go on international voyages covered by the MLC, 2006?

The MLC, 2006, applies to all ships irrespective of the nature of their tonnage or their voyage other than ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply. However, there is some flexibility which can be applied by a flag State regarding the application of particular requirements based on the gross tonnage of ships and voyages. For example, the requirement for certification (in addition to inspection) of working and living conditions on a ship is not mandatory for ships less than 500 GT that do not go on international voyages or voyage between foreign ports. In addition, a determination can be made under Article II, paragraph 6 [see B7. Can a ratifying country make exemptions from certain provisions of the MLC, 2006?]. Ships or seafarers that do not go on international voyages are not required to comply with some of the requirements for English language versions of documents such as medical certificates under the MLC, 2006.

B10. Are ships that exist at the time the MLC, 2006 is ratified by a country excluded?

The MLC, 2006, applies to all ships covered by the Convention [see B4. What ships does the MLC, 2006, apply to?]. However, the technical requirements, of a structural nature, relating to accommodation in Title 3 may not apply to ships construction prior to entry into force of the Convention for the country concerned [see C3.1.a. Do the accommodation requirements of Title 3 apply to existing ships?].

³⁵ A list of countries that have ratified and the date of entry into force for each country as well as other national information such as national determinations (click on the country name) is available on the ILO MLC, 2006, website under the heading "Ratification and information on implementation" under the link entitled "MLC database" at: www.ilo.org/mlc.

B11. Does the MLC, 2006, apply to smaller ships, such as ships below 200 GT?

[See B8. Is there a general tonnage limitation on the application of the MLC, 2006?].

B12. Does the MLC, 2006, apply to offshore resource extraction or similar vessels?

The question whether the MLC, 2006, applies to offshore resource extraction or similar vessels (e.g., MODUs and dredgers) or vessels that are not self-propelled will depend on two factors: whether the vessel is considered “a ship” under the relevant national law and the location of its activities. The Convention leaves, to be decided by reference to the relevant national law or practice and court decisions, the more general question of whether, or the circumstances in which, a particular waterborne vessel would be considered a ship. If the vessel is considered a ship, it would then be necessary to see whether it should be a ship covered by the MLC, 2006. This would depend upon whether or not it navigates exclusively in inland waters or waters within or closely adjacent to sheltered waters or areas where port regulations apply [see B4. What ships does the MLC, 2006, apply to?].

B13. Does the MLC, 2006, apply to yachts?

Unless a yacht is of traditional build or otherwise expressly excluded by the MLC, 2006 [see B4. What ships does the MLC, 2006, apply to?] or is not ordinarily engaged in commercial activities [see B5. When is a ship considered to be “ordinarily engaged in commercial activities”?] and, in principle, if its operations mean that it comes within the definition of a ship under Article II, paragraph 1(i), then it is covered by the MLC, 2006.

B14. Who is the shipowner under the MLC, 2006?

The MLC, 2006, defines a shipowner as 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 the Convention. This definition applies even if any other organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner. This comprehensive definition was adopted to reflect the idea that, irrespective of the particular commercial or other arrangements regarding a ship’s operations, there must be a single entity, “the shipowner”, that is responsible for seafarers’ living and working conditions. This idea is also reflected in the requirement that all seafarers’ employment agreements must be signed by the shipowner or a representative of the shipowner [see C2.1. Seafarers’ employment agreements].

C. Questions relating to the Titles of the MLC, 2006

C1. Title 1. Minimum requirements for seafarers to work on a ship

C1.1. Minimum age

- C1.1.a. If the national minimum age in a country is higher than 16, must it be reduced?

Regulation 1.1, paragraph 2 of the MLC, 2006, sets 16 years as the current minimum age for a person to work as a seafarer. If a country has a higher age then it already meets and exceeds the minimum age and would not need to adjust its minimum age. Night work for seafarers under the age of 18 must be prohibited (with some possible exceptions). It should be noted that the MLC, 2006, requires for some activities or positions (e.g., hazardous work or work as a ship's cook) that seafarers must be at least 18 years of age.

- C1.1.b. Who decides what work is likely to jeopardize the safety or health of seafarers under the age of 18?

Under Standard A1.1, paragraph 4, the determination of work that is likely to jeopardize the safety or health of seafarers under the age of 18 is to be undertaken by the competent authority, after consultation with shipowners' or seafarers' organizations concerned. The work determined to be hazardous is a matter that must be identified in national legislation or other measures, which must be in accordance with international standards. Guideline B4.3.10 of the MLC, 2006, provides guidance on safety and health education of young seafarers that would be relevant to this issue.

- C1.1.c. Is there an international standard for determining the hours that constitute "night" or is it up to each country to decide this?

The determination of the hours that constitute "night" may vary between countries. However, Standard A1.1, paragraph 2, of the MLC, 2006, provides some parameters.

- C1.1.d. What is the situation of young persons aged 16 in a recognized maritime education or training programme?

Under the MLC, 2006, a person below the minimum age of 16 cannot be a seafarer and cannot work on board ships. The MLC, 2006, recognizes that seafarers who are 16 years and older may be involved in a recognized training programme and makes allowance for their employment [see B3. Does the MLC, 2006, apply to cadets?] and in particular for their training, for example, in connection with allowing some night work for young seafarers for training purposes. There are other allowances made in connection with the standards for onboard accommodation for cadets [see C3.1.e. Does the MLC, 2006, require that cadets have a single cabin?].

C1.1.e. Can a seafarer under the age of 18 ever be expected to work at night?

Standard A1.1, paragraph 1 of the MLC, 2006, requires that “night work: be prohibited for seafarers under the age of 18 [see C1.1.c. Is there an international standard for determining the hours that constitute “night”?]. However there is some flexibility to allow an exception to this restriction where the seafarers training programme would be impaired or the specific nature of the duty or the recognized training programme requires seafarers to perform duties at night and the competent authority determines after consultation with the shipowners’ and seafarers’ organizations concerned, that the work will not be detrimental to the health and well-being of young seafarers.

C1.2. Medical certificate

C1.2.a. Will a medical examination under the IMO’s STCW Convention meet the MLC, 2006, requirements?

Standard A1.2, paragraph 3, states that it is without prejudice to the International Maritime Organization (IMO) Convention, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (“STCW”). It also states that a medical certificate issued in accordance with the requirements of the STCW shall be accepted by the competent authority, for the purpose of Regulation 1.2. A medical certificate meeting the substance of those requirements, in the case of seafarers not covered by the STCW, shall similarly be accepted. Like the ILO, the IMO is a specialized agency of the United Nations and often cooperates with the ILO on issues of shared concern in the maritime sector. In 2010, amendments known as the “Manila Amendments” to the STCW were adopted by the IMO. These amendments, which entered into force in 2012, contain wording intended to align the MLC, 2006, requirements and the IMO requirements for medical examinations and certificates for seafarers covered by the STCW Convention. This means that countries that are bound by the STCW Manila Amendments and implemented them in their laws, will already to some extent have implemented the MLC, 2006, requirements.

C1.2.b. What is the period of validity for a medical certificate?

The MLC, 2006, sets out maximum periods in Standard A1.2, paragraph 7, which states that unless a shorter period is required by reason of the specific duties to be performed by the seafarer concerned or is required under the STCW, a medical certificate shall be valid for a maximum period of validity at two years unless the seafarer is under the age of 18, in which case the maximum period is one year. A certification of colour vision is valid for a maximum period of six years.

As indicated these are maximums; a country could have shorter periods of validity.

C1.2.c. Can a seafarer ever work without a medical certificate?

The MLC, 2006, establishes a procedure (in Standard A1.2, paragraph 8) by which, in urgent cases, seafarers in possession of an expired medical certificate can be permitted to work for a limited period.

C1.2.d. What happens if a medical certificate expires during a voyage?

Under Standard A1.2, paragraph 9 of the MLC, 2006, a certificate that expires in the course of a voyage continues in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period of extension does not exceed three months.

C1.2.e. Who can issue a seafarers' medical certificate?

Under Standard A1.2, paragraph 4 of the MLC, 2006, medical certificates can be issued by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority [see A25. Who is the competent authority?] as qualified to issue such a certificate. Practitioners must enjoy full professional independence in exercising their medical judgement in undertaking medical examination procedures. The competent authority in the flag State should decide who is a duly qualified practitioner for this purpose. Practices may vary among countries. However, in most cases the competent authority will produce a list that includes medical practitioners in other countries that it recognizes as duly qualified to provide a certificate for seafarers working on ships that fly its flag.

C1.2.f. Can a ship's doctor issue a medical certificate?

The question whether or not a ship's doctor can issue a medical certificate to seafarers on the ship concerned would need to be decided by the competent authority of the flag State [see A2.5. Who is the competent authority?] bearing in mind that, in accordance with Standard A1.2, paragraph 4, duly qualified medical practitioners must enjoy full professional independence in exercising their medical judgement in undertaking medical examination procedures [see C1.2.e. Who can issue a seafarers' medical certificate?]. This requirement presumably would not be met if the ship's doctor is an employee of the shipowner.

C1.2.g. Is a medical certificate issued in the seafarer's home country valid for work on a ship flying the flag of a different country?

Under the MLC, 2006, a medical certificate is valid if it is issued by a duly qualified medical practitioner. However, the flag State of the ship concerned is responsible for deciding whether the signatory of the medical certificate is indeed duly qualified. Some flag States will recognize medical certificates issued elsewhere, but others may require an examination by a practitioner recognized by the flag State.

C1.2.h. Is there a standard form for a medical certificate under the MLC, 2006?

The MLC, 2006, does not require a standard or model form for medical certificates. However, it states in Standard A1.2, paragraph 6, what the duly qualified medical practitioner is to certify.

Standard A1.2, paragraph 10, also provides that for seafarers working on ships ordinarily engaged on international voyages, the certificate must as a minimum be provided in English.

Additional guidance is provided in *ILO/WHO Guidelines for Medical Fitness Examinations for Seafarers*³⁶ [see C1.2.i. Is there any international guidance regarding medical examinations?].

C1.2.i. Is there any international guidance regarding medical examinations?

Guideline B1.2 of the MLC, 2006, advises that all persons concerned with the conduct of medical fitness examinations of seafarer candidates and serving seafarers should follow the *ILO/WHO Guidelines for Medical Fitness Examinations for Seafarers*, including any subsequent versions, and any other applicable international guidelines published by the ILO, the International Maritime Organization or the World Health Organization.

These ILO/WHO Guidelines were revised in 2011 and are now available as the *Guidelines on the medical examinations of seafarers*. They can be viewed or downloaded (as a PDF) on the ILO MLC, 2006, website.³⁷

C1.3. Training and qualifications

C1.3.a. Does the IMO's STCW certification meet the training requirements of the MLC, 2006?

Under Regulation 1.3, paragraph 3, of the MLC, 2006, training and certification in accordance with the mandatory instruments adopted by the International Maritime Organization (IMO) must be considered as meeting the requirements of the MLC, 2006.

C1.3.b. Does this training requirement apply to seafarers who are not covered by the STCW?

Regulation 1.3, paragraph 2, of the MLC, 2006, provides that seafarers shall not be permitted to work on a ship unless they have successfully completed training for personal safety on board ship. This requirement applies to all seafarers, irrespective of their duties on board ship. The question of other training or qualifications for seafarers not covered by STCW requirements would depend on the relevant national requirements for the work the seafarer is to perform on board a ship. For example, a person hired as a nurse or doctor on a ship would be expected to meet any national standards for those positions. However, the competent authority of a Member will not be responsible for the training or evaluation of the person for that position, but simply for requiring shipowners to ensure that personnel meet relevant national standards. This concept is set out in paragraph 1 of Regulation 1.3. For catering personnel, including ships' cooks, the MLC, 2006, sets out some training requirements in Regulation 3.2 and the related Standards and Guidelines.

C1.3.c. Are countries still bound by the Certification of Able Seamen Convention, 1946 (No. 74)?

In accordance with Regulation 1.3, paragraph 4 of the MLC, 2006, obligations under ILO Convention No. 74 are to be replaced by any "mandatory provisions covering its subject matter have been adopted by the International Maritime Organization". Such

³⁶ Available on the ILO MLC, 2006, website under the heading "Monitoring and implementation tools" under the link "Guidelines on the medical examination of seafarers" available at: www.ilo.org/mlc.

³⁷ *idem*.

provisions have now been adopted as part of the STCW 2010 “Manila Amendments”. Countries that have ratified Convention No. 74 and have also ratified the MLC, 2006, will, when it enters into force for them no longer be bound by Convention No. 74. Countries that have ratified Convention No. 74 but have not ratified the MLC, 2006, will still be bound by Convention No. 74 in addition to any obligations they may have under the STCW.

C1.3.d. Why are there no Code provisions under this Regulation?

In 2004 the Preparatory Technical Maritime Conference (PTMC) decided that this Regulation should not be followed by any indication that its provisions could be the subject of Standards or Guidelines. This was in response to a communication from the IMO regarding its willingness to take responsibility for the training and certification requirements for able seafarers, if these were transferred by the ILO. The PTMC agreed with this transfer, but also agreed with the view that it was necessary to include general provisions on training in the MLC, 2006, in view of the comprehensive nature of this consolidating Convention and in order to justify the closure of the Officers’ Competency Certificates Convention, 1936 (No. 53), and the Certification of Able Seamen Convention, 1946 (No. 74), which are listed in Article X and also to ensure that any personnel who may not be covered by the IMO STCW provisions are trained or otherwise qualified [see C1.3.b. Does this training requirement apply to seafarers who are not covered by the STCW?]. It should be noted that the transfer of seafarers training and certification responsibility to IMO does not include training of ships’ cooks, a matter that will remain with the ILO and is addressed in the Convention under Title 3.

C1.3.e. Must ships’ cooks be trained?

The MLC, 2006, requires that ships’ cooks be trained and qualified [see C3.2.c. Must ships’ cooks be certified?] In September 2013 an international tripartite meeting of experts met to adopt *Guidelines on the training of ships’ cooks*. These Guidelines are available on the ILO MLC, 2006, website.³⁸

C1.3.f. What does personal safety training on board ship?
Is there a specific training programme?

The reference to personal safety training is referring to the basic training under the IMO’s STCW convention for all seafarers to ensure personal safety on board ship.

C1.4. Recruitment and placement

C1.4.a. Must seafarer recruitment and placement services be established?

The MLC, 2006, does not require that public or private seafarer recruitment and placement services be established. However under Article V, paragraph 5, Regulation 1.4, paragraph 2, and Regulation 5.3, paragraph 1, if such services are established in a country, they must be regulated in accordance with the MLC, 2006, requirements.

³⁸ Meeting of Experts to Adopt Guidelines on the Training of Ships’ Cooks. Available at: www.ilo.org/sector/activities/sectoral-meetings/WCMS_204810/lang--en/index.htm.

C1.4.b. What is a seafarer recruitment and placement service?

Article II, paragraph 1(h), of the MLC, 2006, defines a seafarer recruitment and placement service as “any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners”. Under Standard A1.4, paragraph 2, the Convention’s requirements relating to private seafarer recruitment and placement services apply where their primary purpose is the recruitment and placement of seafarers or where they recruit and place a significant number of seafarers. In the event of doubt as to whether the Convention applies to a private recruitment and placement service, the question is to be determined by the competent authority in each country after consultation with the shipowners’ and seafarers’ organizations concerned.

C1.4.c. Is a recruitment department operated by a shipowner considered a private recruitment and placement service?

If seafarers are recruited directly by a shipowner flying the flag of a country that has ratified the MLC, 2006, then this situation prima facie does not fall within Regulation 1.4 and the related Code provisions.

C1.4.d. Who has obligations under Regulation 1.4?

The majority of the obligations under Regulation 1.4 are placed upon the country in which seafarers’ recruitment and placement services are located. However there are also obligations placed on flag States (and shipowners) with respect to the use of seafarers’ recruitment and placement and services, particularly if a shipowner uses a service based in a country that has not ratified the MLC, 2006. This is an issue that is subject to certification for ships that must be certified [see C5.1.j. Must all ships be certified under Regulation 5.1.3?].

C1.4.e. What are the shipowners’ responsibilities under Regulation 1.4?

Under the MLC, 2006, shipowners are not required to use seafarer recruitment and placement services and may directly recruit seafarers to work on their ship. However, where shipowners use a private seafarer recruitment and placement service, they must take steps to ensure that the service is licensed or certified or regulated in accordance with the requirements under Regulation 1.4. This responsibility, which is subject to inspection and also certification, is particularly important where the recruitment and placement service is in a country that has not ratified the MLC, 2006 [see C1.4.f. What happens if seafarers are recruited from a country that has not ratified the MLC, 2006?]. Useful guidance is provided in the section on Regulation 1.4 in Chapter 3 of the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*.³⁹

C1.4.f. What happens if seafarers are recruited from a country that has not ratified the MLC, 2006?

Under Regulation 1.4, paragraph 3, and Standard A1.4, paragraph 9, of the MLC, 2006, shipowners who use seafarer recruitment and placement services that are based in

³⁹ Available on the ILO MLC, 2006, website under the heading “Monitoring and implementation tools” under the link “*Guidelines for flag State inspections under the Maritime Labour Convention, 2006*” at: www.ilo.org/mlc.

countries or territories in which the Convention does not apply must ensure, as far as practicable, that those services meet the requirements of Standard A1.4.

Useful guidance is provided in the section on Regulation 1.4 in Chapter 3 of the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*.⁴⁰

C1.4.g. Can recruitment and placement services charge seafarers fees?

Having regard to Standard A1.4, paragraph 5, of the MLC, 2006, no fees or other charges for seafarer recruitment or placement or for providing employment to seafarers may be borne directly or indirectly, in whole or in part, by the seafarer, other than the cost of the seafarer obtaining a national statutory medical certificate, the national seafarer's book and a passport or other similar personal travel documents, not including, however, the cost of visas, which must be borne by the shipowner.

C1.4.h. Who pays for documents that seafarers need to be able to travel to join ship?

In the light of Standard A.1.4, paragraph 5 of the MLC, 2006, relating to fees or other charges in the context of recruitment and placement [see C1.4.g. Can recruitment and placement services charge seafarers fees?], in the absence of any relevant provision in the seafarer's employment agreement or applicable collective bargaining agreement, one would expect the seafarer to cover the cost of a passport or similar travel document, and the shipowner to pay the cost of any necessary visa. The Conventions relating to seafarers' identity documents (SIDs), Nos 108 and 185 (not consolidated in the MLC, 2006) [see A20. Which ILO Conventions are consolidated in the MLC, 2006?] do not contain a provision requiring the shipowner to pay for the SIDs.

C1.4.i. What is the system of protection against monetary loss that is required of private seafarer recruitment and placement services?

Standard A1.4, paragraph 5, of the MLC, 2006, requires countries to regulate any private seafarer recruitment and placement services that may be operating in their territory. One such requirement is that the countries concerned have to ensure (Standard A1.4, paragraph 5(c)(vi)) that any such services establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them.

The obligation on the ratifying country is not to provide this system of protection but rather, in the system that it adopts (pursuant to Standard A1.4, paragraph 2), to regulate these services through laws or regulations or other measures. The MLC, 2006, does not specify the form of this system, other than referring to insurance or an equivalent measure. It may be useful to also consider the system in light of the many provisions in the MLC, 2006, where shipowners are required to provide some form of insurance or other financial guarantees to cover potential monetary losses – for example, Regulation 2.5 (repatriation), Regulation 4.2 (shipowners' liability in the event of illness, etc.) and Regulation 2.6 (ship's

⁴⁰ Available on the ILO MLC, 2006, website under the heading "Monitoring and implementation tools" under the link "*Guidelines for flag State inspections under the Maritime Labour Convention, 2006*" at: www.ilo.org/mlc.

foundering). The term “monetary loss” is not defined and the Convention does not specify the scope of that term, which covers financial loss suffered.

C1.4.j. Must seafarer recruitment and services be certified for compliance with the MLC, 2006?

The MLC, 2006, provides for various forms of national regulation, not necessarily certification, for private recruitment and placement services.

C1.4.k. Will a certificate of MLC, 2006, compliance for a recruitment and placement service issued by a recognized organization meet the MLC, 2006, requirements?

The MLC, 2006, provides for various forms of national regulation for private recruitment and placement services, such as certification. Certification may be of interest especially if the service is located in a country that has not ratified the MLC, 2006. The decision as to whether a particular certificate is acceptable rests with the relevant flag State competent authority [see A28. Where can I get the contact information for the national competent authority responsible for the MLC, 2006?].

C1.4.l. Does the MLC, 2006, mean that seafarers based in countries that have not ratified the MLC, 2006, cannot be employed on board ships flying the flag of a country that has ratified?

No. The MLC, 2006, does not prevent employment of seafarers from countries that have not ratified the Convention. However, if seafarers are recruited, to work on board a ship that flies the flag of a country that has ratified the MLC, 2006, through a seafarer recruitment and placement service located in a country that has not ratified the MLC, 2006, then the shipowner using that service must ensure, as far as practicable, that it meets the requirements of Standard A1.4 [see C1.4.f. What happens if seafarers are recruited from a country that has not ratified the MLC, 2006?] and see also [C1.4.j. Must seafarer recruitment and services be certified for compliance with MLC, 2006?].

C1.4.m. Does an employment and recruitment service that occasionally places seafarers on board ship such as cruise ships have to comply with the MLC, 2006, requirements?

Under Standard A1.4, paragraph 2, the Convention’s requirements relating to private seafarer recruitment and placement services apply where the primary purpose is the recruitment and placement of seafarers or where they recruit and place a significant number of seafarers. In the event of doubt as to whether the Convention applies to a private recruitment and placement service, the question is to be determined by the competent authority in each country after consultation with the shipowners’ and seafarers’ organizations concerned [see C1.4.b. What is a seafarer recruitment and placement service?].

C1.4.n. Is a professional or other association or service that posts employment opportunities for its members a seafarers’ recruitment and placement service under the MLC, 2006?

Article II, paragraph 1(h) of the MLC, 2006, defines a seafarer recruitment and placement service as “any person, company, institution, agency or other organization, in

the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners”. If a service or association is not engaged in recruiting on behalf of shipowners or placing seafarers with shipowners then it is likely that it would not be considered a recruitment and placement service [see C1.4.b. What is a seafarer recruitment and placement service?]. However, this is a matter for national laws and regulations.

C2. Title 2. Conditions of employment

C2.1. Seafarers’ employment agreements

C2.1.a. What is a seafarers’ employment agreement (SEA)?

The MLC, 2006, defines a seafarers’ employment agreement (SEA) in Article II, paragraph 1(g) as including both a contract of employment and articles of agreement. This definition is an inclusive definition that covers various legal systems and practices and formats. It specifically includes both a contract of employment and articles of agreement; but there could be other formats, as required under national law or practice. Regulation 2.1, paragraph 1, simply describes the SEA as “a clear written legally enforceable agreement” that must be “consistent with the standards set out in the Code”. To the extent compatible with national law and practice, a SEA is understood to incorporate (by reference) any applicable collective bargaining agreement, as provided in Standard A2.1, paragraph 2. This means that, other than some specific elements such as the name of the seafarer, etc., a collective bargaining agreement could form all or part of a SEA. However, irrespective of the precise form of a SEA, a Member is required to adopt national laws and regulations specifying the matters to be included in the SEA. The list of these matters is set out in Standard A2.1, paragraph 4(a) to (j). Even where a seafarer may be working for a concessionaire that is operating on a ship, for example, a seafarer with passenger service duties on a cruise ship, he or she would still need to have a SEA signed by the shipowner or representative of the shipowner addressing the matters set out in Standard A2.1, paragraph 4 [see B14. Who is the shipowner under the MLC, 2006?].

C2.1.b. Does the MLC, 2006, require seafarers to have a copy of the original signed seafarers’ employment agreement (SEA) on board ship?

Standard A2.1, paragraph 1(c), requires that the shipowner and seafarer concerned each have a signed original of the seafarers’ employment agreement, without specifying that this original should be “on board”. Since Standard A2.1, paragraphs 1(d) and 2 only require a copy of the agreement and of any applicable collective bargaining agreement to be available on board, one would assume that no originals need be maintained on board unless the national law concerned specifies otherwise. Questions have arisen about whether in the context of international industry with shipowners and seafarer based in different countries, the signature of the shipowner or the shipowner’s representative [see C2.1.d. Who must sign a seafarers’ employment agreement (SEA)?] must be an original signature or whether it could be an electronic signature. The question of acceptability of an electronic signature in the context of the SEA is one of the many details of general contract law (the appointment of a representative is another such question, for example) that are left by the Convention to be determined by the national law and practice of the flag State (or other law which the flag State recognizes as applying to the SEA).

C2.1.c. How can a seafarers' employment agreement (SEA) incorporate a collective bargaining agreement?

Regulation 2.1, paragraph 3, of the MLC, 2006, states that “To the extent compatible with the Member’s national law and practice, seafarers’ employment agreements shall be understood to incorporate any applicable collective bargaining agreements”. A SEA could in any event incorporate a collective bargaining agreement (CBA) by using wording to show that the parties (shipowner and seafarer) intend that the whole of the CBA should, to the extent relevant to the seafarer, be considered as forming part of the SEA. The SEA concerned could even be a one-page document, containing individual identifying and other employment information specific to the seafarer, followed by a single provision stating that the parties agree that the terms and conditions of work shall be as set out in the identified CBA. A SEA of this kind would probably need to be accompanied by clear information, referred to in Standard A2.1, paragraph 1(d), enabling each seafarer to find out what his or her rights are under the applicable CBA. The effect of Regulation 2.1, paragraph 3, quoted above, is that even if the SEA contains no clear statement incorporating an applicable CBA, it should be understood as incorporating that CBA if a linkage of this kind is compatible with the flag State’s law and practice.

C2.1.d. Who must sign a seafarers' employment agreement (SEA)?

In accordance with Standard A2.1, paragraph 1(a), of the MLC, 2006, the SEA must be signed by both the seafarer and the shipowner or a representative of the shipowner. Except in cases where the applicable national law considers that a particular person, such as the ship’s master, has apparent authority to act on behalf of the shipowner, any signatory other than a shipowner should produce a signed “power of attorney” or other document showing that he/she is authorized to represent the shipowner [see B14. Who is the shipowner under the MLC, 2006?]. Questions have arisen about whether in the context of international industry with shipowners and seafarers based in different countries, the signature of the shipowner or the shipowner’s representative] must be an original signature or whether it could be an electronic signature. The question of acceptability of an electronic signature in the context of the SEA is one of the many details of general contract law (the appointment of a representative is another such question, for example) that are left by the Convention to be determined by the national law and practice of the flag State (or other law which the flag State recognizes as applying to the SEA) [see C2.1.b. Does the MLC, 2006, require seafarers to have a copy of the original signed SEA on board ship?]

C2.1.e. Can the employer of a seafarer supplying a seafarer to the ship sign the seafarers' employment agreement (SEA) as the shipowner?

The term “shipowner” is defined comprehensively in Article II, paragraph 1(j), of the MLC, 2006, as “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 organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner” [see B14. Who is the shipowner under the MLC, 2006?].

The intention of the drafters of the MLC, 2006, was that there could only be one person – namely, “the shipowner” – who assumes, vis-à-vis each seafarer, all the duties and responsibilities imposed by the Convention on the shipowner. While another person supplying a seafarer to the ship may have concluded an employment contract with that seafarer and be responsible for implementing that contract, including payment of wages,

for example, the shipowner will still have the overall responsibility vis-à-vis the seafarer. Such an employer could therefore only sign the SEA as a representative of the shipowner (assuming that the employer has a signed power of attorney from the shipowner).

C2.1.f. Do self-employed seafarers have to conclude a seafarers' employment agreement (SEA)?

Where seafarers are not employees, they do not have to have a SEA, but – in accordance with Standard A2.1, paragraph 1(a) – there would need to be signed evidence of contractual or similar arrangements “providing them with decent working and living conditions on board” as required by the MLC, 2006.

C2.1.g. What is the record of employment for seafarers?

The Standard A2.1, paragraph 1(e), requires seafarers to be given a document containing a record of their employment on board the ship. The MLC, 2006, does not define or have a specific model for this document, but provides the following information: record of employment must not contain any statement as to the quality of the seafarers' work or as to their wages. The form of the document, the particulars to be recorded and the manner in which such particulars are to be entered, are to be determined by national law (Standard A2.1, paragraph 3) and should contain sufficient information, with a translation in English, to facilitate the acquisition of further work or to satisfy the sea-service requirements for upgrading or promotion. A seafarers' discharge book might satisfy the requirements of paragraph 1(e) of the Standard (Guideline B2.1.1).

C2.2. Wages

C2.2.a. Does the MLC, 2006, set a minimum wage for seafarers?

Regulation 2.2 of the MLC, 2006, states that seafarers shall be paid in full in accordance with their employment agreements. The Convention does not establish a mandatory minimum wage for seafarers, but leaves this question to be dealt with under the national law of the flag State.

The MLC, 2006, also will take over (from ILO Recommendation No. 187) the international procedure for establishing a minimum monthly basic pay or wage figure for able seafarers (see Guideline B2.2.4). This minimum wage is set periodically by the ILO Joint Maritime Commission (JMC).⁴¹ Although this minimum wage relates only to able seafarers, in practice the amount of the minimum wages for other seafarers is extrapolated from the amount agreed in the JMC.

⁴¹ The Joint Maritime Commission (JMC) is a bipartite standing body that provides advice to the Governing Body on maritime questions including standard setting for the shipping industry. It is composed as follows: Chairperson of the Governing Body; two Governing Body members (one Worker, one Employer); 20 regular Shipowner members; 20 regular Seafarer members; four deputy Shipowner members; and four deputy Seafarer members. The Standing Orders of the JMC provide guidance on how to deal with the various procedural questions that may arise in the course of the Commission's work. Among the JMC, specific attributes is the updating of the minimum basic wage figure for able seamen in accordance with the Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187). This is the only statutory international wage-fixing mechanism. The JMC's Subcommittee on Wages of Seafarers has been established to regularly update this wage figure. For more information including forthcoming meetings see: http://www.ilo.org/global/industries-and-sectors/shipping-ports-fisheries-inland-waterways/WCMS_162320/lang--en/index.htm.

C2.2.b. How frequently are seafarers to be paid?

The maximum interval at which seafarers receive their wages (to be set by the flag State or in an applicable collective agreement) and reflected in the SEA must be no longer than one month (Standard A2.2, paragraph 1).

C2.2.c. Can seafarers be charged for the cost of sending wages to family members (allotments)?

This is a matter for flag State implementation. Standard A2.2, paragraphs 3, 4 and 5, provides that seafarers must have a means to transmit all or part of their earnings to their families or dependants or legal beneficiaries; that allotments should be remitted in due time and directly to the person or persons nominated by the seafarers; and that any charge for this service must be reasonable in amount.

C2.3. Hours of work and hours of rest

C2.3.a. Must both hours of work and rest be regulated?

Standard A2.3, paragraph 2, of the MLC, 2006, requires each country to fix *either* a maximum number of hours of work which shall not be exceeded in a given period of time, *or* a minimum number of hours of rest which shall be provided in a given period of time. It is up to the country to decide which of the two arrangements to choose.

C2.3.b. What are the standards for minimum hours of rest and maximum hours of work?

Standard A2.3, paragraph 4, of the MLC, 2006, requires countries, in determining the national standards, to take account of the danger posed by the fatigue of seafarers, especially those whose duties involve navigational safety and the safe and secure operation of the ship. Standard A2.3, paragraphs 5 and 6, set out the basic parameters for these standards:

- (a) no more than 14 hours in any 24-hour period; and 72 hours in any seven-day period; if the basis chosen by the country is maximum hours of work;
- (b) at least ten hours in any 24-hour period; and 77 hours in any seven-day period; if the basis chosen by the country is minimum hours of rest.

Hours of rest may be divided into no more than two periods, one of which must be at least six hours in length, and the interval between consecutive periods of rest must not exceed 14 hours.

C2.3.c. What is meant by “any 24-hour period”?

Standard A2.3, paragraph (b) of the MLC, 2006, for example, provides that hours of rest must not be less than ten hours “in any 24-hour period”. Thus, any 24-hour period – starting at any moment during a day – must comprise at least ten hours of rest.

C2.3.d. Does the choice between hours of work and hours of rest lead to any different result in practice?

Paragraph 5(a)(i) of Standard A2.3 of the MLC, 2006, sets a maximum limit on work of 14 hours in any 24-hour period, which results in **ten** hours of rest (24-14=10), corresponds to the minimum **ten** hours of rest required by paragraph 5(b)(i) of the Standard. However, paragraph 5(a)(ii), which sets a maximum limit on work of 72 hours in

any seven-day period, results in **96** ($7 \times 24 - 72 = 96$) hours of rest, whereas the minimum hours of rest in any seven-day period required by paragraph 5(b)(ii) of the Standard is set at only 77. The provisions in paragraphs 5(a) and 5(b) of Standard A2.3 are not new, but reproduce the text of the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180). During the preparation of the MLC, 2006, it was recalled that agreement on the various requirements in Convention No. 180 had been achieved only after protracted discussions, and it was decided that it would not be in the interest of the constituents to reopen the negotiations on any provisions agreed in 1996.

C2.3.e. Are there any exceptions to the hours of rest or work standards?

Standard A2.3, paragraph 13, of the MLC, 2006, allows flag States to have national laws or regulations or a procedure for the competent authority to authorize or register collective agreements permitting exceptions to the limits on maximum hours of work or minimum hours of rest referred to in paragraphs 5 and 6 of the Standard [see C2.3.b. What are the standards for minimum hours of rest and maximum hours of work?]. These exceptions must therefore be provided for in a registered or authorized collective agreement. They must also follow the limits set out in Standard A2.3 "as far as possible".

C2.3.f. How does Regulation 2.3 relate to the IMO's STCW requirements?

Like the ILO, the International Maritime Organization (IMO) is a specialized agency of the United Nations and often cooperates with the ILO on issues of shared concern in the maritime sector. In 2010, amendments known as the "Manila Amendments" to the STCW were adopted by the IMO. These amendments, which entered into force in 2012, contain wording intended to align the MLC, 2006, requirements for seafarers covered by the STCW Convention. This means that countries that are bound by the STCW Manila Amendments will already to some extent have implemented the MLC, 2006, requirements. With the adoption by the IMO of the 2010 "Manila Amendments" to the STCW, the wording in both the MLC, 2006, and the STCW on minimum hours of rest is very similar, other than the provisions in each regarding possible exceptions. Flag States that ratify the MLC, 2006, and are also bound by the 2010 STCW Amendments could approve arrangements in this connection which would be consistent with the requirements of both Conventions.

C2.3.g. Do the minimum hours of rest/maximum hours of work requirements apply to ships' masters?

Ships' masters are seafarers and, as such, the requirements in Regulation 2.3 and Standard A2.3 also apply to them.

C2.3.h. Do the hour of rest and hour of work standards still apply in an emergency?

Standard A2.3, paragraph 14, of the MLC, 2006, safeguards the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea. It allows the master to suspend the schedule of hours of work or hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the master must ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

C2.4. Entitlement to leave

- C2.4.a. What is a seafarer's minimum entitlement to paid leave?

Under Standard A2.4, paragraphs 1 and 2, of the MLC, 2006, the annual leave with pay entitlement must, in general, be calculated on the basis of a minimum of 2.5 calendar days per month of employment, to be determined by the competent authority or through the appropriate machinery in each country. Justified absences from work are not to be considered as annual leave.

- C2.4.b. Can a seafarer agree to be paid instead of actually taking paid leave?

Standard A2.4, paragraph 3, of the MLC, 2006, states that any agreement to forgo the minimum annual leave with pay prescribed in the Standard, except in cases provided for by the competent authority, must be prohibited.

- C2.4.c. Does this mean that the maximum period that a seafarer can serve on board a ship is 11 months before taking one month of paid annual leave?

Yes. The concept of paid annual leave implies that it is to be taken annually and therefore the maximum period for service on board a ship without leave would be 11 months. This is also linked to the requirement in Standard A2.5, paragraph 2(b), regarding the entitlement to repatriation in a period of less than 12 months [see C2.5.a. What is the entitlement to repatriation?].

C2.5. Repatriation

- C2.5.a. What is the entitlement to repatriation?

The MLC, 2006, provides for general entitlements and some parameters. However, the specific entitlements are a matter for flag State implementation.

Regulation 2.5, paragraph 1, provides for the basic right of seafarers to repatriation at no cost to themselves. The basic parameters are set out in Standard A2.5, with many of the precise details being recommended in Guideline B2.5.1 [see A12. What is the status of the Guidelines in Part B of the Code?].

- C2.5.b. What will ensure that repatriation occurs and that costs are paid?

Regulation 2.5, paragraph 2, of the MLC, 2006, provides that flag States must require their ships to provide financial security to ensure that seafarers are duly repatriated in accordance with the Code.

- C2.5.c. What costs are to be covered by a shipowner when a seafarer is repatriated?

This is a matter for flag State implementation as set out under Standard A2.5, paragraph 2, requiring flag States to prescribe the precise entitlements to be accorded by shipowners for repatriation, including those relating to the destinations of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made by shipowners.

C2.5.d. Can a seafarer be charged for repatriation costs?

Standard A2.5, paragraph 3, of the MLC, 2006, prohibits shipowners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found, in accordance with national laws or regulations or other measures or applicable collective bargaining agreements, to be in serious default of the seafarer's employment obligations.

C2.5.e. Some airlines are charging for luggage above a minimum weight. What is the situation for seafarers under the MLC, 2006?

The MLC, 2006, recommends in Guideline B2.5.1, paragraph 3(d) that shipowners should pay for 30 kg of luggage in connection with repatriation. This recommendation must be given due consideration by flag States [see A12. What is the status of the Guidelines in Part B of the Code?]. If airlines make a charge for luggage above a lower limit, this could be a matter for the competent authority [A28. Where can I get the contact information for the national competent authority responsible for the MLC, 2006?] to consider and would need to clarify the situation with the airlines concerned.

C2.5.f. Does this provision address seafarers that are abandoned?

The MLC, 2006, does not directly currently address the serious problem of abandonment of seafarers. However, some provisions, such as those related to repatriation, in the MLC, 2006, would apply to help protect seafarers from some of the consequences of abandonment [see A. Does the MLC, 2006, help abandoned seafarers?].

In April 2014 the Special Tripartite Committee [see A22. What is the Special Tripartite Committee?] established under the MLC, 2006, will consider proposals for amendments to the Code of the MLC, 2006 [see A21. How can the MLC, 2006, be updated?] to more specifically address the problem of abandonment of seafarers.

C2.6. Seafarer compensation for the ship's loss or foundering

C2.6.a. Who is to pay compensation to seafarers on a ship's loss or foundering?

Under Regulation 2.6, paragraph 1, seafarers are entitled to adequate compensation in the case of injury, loss or unemployment arising from the ship's loss or foundering.

C2.6.b. Guideline B2.6, paragraph 1, indicates that this amount may be limited to two months' wages. Does this mean it can be less than two months wages?

The Guideline simply means that the period during which the seafarers are to continue to receive their wages (unless they find other employment) could be restricted by national law or an applicable collective agreement to two months, but not to any shorter period.

C2.7. Manning levels

- C2.7.a. Does the MLC, 2006, establish a minimum manning level for ships?

The MLC, 2006, does not set a specific number of seafarers who must be working on board a ship as this is a matter that the competent authority in the flag State would need to decide for a ship or category of ships. However, it sets out some parameters that must be followed when deciding on the manning levels for ships. Standard A2.7 requires every ship to be manned by a crew that is adequate, in terms of size and qualifications, to ensure the safety and security of the ship and its personnel, under all operating conditions, in accordance with the minimum safe manning document or an equivalent issued by the competent authority, and to comply with the standards of the MLC, 2006. In this connection, when determining manning levels, the competent authority [see A25. Who is the competent authority?] must take into account all the requirements within Regulation 3.2 and Standard A3.2 concerning food and catering.

- C2.7.b. Is the manning level the same as the manning required in a ship's "safe manning document" (SMD)?

The answer would depend on the factors a flag State has taken into consideration when establishing the SMD levels. If the factors set out in Standard A2.7 of the MLC, 2006, including the need to take account of all the requirements within Regulation 3.2 and Standard A3.2 concerning food and catering [see C2.7.a. Does the MLC, 2006, establish a minimum manning level for ships?], were considered in establishing the SMD, then it may be the same.

C2.8. Career and skill development and opportunities for seafarers' employment

- C2.8.a. Who has an obligation under Regulation 2.8?

The obligations under Regulation 2.8 and the related Code are directed to governments with seafarers domiciled in their territory. Specifically Regulation 2.8, paragraph 1, requires countries to have national policies to promote employment in the maritime sector and to encourage career and skill development and greater employment opportunities for seafarers domiciled in their territory.

C3. Title 3. Accommodation, recreational facilities, food and catering

C3.1. Accommodation and recreational facilities

- C3.1.a. Do the accommodation requirements of Title 3 apply to existing ships?

Regulation 3.1, paragraph 2, of the MLC, 2006, provides that the requirements in the Code that relate to ship construction and equipment apply only to ships constructed on or after the date when the MLC, 2006, comes into force for the flag State. For ships constructed before the entry into force for the flag State, the requirements relating to ship construction and equipment that are set out in the Accommodation of Crews Convention

(Revised), 1949 (No. 92),⁴² and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133),⁴³ apply to the extent that they were already applicable, under the law or practice of the Member concerned.

One or both of those Conventions may have become applicable through ratification by the country concerned. Or their substance may have become applicable through the country's ratification of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147),⁴⁴ and/or the 1996 Protocol to Convention No. 147;⁴⁵ there may also be cases where Conventions Nos 92 and 133 have not been ratified but have been made applicable under the country's national law. Even if a country has not ratified any of these Conventions all ships must comply with the basic requirement in Regulation 3.1, paragraph 1, that they "provide and maintain decent accommodations and recreational facilities for seafarers working or living on board, or both, consistent with promoting the seafarers' health and well-being" in accordance with the ships' national legislation. All other requirements in the MLC, 2006, as implemented nationally, including those in Standard A3.1 that are not related to construction and equipment, will apply to ships constructed before the MLC, 2006, entered into force for the flag State.

C3.1.b. Can sleeping rooms be located below a ship's load line?

Under Standard A3.1, paragraph 6(c) and (d), of the MLC, 2006, in ships other than passenger ships and special purpose ships [see C3.1.c. What are "special purpose ships"?], sleeping rooms must be situated above the load line amidships or aft, except that in exceptional cases, where the size, type or intended service of the ship renders any other location impracticable, sleeping rooms may be located in the fore part of the ship, but in no case forward of the collision bulkhead. In passenger ships and special purpose ships the competent authority [see A25. Who is the competent authority?] may, on condition that satisfactory arrangements are made for lighting and ventilation, permit the location of sleeping rooms below the load line, but in no case can they be located immediately beneath working alleyways.

C3.1.c. What are "special purpose ships"?

Special purpose ships are training or other ships constructed in compliance with the IMO Code of Safety for Special Purpose Ships, 2008,⁴⁶ and subsequent versions.⁴⁷

C3.1.d. Must seafarers always be given individual sleeping rooms?

Under Standard A3.1, paragraph 9(a) of the MLC, 2006, in ships other than passenger ships, an individual sleeping room must be provided for each seafarer; but, in the case of

⁴² Available on the ILO website under the heading "Labour Standards" and the links under subheading "Convention No" at: www.ilo.org/normes.

⁴³ *idem*.

⁴⁴ *idem*.

⁴⁵ *idem*.

⁴⁶ IMO. 2008. Code of safety for special purpose ships. Second Edition, 2008 (London, IMO). Available at: http://www.imo.org/blast/blastDataHelper.asp?data_id=22047.

⁴⁷ To be found at: www.imo.org/publications.

ships of less than 3,000 GT or special purpose ships [see C3.1.c. What are “special purpose ships?”], exemptions from this requirement may be granted by the competent authority [see A25. Who is the competent authority?] after consultation with the shipowners’ and seafarers’ organizations concerned.

C3.1.e. Does the MLC, 2006, require that cadets have a single cabin?

This situation and terminology may vary between countries. The following answer assumes that the term “cadet” refers to a young person enrolled in a training programme to obtain specific qualifications, which may require work experience on board. The MLC, 2006, does not directly address the question of accommodation for cadets as distinct from other seafarers. The general rule, and the possibility for exemptions, referred to in answering [see C3.1.d. Must seafarers always be given individual sleeping rooms?] would therefore apply.

C3.1.f. Must seafarers have sleeping rooms on board ships engaged on day trips?

Standard A3.1, paragraph 9, of the MLC, 2006, sets out the requirements where “sleeping accommodation on board ships is required”. If a ship is not engaged in voyages where seafarers would need to sleep on the ship then sleeping rooms would not be required.

C3.1.g. Must each seafarer be provided with private sanitary facilities?

Standard A3.1, paragraph 11, of the MLC, 2006, requires ships to have a sufficient number of sanitary facilities (with a minimum of one toilet, one wash basin and one tub or shower), separate facilities being provided for men and women. Each seafarer is to be given convenient access to them. The Convention does not require private sanitary facilities for each seafarer, but, as recommended in Guideline B3.1.5, paragraph 2 [see A12. What is the status of the Guidelines in Part B of the Code?], where the size of the ship, the activity in which it is to be engaged and its layout make it reasonable and practicable, sleeping rooms should be planned and equipped with a private bathroom, including a toilet, so as to provide reasonable comfort for the occupants and to facilitate tidiness.

C3.1.h. Can the floor area of adjacent private or semi-private sanitary facilities be considered for purposes of calculating the minimum floor area in sleeping rooms?

Standard A3.1 of the MLC, 2006, sets out detailed requirements as to the minimum floor area of sleeping rooms, but does not specify how these areas are to be measured. It provides, however, some guidance (in Guideline B3.1.5, paragraph 6) that space occupied by berths and lockers, chests of drawers and seats should be included in the measurement of the floor area, but not small or irregularly shaped spaces “which do not add effectively to the space available for free movement and cannot be used for installing furniture”. Since an adjacent partitioned sanitary facility would not add effectively to the space available for free movement, etc., it could be concluded that the existence of private or personal sanitary facilities would probably have no impact on the measurement of minimum sleeping room floor areas under Standard A3.1, paragraph 9, although they may be relevant to a question of substantial equivalence [see A11. What is a “substantially equivalent” provision?].

Could less space be provided in sleeping accommodation in return for greater comfort? This question has been raised in the context of ships with limited space for seafarers' sleeping rooms. It raises the concept of "substantial equivalence" addressed in Article VI, paragraphs 3 and 4 of the MLC, 2006 [see A11. What is a "substantially equivalent" provision?]. Any solution to compensate for less floor area in sleeping accommodation would need to be "conducive to the full achievement of the general object and purpose" of the requirements relating to floor space to "give effect to" the provision or provisions concerned (Article VI, paragraph 4). Such a solution might reasonably consist of extra space such as a big, more comfortable day room to be shared by adjoining sleeping rooms; or the definition in Article VI, paragraph 4, might possibly justify a solution providing extra comfort related to sleeping room accommodation, such as the provision of en suite sanitary facilities. The question has even been raised as to whether extra comfort in general, unrelated to floor area, could be considered in the evaluation of a substantially equivalent solution, such as the grant to the seafarers concerned of extra free time ashore.

It is in this context that ratifying Members should assess their national provisions from the point of view of substantial equivalence, identifying the general object and purpose of the MLC, 2006, Code, Part A provision concerned (in accordance with paragraph 4(a)) and determining whether or not the proposed national provision could, in good faith, be considered as giving effect to the Part A provision (as required by paragraph 4(b)).

C3.1.i. Why are frequent inspections of ship accommodation required and who is to carry them out?

Under Standard A3.1, paragraph 18, of the MLC, 2006, frequent inspections are to be carried out on board ships, by or under the authority of the master, to ensure that seafarer accommodation is clean, decently habitable and maintained in a good state of repair. The results of each such inspection must be recorded and be available for review. These inspections are a key part of ensuring ongoing compliance between flag State inspections. The related procedures are likely to be part of a shipowner's plans, as set out under Part II of the ship's Declaration of Maritime Labour Compliance [see C5.1.1. What should be contained in Part II of the Declaration of Maritime Labour Compliance (DMLC)?].

C3.1.j. Is there any flexibility provided with respect to the requirements for accommodation and recreational facilities?

The MLC, 2006, contains a significant level of technical guidance with respect to national implementation of the standards for on-board accommodation and recreational facilities. These provisions, which are directed to flag States, apply to all ships covered by the Convention. However, there also are some exceptions and flexibility based on factors such as gross tonnage levels as well as specific adjustments for some categories of ships such as passenger ships or special purpose ships [see C3.1.c. What are "special purpose ships"?], as well as the possibility for small ships, under 200 GT, to be exempted from certain requirements, after consultation with the shipowners' and seafarers' organizations concerned.

C3.1.k. The MLC, 2006, requires adequate lighting. Are there any standards for lighting?

This is a matter for national standards, many of which are now available online. However, the MLC, 2006, also provides guidance in Guideline B3.1.4. regarding a method to assess the adequacy of measures.

C3.2. Food and catering

- C3.2.a. Is there a minimum standard for the food served to seafarers on board ships?

National laws or other measures would address the detail of what is required on board a ship. The MLC, 2006, provides some minimum standards for the food on board ship under Regulation 3.2. These standards cover the quantity, nutritional value, quality and variety of food and drinking water supplies, having regard to the number of seafarers on board, their religious requirements and cultural practices as they pertain to food, and the duration and nature of the voyage shall be suitable in respect of quantity, nutritional value, quality and variety.

- C3.2.b. Can seafarers be charged for food on board ship?

Regulation 3.2, paragraph 2, of the MLC, 2006, provides that seafarers on board a ship shall be provided with food free of charge during the period of engagement.

- C3.2.c. Must ships' cooks be certified?

The MLC, 2006, does not require that ships' cooks be certified. However the Guidelines under B3.2 suggest that certification may be the expected approach. This would be a matter for national law. However ships' cooks must not be under 18 years of age and, in accordance with Regulation 3.2, paragraph 3, must be trained, qualified and found competent for the position in accordance with requirements set out in the laws and regulations of the country concerned. In 2013 an international meeting adopted the *Guidelines on the training of ships' cooks*.⁴⁸ All of these guidelines are easily available on the MLC, 2006, website.

- C3.2.d. Must all ships have a full-time ships' cook?

Standard A3.2 does not require full-time cooks. The size of the vessel and the number of meals being served per day are the factors determining whether cooks are full-time or part-time. However, the requirement for training and qualifications applies to both full-time and part-time cooks.

- C3.2.e. Does the MLC, 2006, set any standards for the quality of drinking water on board?

With respect to specific standards for potable (drinking) water, the MLC, 2006, leaves this matter to be addressed through flag State implementation [see A7. Does the MLC, 2006, directly apply to shipowners, ships and seafarers?]. However the guidelines for ships' cooks training (also under Regulation 3.2 of the MLC, 2006) which were considered by an ILO international tripartite meeting of experts in September 2011 contain suggestions regarding acceptable standards.⁴⁹ Of course it would still remain important to check with flag State concerned.

The WHO/ILO Guidelines can be downloaded at:

http://www.who.int/water_sanitation_health/publications/2011/dwq_guidelines/en/index.html

⁴⁸ Meeting of Experts to Adopt Guidelines on the Training of Ships' Cooks. Available at: http://www.ilo.org/sector/activities/sectoral-meetings/WCMS_204810/lang--en/index.htm.

⁴⁹ idem.

C4. Title 4. Health protection, medical care, welfare and social security protection

C4.1. Medical care on board ship and ashore

C4.1.a. What kinds of treatment would be considered as medical care?

For the health protection and medical care that shipowners are required to provide to seafarers on board their ship, in principle free of charge, in accordance with Regulation 4.1, the MLC, 2006, does not identify any particular treatment – other than “essential dental care” – as this would be a matter for national laws or regulations. Flag States are required to ensure the application to the seafarers of any general national provisions on occupational health protection and medical care relevant to their duties, as well as of special provisions specific to work on board ship; the health protection and medical care must be as comparable as possible to that which is generally available to workers ashore, including prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatment and to medical information and expertise; it must include measures of a preventive character such as health promotion and health education programmes. Seafarers have the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable.

C4.1.b. Must every ship have a ship's doctor on board?

Under Standard A4.1, paragraphs 4(b) and (c), of the MLC, 2006, ships carrying 100 or more “persons” (i.e., who will not necessarily all be seafarers) and ordinarily engaged on international voyages of more than three days’ duration must carry a qualified medical doctor. National laws or regulations must also specify which other ships are required to carry a medical doctor, taking into account, inter alia, such factors as the duration, nature and conditions of the voyage and the number of seafarers on board. Ships which do not carry a medical doctor must have either at least one seafarer on board who is in charge of medical care and administering medicine as part of their regular duties or at least one seafarer on board competent to provide medical first aid; such persons must have satisfactorily completed training in medical care that meets the requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (“STCW”).

C4.1.c. What should be in a medical chest?

Standard A4.1, paragraph 4(a), of the MLC, 2006, requires all ships to carry a medicine chest, medical equipment and a medical guide, the specifics of which shall be prescribed and subject to regular inspection by the competent authority; the national requirements must take into account the type of ship, the number of persons on board and the nature, destination and duration of voyages and relevant national and international recommended medical standards. As far as the content of the medical chest and many other related matters are concerned, Guideline B4.1. paragraph 4 [see A12. What is the status of the Guidelines in Part B of the Code?] refers to relevant international recommendations, including the latest edition of the *International Medical Guide for Ships*.⁵⁰

⁵⁰ WHO. 2007. *International Medical Guide for Ships*. Third edition, 2007 (Geneva, WHO). To be found at: www.who.int/bookorders.

C4.1.d. Is there a standard ships' medical guide?

While a country may develop a national medical guide, to fulfil the requirement under Standard A4.1, paragraph 4(a), Guideline B4.1. paragraph 4 [see A12. What is the status of the Guidelines in Part B of the Code?] refers to relevant international recommendations, including the latest edition of the *International Medical Guide for Ships*.⁵¹

C4.1.e. Does the MLC, 2006, contain a model form for the standard medical report form to be used on board ships?

No model is provided in the MLC, 2006, for the standard medical report form, which countries must adopt in accordance with Standard A4.1, paragraph 2, for use by the ships' masters and relevant onshore and on-board medical personnel. The purpose of the form is explained in Guideline B4.1.2, paragraph 1, namely to facilitate the exchange of medical and related information concerning individual seafarers between ship and shore in cases of illness or injury.

While no particular form is required under the MLC, 2006, the third edition of the *International Medical Guide for Ships*,⁵² published in 2007 by the World Health Organization (WHO) on behalf of WHO, ILO and IMO, contains a form for this purpose in Annex A.

C4.1.f. Guideline B4.1 paragraph 3, of the MLC, 2006, refers to the Document for Guidance, 1985 – An international maritime training guide. Where can I get copy as it seems to be out of print?

The IMO is no longer distributing this guidance as the STCW has been revised. An English language version of this publication can be downloaded freely on the ILO's dedicated MLC, 2006, website (www.ilo.org/mlc).

C4.2. Shipowners' liability

C4.2.a. What is shipowners' liability?

In addition to providing for health protection and medical care on board and ashore, the MLC, 2006, also, under Regulation 4.2, requires flag States to ensure that all seafarers employed on their ships have material assistance and support from the shipowner with respect to the financial consequences of sickness, injury or death occurring while they are serving under a seafarers' employment agreement or arising from the employment under such agreement. These financial consequences include loss of wages and also medical and other costs. These provisions complement the protection set out in Regulation 4.1 regarding medical care on board ship and ashore and the long-term protection under Regulation 4.5 regarding social security.

C4.2.b. When does shipowners' liability begin and end?

The liability of shipowners, under Regulation 4.2, to bear the costs for seafarers working on their ships in respect of sickness and injury begins on the date when the

⁵¹ WHO. 2007. *International Medical Guide for Ships*. Third edition, 2007 (Geneva, WHO). To be found at: www.who.int/bookorders.

⁵² idem.

seafarers commence their duty and ends on the date upon which they are deemed duly repatriated, except that shipowners are also liable with respect to sickness and injury that arises from the seafarers' employment between the dates of commencement of duty and repatriation.

C4.2.c. What costs are included under shipowners' liability?

Regulation 4.2. paragraph 1, of the MLC, 2006, sets out the general principle that seafarers have a right to material assistance and support from the shipowner with respect to the financial consequences of sickness, injury or death occurring while they are serving under a seafarers' employment agreement or arising from their employment under such agreement. The question of what are considered financial consequences is a matter for national laws and regulations. Standard A4.2, paragraphs 1 to 4 and 7, of the MLC, 2006, requires the following costs to be covered as a minimum:

- the expense of medical care, including medical treatment and the supply of 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 [see C4.2.d. Are there any limits on shipowners' liability?]; where sickness or injury results in incapacity for work, full wages as long as the sick or injured seafarers remain on board or until the seafarers have been repatriated; and wages in whole or in part, as prescribed by national laws or regulations or as provided for in collective agreements, from the time when the seafarers are repatriated or landed until their recovery or, if earlier, until they are entitled to cash benefits under the legislation of the country concerned [see C4.2.d. Are there any limits on shipowners' liability?];
- 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 seafarers' employment agreement or a collective agreement;
- the cost of burial services in the case of death on board or ashore during the period of engagement;
- the cost of safeguarding the property of seafarers left on board by sick, injured or deceased seafarers.

C4.2.d. Are there any limits on shipowners' liability?

Under Standard A4.2, national laws or regulations may limit the liability of the shipowner to defray the expense of medical care and board and lodging, as well as the liability to pay wages in full or in part [see C4.2.c. What costs are included under shipowners' liability?] to a period which must not be less than 16 weeks from the day of the injury or the commencement of the sickness [see C4.2.f. Are there any exceptions to shipowner liability?].

C4.2.e. Does the MLC, 2006, specify a particular form for the financial security that shipowners are to provide?

No particular form is prescribed for the 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 [see C4.2.c. What costs are included under shipowners' liability?]. It could take various forms (e.g., insurance or a bond).

C4.2.f. Are there any exceptions to shipowner liability?

Under Standard A4.2, paragraph 5, national laws or regulations may exclude the shipowner from liability in respect of:

- (a) injury incurred otherwise than in the service of the ship;
- (b) injury or sickness due to the wilful misconduct of the sick, injured or deceased seafarer; and
- (c) sickness or infirmity intentionally concealed when the engagement is entered into.

Standard A4.2, paragraph 6, allows national laws or regulations to also exempt the shipowner from liability to defray the expense of medical care and board and lodging and burial expenses in so far as such liability is assumed by the public authorities. Guideline B4.2, paragraph 2, recognizes that national laws or regulations may provide that a shipowner ceases to be liable to bear the costs of a sick or injured seafarer from the time at which that seafarer can claim medical benefits under a scheme of compulsory sickness insurance, compulsory accident insurance or workers' compensation for accidents.

C4.2.g. To what extent are shipowners liable if seafarers on their ships are covered by a state (public) system of compensation in the case of sickness or injury?

Standard A4.2, paragraph 6, allows national laws or regulations to also exempt the shipowner from liability to defray the expense of medical care and board and lodging and burial expenses in so far as such liability is assumed by the public authorities. Guideline B4.2, paragraph 2, recognizes that national laws or regulations may provide that a shipowner ceases to be liable to bear the costs of a sick or injured seafarer from the time at which that seafarer can claim medical benefits under a scheme of compulsory sickness insurance, compulsory accident insurance or workers' compensation for accidents [see C4.2.f. Are there any exceptions to shipowner liability?].

C4.3. Health and safety protection and accident prevention

C4.3.a Who has responsibility for establishing the on-board health and safety protection and accident prevention under Regulation 4.3?

The primary obligations under Regulation 4.3, paragraphs 1–3, regarding what is usually called marine or maritime occupational safety and health (MOSH), are directed to the flag State. A significant level of technical details and guidance on the subject is set out in Standard A4.3 and Guideline B4.3. These provisions are also linked to those under Standard A3.1 regarding accommodation and recreational facilities on board ship. Standard A4.3 specifies the areas in which occupational safety and health policies and programmes are to be adopted, effectively implemented and promoted on ships and which are also to be the subject of legal standards covering occupational safety and health protection and accident prevention. Such policies and programmes and legal standards may already exist for ships in the country concerned or that country may have global policies and programmes covering these subjects, which will need to be supplemented or adapted so as also to cover conditions on board ship. Standard A4.3 and Guideline B4.3 for the most part set out technical details that would need to be developed, based on international and industry guidance and tripartite consultation, and implemented by the competent authority [see A25. Who is the competent authority?] after consultation with the shipowners' and seafarers' organizations concerned. The International Labour Office is in

the process of developing additional technical guidance to assist with national implementation. Additional ILO guidance is also available, such as the code of practice on accident prevention on board ship at sea and in port, 1996,⁵³ and the code of practice on ambient factors in the workplace, 2001.⁵⁴

C4.3.b. When must a ship's safety committee be established?

A ship's safety committee is to be established when there are five or more seafarers on board the ship concerned (Standard A4.3, paragraph 2(d)).

C4.3.c. Where can I find guidance on the international standards for occupational safety and health?

The MLC, 2006, mentions a number of guidelines on OSH that should be considered and are relevant. These are available on the ILO's SAFEWORK website at: <http://www.ilo.org/safework/about/lang--en/index.htm>.

In addition many countries have developed laws and regulations on this matter and their texts may be useful.

C4.4. Access to shore-based welfare facilities

C4.4.a. Why are shore-based seafarers' welfare facilities required under the MLC, 2006?

The purpose of including a requirement for shore-based welfare centres is to help ensure that seafarers working on board a ship have access to shore-based facilities and services to secure their health and well-being. These facilities, which are located in or near ports, are important way to provide seafarers, who may be on extended voyages at sea, with access to health and welfare services in a foreign country, as well as a social environment.

C4.4.b. What is the obligation on a port State regarding shore-based welfare services?

Under Regulation 4.4, countries must ensure that shore-based welfare facilities, where they exist on their territory, are easily accessible to all seafarers, irrespective of nationality, race, colour, sex, religion, political opinion or social origin and irrespective of the flag State of the ship on which they are employed or engaged or work. They must also encourage the development of welfare facilities in appropriate ports of their country and determine, after consultation with the shipowners' and seafarers' organizations concerned, which ports are to be regarded as appropriate. They must encourage the establishment of welfare boards to regularly review welfare facilities and services to ensure that they are appropriate in the light of changes in the needs of seafarers resulting from technical, operational and other developments in the shipping industry.

⁵³ To be found at: <http://www.ilo.org/safework/info/standards-and-instruments/codes/lang--en/index.htm>.

⁵⁴ *idem*.

C4.4.c. What kinds of services should be provided in welfare facilities?

Guideline B4.4.2, paragraph 3, of the MLC, 2006 [see A12. What is the status of the Guidelines in Part B of the Code?] gives a non-exhaustive list of the following kinds of services:

- (a) meeting and recreation rooms as required;
- (b) facilities for sports and outdoor facilities, including competitions;
- (c) educational facilities; and
- (d) where appropriate, facilities for religious observances and for personal counselling.

C4.4.d. Who must pay for welfare facilities?

The provisions in Regulation 4.4 and Standard A4.4 do not require that the port State take responsibility for financing or operating such services. Guideline B4.4.2, paragraphs 1 and 2, of the MLC, 2006 [see A12. What is the status of the Guidelines in Part B of the Code?] states that welfare facilities and services should be provided, in accordance with national conditions and practice, by one or more of the following:

- (a) public authorities;
- (b) shipowners' and seafarers' organizations concerned under collective agreements or other agreed arrangements; and
- (c) voluntary organizations.

Under Guideline B4.4.4, financial support for port welfare facilities should be made available through one or more of the following:

- (a) grants from public funds;
- (b) levies or other special dues from shipping sources;
- (c) voluntary contributions from shipowners, seafarers, or their organizations; and
- (d) voluntary contributions from other sources.

C4.4.e. Does the MLC, 2006, require that seafarers be allowed ashore to access welfare centres?

Regulation 2.4 of the MLC, 2006, establishes the principle that seafarers shall be granted shore leave to benefit their health and well-being and consistent with the operational requirements of their positions. The fundamental importance of shore leave to seafarers' well-being, is recognized under Regulation 4.4. of the MLC, 2006, as well as in the IMO Convention on the Facilitation of International Maritime Traffic, 1965, as amended, and the ILO Conventions Nos 108 and 185 on seafarers' identity documents. Although the grant of shore leave may not always be possible in view of the operational needs of the ship concerned or for security reasons, requests for shore leave to access welfare centres should not be unreasonably refused.

C4.5. Social security

C4.5.a. What is social security and social protection?

The notion of social security as it is commonly used within the ILO covers all measures providing benefits, whether in cash or in kind, to secure protection, inter alia, from lack of or insufficient work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; lack of access or unaffordable access to health care; insufficient family support, particularly for children and adult dependants; general poverty and social exclusion. Social security schemes can be of a contributory (social insurance) or non-contributory nature.

Social protection is referred to as the set of public measures that a society provides for its members to protect them against economic and social distress that would be caused by the absence or a substantial reduction of income from work as a result of various contingencies (sickness, maternity, employment injury, unemployment, invalidity, old age, and death of the breadwinner); the provision of health care; and, the provision of benefits for families with children. This concept of social protection is also reflected in the various ILO standards. By definition, social protection is broader and more inclusive than social security since it incorporates non-statutory or private measures for providing social security, but still encompasses traditional social security measures such as social assistance, social insurance and universal social security benefits. It may be noted that there are significant differences among societies and institutions around the world of how they define and approach social protection.

C4.5.b. What does the MLC, 2006, require for social security?

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 Title 4 with respect to Medical care (Regulation 4.1); Shipowners' 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, paragraphs 1, 2 and 3, a ratifying country is required to "take steps according to its national circumstances" to provide the complementary social security protection, in at least three branches [see C4.5.c. What is meant by "branches of social security"?] to all seafarers ordinarily resident in its territory. The resulting protection must be no less favourable than that enjoyed by shoreworkers resident in its territory. If a country's social security system for seafarers at least meets these two basic conditions, the country is in a position to ratify the MLC, 2006, as far as its obligation to provide social security to seafarers is concerned. Flexibility is provided to facilitate the fulfilment of this obligation [see C4.5.f. What are the different ways that social security can be provided under the MLC, 2006?].

Although the aim of Regulation 4.5 is that all seafarers, whatever their nationality or residence and whatever the flags of the ships they work on, should be protected by comprehensive social security protection, the undertaking under the MLC, 2006, of each ratifying country is not to provide such comprehensive coverage outright, but rather to progress towards it: "to take steps, according to its national circumstances ... to achieve progressively" comprehensive social security protection for seafarers".

C4.5.c. What is meant by “branches of social security”?

Branches of social security refer to various types of benefits classified in relation to the contingency which they seek to address and for the support of which they are provided. These social security branches in the MLC, 2006, correspond to the nine classical branches of social security laid down and defined in the Social Security (Minimum Standards) Convention, 1952 (No. 102),⁵⁵ which should be referred to for guidance on the components and protection required under the respective branches. These nine branches are:

- medical care;
- sickness benefit;
- unemployment benefit;
- old-age benefit;
- employment injury benefit;
- family benefit;
- maternity benefit;
- invalidity benefit;
- survivors’ benefit.

C4.5.d. What is meant by complementary social security protection?

In the MLC, 2006, many of the areas of social protection are addressed through what can be described as complementary requirements for shipowners, flag States and States of residence, which, together, aim at providing comprehensive social security protection for seafarers. Short-term protection is ensured by: (1) the obligation for flag States which ratify the MLC, 2006, to provide medical care on board while any ratifying State must give access to its facilities to seafarers in need of immediate medical care who are on board ships within its territory (Regulation 4.1); (2) at the same time, shipowners are required to provide protection (often through insurance systems) against sickness, injury or death occurring in conjunction with employment to the seafarers working on their ships, irrespective of the seafarers’ nationality or place of residence (Regulation 4.2).

This shorter term protection is intended to be complemented or to be combined with the longer term protection required in Regulation 4.5 in at least three branches at the time of ratification [see C4.5.c. What is meant by “branches of social security”?]. The branches of medical care, sickness benefit and employment injury benefit are recommended in this regard in Guideline B4.5, paragraph 1, because they directly complement the existing responsibilities of shipowners under Regulations 4.1 and 4.2.

⁵⁵ To be found at: www.ilo.org/normes.

C4.5.e. What should a country that has already a national social security system in place verify prior to ratifying the MLC, 2006?

For countries that already have established national social security system covering workers including seafarers “ordinarily resident” in the country concerned and their dependants, then it is likely that very few or possibly no adjustments would be required in order to ratify the MLC, 2006. The only concern would be to specify which of the nine branches are covered and to seek to move to cover all nine branches, if these are not yet covered (Standard A4.5, paragraph 10 and Regulation 4.5, paragraph 2, respectively). If a country has a social security system but it does not yet cover seafarers ordinarily resident, then the existing protection would need to be extended to seafarers and their dependants, at a level at least equal to the protection enjoyed by shoreworkers (Regulation 4.5, paragraph 3). If these seafarers are working outside the country, on board ships which fly the flag of other States, then the countries concerned should cooperate, through multilateral and bilateral agreements or other arrangements, to ensure the maintenance of social security rights which have been acquired or in course of acquisition (Standard A4.5, paragraph 8). Administrative arrangements should be also made with shipowners and flag States concerned to ensure coverage and the due payment and collection of contributions, where applicable.

C4.5.f. What are the different ways that social security can be provided under the MLC, 2006?

The MLC, 2006, offers a high degree of flexibility to members States with regard to the choice of means through which they can fulfil their obligation of providing social security to seafarers. Flexibility is provided for in that this obligation can be met:

- through various bilateral and multilateral agreements or contribution-based systems (Standard A4.5, paragraph 3);
- through the additional flexibility that is provided as to the manner in which the country ensures protection. For example, Standard A4.5, paragraph 7, recognizes that it could be provided in laws or regulations or in private schemes or in collective bargaining agreements or in a combination of these. Furthermore, if a contributory scheme is chosen, it would seem reasonable (having regard to Guideline B4.5, paragraph 7) for the country of residence to expect the flag States concerned to require that shipowners under their respective flags make the relevant contributions.

C4.5.g. Where can I obtain information about the social security protection that is provided by each country that has ratified the MLC, 2006?

A list of countries that have ratified and the date of entry into force for each country as well as other national information (click on the country name) is available on the ILO MLC, 2006, website under the heading “Ratification and information on implementation” under the link entitled “MLC database” at: www.ilo.org/mlc.

C4.5.h. Is there a form for submitting the information on social security under the MLC, 2006?

There is a model communication that can be filed to meet this MLC, 2006, obligation by ratifying countries. It is available at: www.ilo.org/mlc.

C5. Title 5. Compliance and enforcement

What is the relationship between Title 5 and the other provisions in the MLC, 2006?

As stated in paragraph 1 in the introductory provisions to Title 5:

The Regulations in this Title specify each Member's responsibility to fully implement and enforce the principles and rights set out in the Articles of this Convention as well as the particular obligations provided for under its Titles 1, 2, 3 and 4.

Does the concept of substantial equivalence apply to Title 5?

As indicated in introductory paragraphs 2 and 3 of Title 5, the requirements of this Title cannot be implemented through substantially equivalent provisions [see A11. What is a "substantially equivalent" provision?].

C5.1. Flag State responsibilities

C5.1.a. What is a flag State?

The term "flag State" refers to the country where a ship is registered and/or the country whose flag the ship is flying. Ships can, and often do, move from one country/registry/flag to another during the course of their operating lives. Under international law the flag State is the government that has authority and responsibility for regulating ships, and the conditions on board ships, that fly its flag no matter where they travel in the world. This is indicated in the Preamble to the MLC, 2006, which states:

Recalling that Article 94 of the United Nations Convention on the Law of the Sea, 1982, establishes the duties and obligations of a flag State with regard to, inter alia, labour conditions, crewing and social matters on ships that fly its flag.

Article 94 of the United Nations Convention on the Law of the Sea, 1982, provides in paragraph 1 that "Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag." The specific responsibilities of flag States regarding inspection and, also in some cases, certification, that a ship and its operations including conditions for workers on ships (seafarers) meets agreed-upon international standards are set out in the many international maritime Conventions adopted by the International Maritime Organization (IMO) and the ILO.

C5.1.b. Can a flag State delegate its responsibilities?

In accordance with Regulation 5.1.1, paragraph 3 of the MLC, 2006, a country may, where appropriate, authorize public institutions or other organizations (including those of another country) which it recognizes as competent and independent to carry out inspections or to issue certificates or to do both. In all cases, the delegating country remains fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag. In the MLC, 2006, the organizations to which flag State tasks can be delegated are called "recognized organizations" (ROs).

C5.1.c. Is there a model for a flag State inspection and certification system?

Regulation 5.1.1, paragraph 2, requires flag States to establish an effective system for the inspection and certification of maritime labour conditions ensuring that the working and living conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in this Convention. No model is prescribed for such a system, which, under Standard A5.1.1, must have clear objectives and standards covering the administration of the inspection and certification systems, as well as adequate overall procedures for the country's assessment of the extent to which those objectives and standards are being attained. In accordance with Regulation 5.1.1, paragraph 5, information about the inspection and certification system, including the method used for assessing its effectiveness, must be included in the ILO Member's reports to the ILO under article 22 of the Constitution [see A41. Where can I obtain a copy of the report form for the MLC, 2006, that each ratifying country has to make to the ILO?].

C5.1.d. What is a recognized organization (RO)?

In the MLC, 2006, the organizations to which flag State tasks can be delegated are called "recognized organizations" (ROs) [see C5.1.b. Can a flag State delegate its responsibilities?] Regulation 5.1.2 and the Code establishes the requirements regarding the process for delegation/authorization of ROs. In many countries the organizations that are authorized as ROs are ship classification societies that are also responsible for ship surveys including statutory certification of ships under IMO Conventions.

C5.1.e. How is a recognized organization (RO) for a flag State authorized?

Standard A5.1.2, paragraphs 1 and 2, of the MLC, 2006, sets out requirements for flag States that may wish to appoint public institutions or other organizations to carry out inspections required by the MLC, 2006, in accordance with normal practice. An up-to-date list of any authorizations (and the scope of the authorization) for ROs must be provided to the International Labour Office for publication (Standard A5.1.2, paragraph 4).

C5.1.f. What tasks can a Recognized Organization (RO) carry out?

The tasks of each RO depend upon the tasks which the flag State concerned has delegated to it within the scope of those that an RO is permitted by the MLC, 2006, to carry out. Under Regulation 5.1.2, paragraph 1, of the MLC, 2006, and RO may only be authorized by a flag State to carry out tasks that are expressly mentioned in the Code of Title 5 [see A9. What is the Code of the MLC, 2006?] as tasks that can be carried out by an RO. In this respect, the Code uses wording such as "by the competent authority, or by a recognized organization duly authorized for this purpose".

Most of the tasks related to flag State inspection and certification under the MLC, 2006, can be undertaken by an RO. When an RO is appointed, the flag State (or its competent authority) needs to specify the scope of the RO's role with respect to verification of national requirements. Although the attention of an RO carrying out a flag State inspection might be drawn to a possible deficiency on a ship by seafarers and reported to the flag State, the investigation of complaints that are made to the flag State regarding its ships (Standard A5.1.4, paragraph 5) or the enforcement of the national requirements implementing the MLC, 2006, should be dealt with by the competent authority in each flag State. Information as to the role of ROs and the scope of their authority should also be made available to seafarers in the event that they have a complaint.

C5.1.g. Must all ships be inspected?

All ships covered by the MLC, 2006 [see B4. What ships does the MLC, 2006, apply to?], are subject to inspection for all the requirements of the Convention (Regulation 5.1.4, paragraph 1). For ships that will be certified the provisions of Regulation 5.1.3 and Standard A5.1.3 will also apply. The inspection standards are the national requirements implementing the MLC, 2006.

C5.1.h. What is the list of 14 areas to be certified?

Standard A5.1.3, paragraph 1, provides that:

A list of 14 areas in the working and living conditions of seafarers that must be inspected and certified as complying with the national laws and regulations or other measures implementing the requirements of the MLC, 2006, is contained in Appendix A5-I to the Convention. These 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.

C5.1.i. Do the requirements in the MLC, 2006, that are not in the list of 14 areas in Appendix A5-I have to be inspected?

All ships covered by the MLC, 2006, are subject to inspection for all the requirements of the Convention (Regulation 5.1.4, paragraph 1). For ships that will be certified, the provisions of Regulation 5.1.3 and Standard A5.1.3 will also apply. The inspection standards are the national requirements implementing the MLC, 2006. The relevant national provisions implementing the requirements of the MLC, 2006, in the 14 areas that must be certified for some ships will be referenced in Part I of the DMLC that is to be prepared by the competent authority [see A25. Who is the competent authority?].

C5.1.j. Must all ships be certified under Regulation 5.1.3?

Under Regulation 5.1.3, certification is mandatory for ships of:

- 500 GT or over, engaged in international voyages; and
- 500 GT or over, flying the flag of a Member and operating from a port, or between ports, in another country.

For the purpose of this Regulation, “international voyage” means a voyage from a country to a port outside such a country.

Certification would not therefore be mandatory for a ship under 500 GT, even if engaged in international voyages or for a ship of 500 GT or more if it flies the flag of the flag State concerned and is not engaged in international voyages. Regulation 5.1.3, paragraph 2, allows a shipowner whose ship does not fall under the mandatory certification provisions to request that the ship be certified after the inspection.

C5.1.k. How detailed should Part I of the Declaration of Maritime Labour Compliance (DMLC) be?

The main requirements for Part I of the DMLC are set out in Standard A5.1.3, paragraphs 9 and 10, of the MLC, 2006:

It must be drawn up by the competent authority [see A25. Who is the competent authority?] in the form corresponding to the model in Appendix A5-II. It must:

- (i) identify the list of matters to be inspected in accordance with the MLC, 2006 (i.e., the 14 areas listed in Appendix A5-I);
- (ii) identify, in each of those areas, 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;
- (iii) refer to ship-type specific requirements under national legislation;
- (iv) record any substantially equivalent provisions [see A11. What is a “substantially equivalent” provision?]; and
- (v) clearly indicate any exemption granted by the competent authority as provided in Title 3.

Questions have been asked as to how detailed should be the statement on the national requirements which is to be provided under item (ii) above “to the extent necessary”. Guidance is provided in Guideline B5.1.3 as follows: “Where national legislation precisely follows the requirements stated in this Convention, a reference may be all that is necessary. Where a provision of the Convention is implemented through substantial equivalence as provided under Article VI, paragraph 3, this provision should be identified and a concise explanation should be provided.”

In the preparation of Part I of the DMLC, it may be useful to take account of the purpose of the DMLC as conceived in Guideline B5.1.3, paragraph 4, namely “to help all persons concerned, such as flag State inspectors, authorized officers in port States and seafarers, to check that the requirements are being properly implemented”. The example of a DMLC given in Appendix B5-I to the MLC, 2006, may also be helpful.

Although the model Declaration of Maritime Labour Compliance, Part I, does not require this following information, it may be advisable to also include information about determinations with respect to who is considered to be a seafarer [see B1. Who is protected by the MLC, 2006?] and the definition of night [see C1.1.c. Is there an international standard for determining the hours that constitute “night” or is it up to each country to decide this?] and of hazardous work [see C1.1.b. Who decides what work is likely to jeopardize the safety or health of seafarers under the age of 18?] if seafarers on board are below the age of 18. This would be done to avoid uncertainty during inspections.

C5.1.l. What should be contained in Part II of the Declaration of Maritime Labour Compliance (DMLC)?

In accordance with paragraph 10(b) of Standard A5.1.3, Part II of the DMLC, which is to be drawn up by the shipowner and certified by the competent authority or a duly authorized RO, must identify the measures adopted to ensure ongoing compliance, between inspections, with the national requirements, stated in Part I of the DMLC, and the measures proposed to ensure that there is continuous improvement. Detailed guidance on the details that should be provided in Part II of the DMLC, are provided in Guideline B5.1.3, paragraphs 2 and 3. It may also be useful to take account of the purpose of the DMLC as conceived in Guideline B5.1.3, paragraph 4, namely “to help all persons concerned, such as flag State inspectors, authorized officers in port States and seafarers, to check that the requirements are being properly implemented”. The example of a DMLC given in Appendix B5-I to the MLC, 2006, may in addition be helpful.

C5.1.m. Can a recognized organization (RO) be authorized to issue a Declaration of Maritime Labour Compliance (DMLC)?

A DMLC, Part I, is to be “drawn up by the competent authority” (Standard A5.1.3, paragraph 10(a)); this means that the person signing it must have been directly empowered to do so by the competent authority. It will then be “issued under the authority of” the competent authority (see MLC, 2006, Appendix A5-II, model form). Under Standard A5.1.3, paragraph 1, an RO may, if authorized, issue a Maritime Labour Certificate (MLC), which would include with the attached DMLC, consisting of Part I signed on behalf of the competent authority, and Part II, which can be certified by an RO (Standard A5.1.3, paragraph 10).

What the competent authority is to “draw up” and sign is essentially the main content of the DMLC, Part I, identifying the relevant national laws or regulations or other measures implementing the requirements of the MLC, 2006, in the country concerned. A standard form for Part I containing the competent authority’s signature could be prepared in advance with the ship-specific elements at the top left blank (i.e., the name of ship, IMO number, gross tonnage).

If an RO has been duly authorized by the flag State competent authority to complete and issue the Maritime Labour Certificate, an RO could also be authorized to issue the DMLC, Part I to be attached to the Certificate.

C5.1.n. Must the original Maritime Labour Certificate and the Declaration of Maritime Labour Compliance (DMLC) be carried on board a ship?

Standard A5.1.3, paragraph 12, of the MLC, 2006, provides that “A current valid Maritime Labour Certificate and Declaration of Maritime Labour Compliance ... shall be carried on the ship and a copy shall be posted in a conspicuous place on board where it is available to the seafarers. A copy shall be made available in accordance with national laws and regulations, upon request, to seafarers ...”. The reference to both a “current valid Maritime Labour Certificate and Declaration of Maritime Labour Compliance”, which must be kept on board (with an English translation), and the copy which must be posted in a conspicuous place, indicates that both the original and a copy of the Certificate and DMLC are required on board ship.

C5.1.o. What is the period of validity of a Maritime Labour Certificate?

Standard A5.1.3 sets out, in paragraph 1, a maximum period of validity of five years (subject to paragraph 3) for the Maritime Labour Certificate. Since this is a maximum, the flag State's law could provide a shorter period of validity or give the competent authority or duly authorized RO to issue a certificate for a shorter period. This might be a useful thing to do, especially in the early days of the Convention, in order to prevent a large number of certificates from expiring during the same period or to align the period of validity under the MLC, 2006, with that of certificates issued under IMO Conventions.

C5.1.p. When can an interim Maritime Labour Certificate be issued?

A flag State need not issue interim certificates, but if it chooses to do so, Standard A5.1.3, paragraphs 5 to 7, set out the situations when this would be allowed, namely:

- (a) to new ships on delivery;
- (b) when a ship changes flag; or
- (c) when a shipowner assumes responsibility for the operation of a ship which is new to that shipowner.

An interim Maritime Labour Certificate may be issued for a period not exceeding six months by the competent authority or a recognized organization duly authorized for this purpose. An interim Maritime Labour Certificate may only be issued following verification that:

- (a) the ship has been inspected, as far as reasonable and practicable, in the 14 areas [see C5.1.h. What is the list of 14 areas to be certified?];
- (b) the shipowner has demonstrated to the competent authority or RO that the ship has adequate procedures to comply with the Convention;
- (c) the master is familiar with the requirements of the Convention and the responsibilities for implementation; and
- (d) relevant information has been submitted to the competent authority or RO to produce a Declaration of Maritime Labour Compliance.

C5.1.q. Must an interim Maritime Labour Certificate have a Declaration of Maritime Labour Compliance attached to it?

Under paragraph 8, of Standard A5.1.3, a Declaration of Maritime Labour Compliance need not be issued for the period of validity of the interim certificate.

C5.1.r. Can an interim Maritime Labour Certificate be renewed?

Under paragraphs 6 and 8 of Standard A5.1.3, an interim Maritime Labour Certificate may be issued for a period not exceeding six months. No further interim certificate may be issued following the initial six months.

C5.1.s. When would a Maritime Labour Certificate cease to be valid?

Standard A5.1.3, paragraph 14, sets out the situations when a Maritime Labour Certificate would cease to be valid, namely:

- (a) if the relevant inspections are not completed within the periods prescribed by the MLC, 2006;
- (b) if the certificate is not endorsed following an intermediate inspection;
- (c) when a ship changes flag;
- (d) when a shipowner ceases to assume the responsibility for the operation of a ship; and
- (e) when substantial changes have been made to the structure or equipment covered in Title 3 of the MLC, 2006.

C5.1.t. Can a Maritime Labour Certificate be withdrawn?

Under Standard A5.1.3, paragraphs 16 and 17, a Maritime Labour Certificate must be withdrawn if there is evidence that the ship concerned does not comply with the requirements of this Convention and any required corrective action has not been taken [see C5.1.s. When would a Maritime Labour Certificate cease to be valid?].

C5.1.u. Does a change of the RO affect the validity of already issued certificates?

Regulation 5.1.1, paragraph 3, provides that:

3. In establishing an effective system for the inspection and certification of maritime labour conditions, a Member may, where appropriate, authorize public institutions or other organizations (including those of another Member, if the latter agrees) which it recognizes as competent and independent to carry out inspections or to issue certificates or to do both. In all cases, the Member shall remain fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag.

Since the flag State remains fully responsible for the inspection and certification irrespective of the delegation [see C5.1.b. Can a flag State delegate its responsibilities?], a change of RO would not affect the validity of already issued certificates.

C5.1.v. Are there any model guidelines for flag State inspectors?

Standard A5.1.4, paragraph 7, of the MLC, 2006, requires inspectors to be issued with clear guidelines as to the tasks to be performed and be provided with proper credentials. In 2008 tripartite meetings of experts adopted the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*,⁵⁶ to assist countries to implement Title 5 of the MLC, 2006. This was in response to a resolution adopted by the ILC at the same time as the MLC, 2006. The resolution explained that the success of the Convention will depend, among others, upon the uniform and harmonized implementation of flag State responsibilities in accordance with its relevant provisions, and that given the global nature

⁵⁶ Available on the MLC, 2006, website under the heading “Monitoring and implementation tools”, under the link “*Guidelines for flag State inspections under the Maritime Labour Convention, 2006*”.

of the shipping industry, it is important for flag State inspectors to receive proper guidelines for the performance of their duties.

Each country may have its own practices relating to flag State inspection. The international guidelines are designed to be of practical assistance to governments in drafting their own national guidelines.

C5.1.w. Can a flag State inspector prevent a ship from sailing?

Standard A5.1.4, paragraph 7, provides that inspectors, issued with clear guidelines as to the tasks to be performed and provided with proper credentials, shall be empowered:

- (a) to board a ship that flies the flag of the country concerned;
- (b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed; and
- (c) to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of the 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.

C5.1.x. What is an on-board complaints procedure?

Ships are required, by Regulation 5.1.5, paragraph 1, to 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 requirement relating to these procedures is one of the matters in the 14 areas that must be inspected and certified.

C5.1.y. Who is responsible for developing the on-board complaint procedures?

The obligation (under Standard A5.1.5, paragraph 2, of the MLC, 2006) is on countries to adopt laws or regulations to ensure that appropriate on-board complaint procedures are in place. Guideline B5.1.5, paragraph 1, recommends [see A12. What is the status of the Guidelines in Part B of the Code?], subject to any relevant provisions of an applicable collective agreement, that a model for those procedures should be developed by the competent authority [see A25. Who is the competent authority?] in close consultation with shipowners' and seafarers' organizations.

C5.1.z. Are there any models for on-board complaint procedures?

The MLC, 2006, does not contain a model, but sets out some basic principles in Regulation 5.1.5 and Standard A5.1.5. These principles include the aim to resolve complaints at the lowest possible level, but to allow a right to appeal directly to the master or appropriate external authorities, as well as the right for the seafarer to be accompanied or represented, and to receive impartial advice, and safeguards against victimization for filing complaints. Guideline B5.1.5 [see A12. What is the status of the Guidelines in Part B of the Code?] suggests some principles detailed rules as a basis for discussion in the development of the on-board procedures.

C5.1.a.a. *Where would seafarers get a copy of a ship's on-board complaints procedure?*

Seafarers must be provided with a copy of the on-board complaint procedures applicable on their ship in addition to a copy of their seafarers' employment agreement (Standard A5.1.5, paragraph 4).

C5.1.b.b. *Must seafarers always use the ship's on-board complaint procedure?*

Although on-board complaint procedures must seek to resolve complaints at the lowest level possible, seafarers have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities (Standard A5.1.5, paragraph 2).

C5.1.c.c. *Can seafarers complain directly to the flag State competent authority or an inspector instead of using the on-board complaint procedure?*

[See C5.1.b.b. *Must seafarers always use the ship's on-board complaint procedure?*].

C5.1.d.d. *In the case of a marine casualty, must an official inquiry be held?*

Regulation 5.1.6, paragraph 1, of the MLC, 2006, provides that each Member must hold an official inquiry into any serious marine casualty, leading to injury or loss of life, that involves a ship that flies its flag.

C5.1.e.e. *How can seafarers find the address of the competent authority to which complaints may be made in the flag State or State of their residence?*

Information about the national competent authority [See A25. Who is the competent authority?] for countries that have ratified [see A.26. Where would I get a list of countries that have ratified the MLC, 2006?] the MLC, 2006, along with other national information can be found on ILO MLC, 2006, website under the link "MLC, 2006, database".⁵⁷ The competent authority should be able to provide the information regarding complaints.

C5.2. Port State responsibilities

C5.2.a. What is a port State?

This is the term used to describe the authority under international law for a country to exercise regulatory control with respect to foreign ships that come into its port. Mainly this takes the form of inspecting (often called "port State control") the ship and conditions on board the ship. It can be regarded as a form of international cooperation under Article I, paragraph 2, of the MLC, 2006, whereby the port State role supports the efforts of flag States by inspecting ships to ensure that they remain compliant between inspections by the flag State. This important role is also referred to in Article V, paragraphs 4 and 7, of the MLC, 2006. A country can be and often is, simultaneously a flag State, for purposes of regulating the ships that fly its flag, and a port State with respect to ships of other countries.

⁵⁷ MLC, 2006, database (click on the country name) is available under the heading "MLC database" at: www.ilo.org/mlc.

C5.2.b. What is the purpose of a port State inspection?

The purpose of the inspection by an authorized officer (a PSCO) of a foreign ship coming into port is to check whether it is in compliance with the requirements of the Convention (including seafarers' rights).

C5.2.c. What is port State control?

The term "port State control" arises from arrangements among countries in a region to work together and cooperate with respect to carrying out port State control (inspections) to ensure that ships coming into their ports meet international standards. As noted on the website of the first of these regional arrangements:

... the Paris MOU, is an administrative agreement between the maritime authorities of twenty-four European countries and Canada. In 1978 the "Hague Memorandum" between a number of maritime authorities in Western Europe was developed. It dealt mainly with enforcement of shipboard living and working conditions, as required by ILO Convention No. 147. However, just as the Memorandum was about to come into effect, in March 1978, a massive oil spill occurred off the coast of Brittany (France), as a result of the grounding of the supertanker "Amoco Cadiz". This incident caused a strong political and public outcry in Europe for far more stringent regulations with regard to the safety of shipping. This pressure resulted in a more comprehensive memorandum which covered:

- safety of life at sea;
- prevention of pollution by ships;
- living and working conditions on board ships.

Subsequently, a new, effective instrument known as the Paris Memorandum of Understanding on Port State Control was adopted in January 1982 and was, initially, signed by 14 European countries. It entered into operation on 1 July 1982. Since then, the Paris MOU has expanded to 27 maritime Administrations. As noted by the IMO "these inspections were originally intended to be a back up to flag State implementation, but experience has shown that they can be extremely effective, especially if organized on a regional basis. A ship going to a port in one country will normally visit other countries in the region before embarking on its return voyage and it is to everybody's advantage if inspections can be closely co-ordinated. This ensures that as many ships as possible are inspected but at the same time prevents ships being delayed by unnecessary inspections. The primary responsibility for ships' standards rests with the flag State – but port State control provides a 'safety net'" to catch substandard ships. IMO has encouraged the establishment of regional port State control organizations and agreements on port State control – Memoranda of Understanding or MOUs – have been signed covering all of the world's oceans: Europe and the north Atlantic (Paris MOU); Asia and the Pacific (Tokyo MOU); Latin America (Acuerdo de Viña del Mar); Caribbean (Caribbean MOU); West and Central Africa (Abuja MOU); the Black Sea region (Black Sea MOU); the Mediterranean (Mediterranean MOU); the Indian Ocean (Indian Ocean MOU); and the Arab States of the Gulf (GCC MoU (Riyadh MoU)).

C5.2.d. Is a port State required to inspect all foreign ships?

Regulation 5.2.1, paragraph 1, provides that every foreign ship calling, in the normal course of its business or for operational reasons, in the port of an ILO Member may be the subject of inspection in accordance with paragraph 4 of Article V of the MLC, 2006, for the purpose of reviewing compliance with the requirements of the Convention (including seafarers' rights) relating to the working and living conditions of seafarers on the ship.

As indicated by the word "may", the inspection of foreign ships is permissive rather than mandatory under the MLC, 2006.

C5.2.e. Who is an “authorized officer” for port State control?

The MLC, 2006, does not define the term authorized officers; so this would be a matter for national implementation.

The tripartite experts’ meeting in September 2008 adopted the *Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006*,⁵⁸ to assist port State control officers to carry out inspections of foreign ships coming into their ports [see A14. What is the status of the 2008 ILO Guidelines, for flag State inspections and the ILO guidance for port State control officers?]. They provide the following tripartite guidance:

2.2. *Port State control officers*

30. Port State control inspection under the MLC, 2006, is to be carried out by “authorized” officers (Regulation 5.2.1, paragraph 3). As mentioned earlier, the term “port State control officer (PSCO)” is adopted in these Guidelines. This means that persons must be authorized, by the competent authority in the port State to carry out these inspections and should carry official identification that can be shown to ships’ masters and to seafarers.

31. PSCOs should also be given sufficient power under relevant national laws or regulations to carry out their responsibilities under the MLC, 2006, in the event that a port State authority decides to inspect a foreign ship.

32. The MLC, 2006, does not set out specific requirements with respect to PSCOs, but port State control is to be carried out in accordance with the MLC, 2006, and “... other applicable international arrangements governing port State control inspections” (Regulation 5.2.1, paragraph 3). This means that existing requirements and international guidance with respect to qualifications and training required for persons functioning as a PSCO would be generally relevant.⁵⁹

C5.2.f. Is there guidance or a model for a port State inspection and monitoring system and to provide guidance to authorized officers?

The tripartite experts’ meeting in September 2008 adopted the *Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006*,⁶⁰ to assist port State control officers to carry out inspections of foreign ships coming into their ports [see A14. What is the status of the 2008 ILO Guidelines, for flag State inspections and port State control officers?]. The need to develop international guidelines and related national guidance for port State control officers had, in fact, been foreseen in the MLC, 2006, itself. The MLC, 2006, begins, in Article I, by requiring that: “Members shall cooperate with each other for the purpose of ensuring the effective implementation and enforcement of the Convention.” More specifically Regulation 5.2.1, paragraph 3, provides that “Inspections in a port shall be carried out by authorized officers in

⁵⁸ Available on the ILO MLC, 2006, website under the heading “Monitoring and implementation tools” under the link “*Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006*”.

⁵⁹ See: IMO resolution A.787(19), section 2.5; Annex 7 of the Paris MOU, and the Code of good practice for port State control officers, adopted in the framework of the IMO (MSC MEPC.4/Circ.2). Editor note: check for any updates. The provisions of the MLC, 2006, relating to flag State inspectors may also be useful for port State authorities to consider (Regulation A5.1.4, paragraphs 2, 3, 6, 7, 10, 11 and 12).

⁶⁰ Available on the ILO MLC, 2006, website under the heading “Monitoring and implementation tools” under the link “*Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006*”.

accordance with the provisions of the Code and other applicable international arrangements governing port State control inspections in the Member”. Standard A5.2.1, paragraph 7, provides that “Each Member shall ensure that its authorized officers are given guidance, of the kind indicated in Part B of the Code, as to the kinds of circumstances justifying detention of a ship under paragraph 6 of this Standard”. Finally, Guideline B.5.2.1, paragraph 3, provides that “Members should cooperate with each other to the maximum extent possible in the adoption of internationally agreed guidelines on inspection policies, especially those relating to the circumstances warranting the detention of a ship”. Developing guidelines for port State control officers was an important response to the call for “internationally agreed guidelines”, in so far as the implementation of the MLC, 2006, is concerned. However, a harmonized approach to port State control is an ongoing process that includes cooperation among countries and coordination of maritime inspection under several maritime Conventions, not just the MLC, 2006, but also, particularly, the relevant IMO Conventions.

C5.2.g. What is to be inspected during port State control?

The purpose of the inspection by PSCOs is to determine whether a ship is in compliance with the requirements of the Convention (including seafarers’ rights) (Article IV, paragraph 5). These requirements are laid down in the Articles and Regulations and in Part A (Standards) of the Code of the MLC, 2006, relating to the working and living conditions of seafarers on the ship (Regulation 5.2.1, paragraphs 1 and 3). Part B (Guidelines) of the MLC, 2006, Code is not subject to inspection by port State control. Port State control inspections are, in principle, concerned with the 14 areas of working and living conditions on the ship (Standard A5.2.1, paragraph 2) that are listed in Title 5, Appendix A5-III of the MLC, 2006, and are to be certified by flag States as being in compliance with the related requirements of the Convention. However, the PSCO may also take action in the case of non-compliance with any other requirement of the Convention relating to working and living conditions (Regulation 5.2.1, paragraph 1).

The details for the implementation of the MLC, 2006, requirements are to be prescribed, in accordance with the Convention, in the national laws or regulations, collective agreements or other measures in the flag State concerned. On ships carrying a Maritime Labour Certificate, a summary of the relevant national standards adopted to implement the MLC, 2006, in the 14 areas referred to will be set out in Part I of the DMLC attached to the certificate. These 14 areas of flag State certification (listed in Appendix A5-I to the MLC, 2006) are the same as the 14 areas that are in principle to be covered by a port State control inspection (listed in Appendix A5-III). As indicated below, the certificate and DMLC should be the starting point in the inspection process as they constitute prima facie evidence that the ship is in compliance with the requirements of the MLC, 2006 (including seafarers’ rights).

PSCOs may also be entrusted with handling and investigating complaints made by seafarers on ships visiting their ports. If complaint handling is not part of their functions, they should be able to direct seafarers to the competent official for handling complaints or to receive complaints for transmittal to the competent official.

C5.2.h. If a ship’s Maritime Labour Certificate and Declaration of Maritime Labour Compliance appear to be in order can there be any further inspection?

In accordance with Regulation 5.2.1, paragraph 2, and Standard A5.2.1, paragraph 1, of the MLC, 2006, the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance must be accepted as prima facie evidence of compliance with the requirements of the Convention. Accordingly, the inspection in ports must be limited to a review of the certificate and declaration except in the following four cases:

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- (a) the required documents are not produced or maintained or are falsely maintained or the documents produced do not contain the information required by the Convention or are otherwise invalid; or
 - (b) there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention; or
 - (c) there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with the Convention; or
 - (d) there is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of this Convention.

In any of those cases a more detailed inspection may be carried out to ascertain the working and living conditions on board the ship. Such inspection must in any case be carried out 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).

C5.2.i. When may the foreign ships of non-ratifying countries be inspected in a port State?

Since countries that have not ratified the MLC, 2006, cannot, by definition, produce a Maritime Labour Certificate and Declaration of Maritime Labour Compliance issued under the Convention, they can always be the subject of a port State control inspection, especially in the light of the obligation on ratifying countries to ensure no more favourable treatment to ships of non-ratifying countries [see A4. What is meant by the “no more favourable treatment” clause?].

C5.2.j. What if there is a complaint about a matter that is not on the list of 14 areas to be certified?

Standard 5.2.1, paragraph 1, authorizes a more detailed inspection to be carried out if there is a complaint alleging that specific working and living conditions on the ship “do not conform to the requirements of this Convention”. An inspection may therefore be carried out where the alleged non-conformity relates to any requirement of the MLC, 2006, and thus not necessarily a requirement coming within the 14 areas of certification and port State control.

C5.2.k. Who can make a complaint under Standard A5.2.1?

Standard A5.2.1, paragraph 3, provides that a “complaint” means information submitted by a seafarer, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board.

C5.2.l. When can a ship be detained by an authorized port State officer?

Standard A5.2.1, paragraphs 6 and 8, provide that “the authorized officer shall take steps to ensure that the ship shall not proceed to sea” where a ship is found not to conform to the requirements of this Convention and:

- (a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or

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- (b) the non-conformity constitutes a serious or repeated breach of the requirements of this Convention (including seafarers' rights).

This detention in port must continue until the above non-conformities have been rectified, or until the authorized officer has accepted a plan of action to rectify them and is satisfied that the plan will be implemented in an expeditious manner.

However, when implementing their responsibilities under Standard A5.2.1, all possible efforts must be made to avoid a ship being unduly detained or delayed (see Standard A5.2.1, paragraph 8).

- C5.2.m. What are the onshore complaint handling procedures?

Under Regulation 5.2.2 of the MLC, 2006, a complaint by a seafarer alleging a breach of the requirements of the MLC, 2006 (including seafarers' rights) may be made to an authorized officer in the port at which the seafarer's ship has called in accordance with Standard A5.2.2. Appropriate steps must be taken to safeguard the confidentiality of these complaints (Standard A5.2.2, paragraph 7) and the receipt of the complaint should be recorded by the authorized officer and, in the event that matters are not resolved at the ship-board level, and it is not a matter for a more detailed inspection by a PSCO then the flag State's competent authority must be contacted for advice and a corrective plan of action. In cases where there is no reply from the flag State and the matter is not resolved, then the port State is required to send a copy to the ILO Director-General and to the appropriate shipowners' and seafarer's organizations in the port.

- C5.2.n. Who has to develop these procedures?

Regulation 5.2.2, paragraph 1, provides that each Member must ensure that seafarers on ships calling at a port in the Member's territory who allege a breach of the requirements of the Convention (including seafarers' rights) have the right to report such a complaint in order to facilitate a prompt and practical means of redress. The Member in this context would be the port State.

- C5.2.o. Who can make an onshore complaint?

Standard A5.2.2, paragraph 1, allows an onshore complaint to be made "by a seafarer alleging a breach of the requirements of this Convention (including seafarers' rights)". Presumably, such a complaint could be made by the seafarer through a representative.

- C5.2.p. Who is an authorized officer for purposes of onshore complaint handling?

The MLC, 2006, does not address this question. It could be a port State control officer (PSCO) or another authorized officer.

- C5.2.q. Are complaints confidential?

Standard A5.2.2, paragraph 7, requires appropriate steps to be taken to safeguard the confidentiality of complaints made by seafarers.

C5.3. Labour-supplying responsibilities

C5.3.a. What are labour-supplying responsibilities?

Regulation 5.3 establishes obligations with respect to the enforcement of what are called the “labour-supplying responsibilities” of States as set out in Titles 1 to 4 of the MLC, 2006. It also implements Article V, paragraphs 1 and 5. These responsibilities include the regulation of seafarer recruitment and placement services and the provision of social security. The provisions under Regulation 5.3 and the Code do not specify the form of legal implementation, and to a large extent effective implementation of the obligation in relevant provisions in Titles 1 to 4 would constitute implementation of this obligation, at least with respect to Regulation 4.5. The main requirements are that:

- the country must establish an effective inspection and monitoring system for enforcing its labour-supplying responsibilities, particularly those regarding the recruitment and placement of seafarers;
- the country must also implement social responsibilities for seafarers that are its nationals or residents or are otherwise domiciled in its territory;
- the country must report on its system for enforcing these obligations in its article 22 report under the ILO Constitution [see A41. Where can I obtain a copy of the report form for the MLC, 2006, that each ratifying country has to make to the ILO?].