

Maritime Labour Convention, 2006

Frequently asked questions

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The Maritime Labour Convention, 2006

Frequently asked questions ¹

1. What is the Maritime Labour Convention, 2006?

It is an important new international labour Convention that was adopted by the International Labour Conference of the International Labour Organization (ILO), under article 19 of its Constitution at a maritime session in February 2006 in Geneva, Switzerland. It sets out seafarers' rights to decent conditions of work and helps to create conditions of fair competition for shipowners. It is intended to be globally applicable, easily understandable, readily updatable and uniformly enforced. The Maritime Labour Convention, 2006 has been designed to become a global legal instrument that, once it enters into force, will be the 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

¹ These questions and answers are intended to provide a quick overview of the Maritime Labour Convention, 2006 to persons unfamiliar with the new Convention. They do not purport to provide interpretations of any provisions and should not in any way be treated as a substitute for the actual provisions of the Convention. The text of this booklet is based on a previous document entitled *Proposed consolidated maritime labour Convention: Frequently asked questions*, which was a background document to the International Labour Conference, 94th (Maritime) Session, February 2006.

of Life at Sea, 1974, as amended (SOLAS), the International 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).

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

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

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

The Convention will enter into force:

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

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

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

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

4. Why was a new Convention needed?

The decision by the ILO to move forward to create this major new maritime labour Convention was the result of a joint resolution in 2001 by the international seafarers' and 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 standards. Many of the standards were out of date and did not reflect contemporary working and living conditions on board ships. In addition, there was a need to develop a more effective enforcement and compliance system that would help to eliminate substandard ships and that would work within the well-established international system for enforcement of the international standards for ship safety and security and environmental protection that have been adopted by the International Maritime Organization (IMO).

5. Does the new Convention deal with any new subjects?

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

- Title 1: Minimum requirements for seafarers to work on a ship
- Title 2: Conditions of employment
- Title 3: Accommodation, recreational facilities, food and catering
- Title 4: Health protection, medical care, welfare and social security protection
- Title 5: Compliance and enforcement.

These five Titles essentially cover the same subject matter as the existing 68 maritime labour instruments, updating them where necessary. It occasionally contains new subjects, particularly in the area of occupational safety and health to meet current health concerns, such as the effects of noise and vibration on workers or other workplace risks. The provisions relating to flag State inspections, the use of “recognized organizations” and the potential for inspections in foreign ports (port State control) in Title 5 are based on existing maritime labour Conventions; however, the new Convention builds upon them to develop a more effective approach to these important issues, consistent with other international maritime Conventions that establish standards for quality shipping with respect to issues such as ship safety and security and protection of the marine environment.

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

In ships flying the flags of countries that do not exercise effective jurisdiction and control over them, as required by inter-

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

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

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

8. How will the Maritime Labour Convention, 2006 protect more of the world's seafarers?

The Convention aims to achieve worldwide protection for all seafarers. It seeks to meet this goal in a number of ways. It is estimated that there are over 1.2 million people working at sea in the world. Until now it had not been clear that all of these people, particularly for example, those that work on board ships but are not directly involved in navigating or operating the ship, such as many personnel that work on passenger ships, would be considered seafarers. The new Convention clearly defines a seafarer as any person who is employed or engaged or works in any capacity on board a ship that is covered by the Convention. Except for a few specific exclusions and areas where flexibility is provided for

national authorities to exempt smaller ships (200 gross tonnage and below) that do not go on international voyages from some aspects of the Convention, the Convention *applies* to all ships (and to the seafarers on those ships) whether publicly or privately owned that are ordinarily engaged in commercial activities.

The Convention does *not apply* to:

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

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

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

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

mented, to the extent possible, while also making efforts to improve conditions. This is particularly important for an international industry such as shipping.

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

The areas of *flexibility* in the Convention include the following:

- the “Seafarers Employment and Social Rights” set out in Article IV are to be fully implemented, “in accordance with the requirements of this Convention” (in accordance with the relevant provisions of the Articles, Regulations and Part A of the Code); however, unless specified otherwise in the Convention, national implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice;
- implementation of the mandatory standards in Part A of the Code (other than Title 5) may also be achieved through measures which are “substantially equivalent”;
- many of the prescriptive or detailed requirements in existing Conventions which had created difficulties for some governments interested in ratifying the Convention are now found in the Guidelines, which are in Part B of the Code. The provisions of Part B of the Code are not mandatory and are not subject to port State inspections, however governments are required to give “due consideration” to their content when implementing their obligations;
- the requirements of the Convention, other than the ship certification system, will apply to most ships (it does not apply to fishing vessels, ships of traditional build or warships); however, the application of details in the Code may be relaxed for some smaller ships – 200 gross tonnage (GT) and

below – that do not go on international voyages. This determination would be made in consultation with shipowners' and seafarers' organizations concerned;

- all ships covered by the Convention would be subject to the inspection system developed by the flag State but the certification system is only mandatory for ships of 500 gross tonnage and above that are engaged in international voyages (or are operating between ports in a foreign country). The certification system will certify that the ship is being operated in conformity with the Convention's requirements as implemented in the laws or regulations of the flag State concerned (in the case of other ships, the shipowners can also request their flag State to include their ships in the certification system so as to avoid or reduce the likelihood of their being inspected in foreign ports);
- the Convention expressly recognizes that some flag States may make use of recognized organizations such as classification societies to carry out aspects of the ship certification system on their behalf;
- provisions affecting ship construction and equipment (Title 3) will not apply to ships constructed before the Convention comes into force for the country concerned. Smaller ships (200 gross tonnage and below) may be exempted from specific accommodation requirements;
- specific allowance is made for making determinations at a national level through consultation with shipowners' and seafarers' organizations "in case of doubt" as to the application of the Convention to categories of persons or ships or a particular ship. A Resolution was adopted along with the Convention which provides guidance to national authorities on the question of who would be considered "seafarers" in this context;
- provision is made for the situation of countries that may not have national organizations of shipowners or seafarers to consult;
- provision is made for national circumstances and for bilateral, multilateral and other arrangements in connection with social security coverage.

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

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

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

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

12. What will be the advantages for ships of ratifying countries?

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

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

The Maritime Labour Convention, 2006, aims to establish a continuous "compliance awareness" at every stage, from the

national systems of protection up to the international system. This starts with the individual **seafarers**, who – under the Convention – have to be properly informed of their rights and of the remedies available in case of alleged non-compliance with the requirements of the Convention and 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 and above, engaged in international voyages or voyages between foreign ports, are required to develop and carry out plans for ensuring that the applicable national laws, regulations or other measures to implement the Convention are actually being complied with. The **masters** of these ships are then responsible for carrying out the 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 above 500 gross tonnage that are engaged in international voyages or voyages between foreign ports, the **flag State** (or recognized organization on its behalf) will review the 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 that are not covered by the certification system. Flag States will carry out periodic quality assessments of the effectiveness of their national systems of compliance, and their **reports to the ILO under article 22** of the Constitution will need to provide information on their inspection and certification systems, including on their methods of quality assessment. This general inspection system in the flag State (which is founded on ILO Convention No. 178) is complemented by procedures to be followed in countries that are also or even primarily the source of the world's supply of seafarers, which will similarly be reporting under article 22 of the ILO Constitution. The system is further reinforced by voluntary measures for inspections in **foreign ports (port State control)**.

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

The Appendices to the Convention contain key model documents: a **maritime labour certificate** and a **declaration of mari-**

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

15. What is meant by “no more favourable treatment” for ships of non-ratifying countries?

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

16. How will respect for the new Convention actually be enforced?

The new Convention is intended to achieve more compliance by operators and owners of ships and to strengthen enforcement of standards through mechanisms which operate at all levels. For example, it contains provisions for:

- complaint procedures available to seafarers;
- shipowners' and shipmasters' supervision of conditions on their ships;

- flag States' jurisdiction and control over their ships;
- port State inspections of foreign ships.

By requiring ratifying Members not only to implement the Convention in the national laws but also to document their implementation, the Convention should also enhance the effectiveness of the supervision carried out at the international level, especially by the competent bodies of the ILO.

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

The part of the Convention which is expected to need updating from time to time, namely the two-part Code relating to the technical and detailed implementation of the basic obligations under the Convention, can be amended under an accelerated procedure ("tacit acceptance") (provided for in Article XV) enabling changes to come into effect, for all or almost all ratifying countries, within three to four years from when they are proposed.

18. Will ratifying Members be bound by all new amendments?

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

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

Both types of amendment procedure – under Article XIV for the Convention as a whole, and Article XV for amendments only to the Code – are based to a certain extent on procedures that are already well established in another agency of the United Nations, the International Maritime Organization (IMO). However, the Art-

icle XIV *express ratification* procedure is closer to the present ILO procedure for revising Conventions. The accelerated or *tacit acceptance* procedure under Article XV follows the IMO procedures especially with respect to the submission of amendments to Member States and their entry into effect; the main difference relates to the adoption of amendments: here (unlike under the IMO procedures) non-ratifying Members play a role and amendments have to be approved by the International Labour Conference, open to all ILO Members.

20. What are the novel features of the new Convention?

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

- Title 1: Minimum requirements for seafarers to work on a ship
- Title 2: Conditions of employment
- Title 3: Accommodation, recreational facilities, food and catering
- Title 4: Health protection, medical care, welfare and social security protection
- Title 5: Compliance and enforcement.

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

Regulation 1.2 – Medical certificate

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

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

...

Standard A1.2 – Medical certificate

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

...

Guideline B1.2 – Medical certificate

Guideline B1.2.1 – International Guidelines...

Other innovations are the amendment procedures and the system for the certification of ships. However, most of these novel features are based on those of the instruments of other organizations, especially the IMO. One unique feature relates to the special status of the non-mandatory Part B of the Code and its relationship with the mandatory Part A.

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

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

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

Is Part B of the Code mandatory?

Answer: No.

Can Part B be ignored by ratifying Members?

Answer: No.

Is implementation of Part B verified by port State inspectors?

Answer: No.

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

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

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

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

23. Can an ILO Convention legally contain non-mandatory provisions?

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

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

The Regulations, which will be approved by parliaments or legislatures during the national ratification processes, not only set out the basic rights of seafarers but also govern the content of the Code, including its possible future content after amendment under

the accelerated procedure. Every provision of Part A of the Code must come within the general scope of the Articles or Regulations to be valid. This requirement sometimes leads to a measure of duplication.

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

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

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