

HANDBOOK
Guidance on implementing
the Maritime Labour Convention, 2006
and Social Security for Seafarers

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First published 2012

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ILO
Handbook: Guidance on implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers / International Labour Office. – Geneva, 2012

1 v.

ISBN: 978-92-2-125536-9 (print)

ISBN 978-92-2-125537-6 (web pdf)

merchant marine / seafarer / social security / ILO Convention / application. 10.05.3

ILO Cataloguing in Publication Data

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Preface

This handbook on social security has been prepared by the International Labour Office under the auspices of the ILO's five year (2006-2011) *Action Plan to achieve rapid and widespread and effective implementation of the Maritime Labour Convention, 2006*. It is intended to assist countries that may need additional information or technical support to ratify and implement this innovative Convention (referred to below as "the MLC, 2006"). These innovations relate to the Convention's legal structure and terminology, its comprehensiveness, its areas of flexibility as well as its expanded compliance and enforcement provisions.

The comprehensive nature of the MLC, 2006, which consolidates 37 existing ILO Conventions and related Recommendations adopted since 1920, could provide a challenge for some countries. The Convention brings together, in one legal instrument, a diverse range of regulatory concerns – including minimum age for seafarers, medical fitness, recruitment and placement services, repatriation, onboard accommodation, occupational safety, social security, maritime labour inspection and certification and port State control. Often these issues are addressed at the national level by different agencies or departments and in various forms of legislation.

Social security protection is perhaps one of the most essential aspects of decent work, but also one of the most complex issues to implement, particularly in a globalized sector such as the maritime sector where workers and employers are often based in different countries, often with differing approaches to the provision of social security and often very different levels of economic and social development. The MLC, 2006 has provisions for shorter term social protection based on shipowners' liability, as well as for medical care during the period of employment. This aspect has not given rise to significant difficulty. Many countries, however, have a major problem with respect to providing the essential complementary support to cover the longer-term risks and ensure social protection for the seafarers themselves and their dependants following the end or interruption of the seafarers' employment. Social protection of this kind is primarily provided by the seafarer's State of ordinary residence; but, in the countries concerned, there may be no State-based system of social security for any workers. In addition, many more countries – even those with advanced systems of social security for their nationals and residents – may have problems in ensuring that adequate social protection is provided to seafarers working on ships flying their flag but coming from countries providing little or no social protection to their nationals and residents.

The coverage required under Regulation 4.5 of the MLC, 2006 and the related Code, is a minimum of three areas, all of which must be notified to the Director-General of the ILO on ratification. These areas complement those already provided for under the flag State obligations in other provisions, particularly with regard to medical care and shipowners' liability referred to above.

This handbook also contains model national provisions taken from model provisions published by the ILO¹. These provisions and the related commentary were prepared in response to a number of governments that had identified a need for a "model law", on the lines of those prepared by some other United Nations organizations. However, as explained in the extract from the handbook commentary, the model national provisions are not a model law, in the sense of a standard draft law proposed for adoption as such. A draft of such a kind could not take account of the differences from country to country. This is particularly true in the area of social security protection, for which the extent of the obligations under the MLC, 2006 depends upon the national circumstances of the country concerned. In addition, while focusing on the State of ordinary residence, the Convention also encourages all States to consider taking action to provide coverage for seafarers working on their ships. Variations between countries are likely, not only with respect to the extent of protection, but also with respect to the means of providing for such protection; countries are free to choose between a wide range of mechanisms: laws and regulations, collective bargaining agreements, bilateral or multilateral agreements or private or public contribution schemes, for example.

This handbook would not have been possible without the technical cooperation support of ILO Members. In particular, support has been provided for this social security handbook by the Government of Sweden, through the ILO/Sweden Partnership Programme 2009-2013.

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¹ *Guidance on implementation of the Maritime Labour Convention, 2006 - Model national provisions. Handbook*. ILO, Geneva, 2011. ISBN 978-92-2-125538-3.

Acknowledgements

This guidance has been prepared under the direction of Cleopatra Doumbia-Henry with contributions from Ursula Kulke, Kroum Markov and Emmanuelle St-Pierre Guilbault, social security experts in the Social Security and the International Labour Standards Departments of the International Labour Office, with the assistance of special advisors to the ILO on the Maritime Labour Convention, 2006, Dominick Devlin and Moira L. McConnell. Special thanks to Ms Irma Godoy, Documentalist of the Department, who managed the editing and processing of the publication.

The ILO would like to express its appreciation to the Government of Sweden for its financial contribution, through the Swedish International Development Cooperation Agency (SIDA) to the cost of producing this handbook and related resources, including the ILO Handbook *Guidance on Implementing the Maritime Labour Convention, 2006, Model National Provisions* to support the essential stages in national implementation of the *Maritime Labour Convention, 2006*.

Contents

| | |
|---|------------|
| Preface | V |
| Acknowledgements | VII |
| Introduction | 1 |
| Part 1: The ILO, Social Protection and Social Security | 3 |
| 1.1 The human right to social security | 3 |
| 1.2 The need for security protection in the maritime labour sector | 4 |
| 1.3 Laying the foundation for the MLC, 2006 – 85 years of international maritime social security standard-setting | 4 |
| Part 2: The Maritime Labour Convention, 2006 and Social Security | 7 |
| 2.1 Overview of the Structure of the MLC, 2006 | 7 |
| 2.2 Social Protection and Social Security in the MLC, 2006..... | 9 |
| 2.3 The comprehensive requirements under the MLC, 2006 – Regulation 4.5 | 10 |
| 2.3.1 The specific obligations in the MLC, 2006 – Standard A4.5 | 11 |
| 2.3.2 Built-in flexibility..... | 12 |
| 2.3.3 Responsibilities of flag States for non-national /non-resident seafarers | 13 |
| 2.4 Implementing the MLC, 2006: Differing country situations..... | 14 |
| 2.4.1 Obligations for countries that already have social security systems in place | 14 |
| 2.5 Minimum obligations for countries which have not yet established social security systems | 16 |
| Part 3: Appendices and other social security information resources | 17 |
| Appendix 1: Explanatory Note to the Regulations and Code of the Maritime Labour Convention, 2006 | 18 |
| Appendix 2: Regulation 4.5, Standard A4.5 and Guideline B4.5..... | 19 |
| Appendix 3: Model national legal provisions | 21 |
| Appendix 4: Addendum to the Commentary on the recommended draft of the Maritime Labour Convention concerning Regulation 4.5: Social security | 25 |
| Appendix 5: Tables of ratification of ILO social security Conventions | 27 |

Introduction

This Handbook has been developed to assist Members of the International Labour Organization (ILO) to implement their responsibilities under the Maritime Labour Convention, 2006 (MLC, 2006) regarding social security for seafarers. It is intended to provide the necessary background on the subject of social security as well as practical information and guidance to government administrations concerned with implementing the MLC, 2006 in their country and to social partners when assisting in doing so. It has been prepared in response to a request in 2006 by the 94th International Labour Conference for the promotion of the provision of effective social security for seafarers and the preparation of related material.¹ It also responds to concerns expressed by ILO constituents on the difficulties encountered in understanding the measures need to be put in place for the proper implementation of the social security provisions of the MLC, 2006.²

It must be emphasized that the information is intended as a practical resource that can be used by any government that finds it helpful. However in all cases the relevant national laws or regulations or collective bargaining agreements or other measures implementing the MLC, 2006 should be viewed as the authoritative statement of the national requirements.

This Handbook is divided into **three Parts**, including in Part 3 **five Appendices**.

Part 1 provides an overview of the nature and importance of social security and the role of the ILO in furthering the realization of this human right, with particular emphasis on the needs of seafarers in this regard. It concludes with a brief overview of 85 years of ILO standard setting for social security for seafarers leading up to the MLC, 2006.

Part 2 focuses on the MLC, 2006, and on its social security protection provisions. **Section 1** provides information on the structure of the MLC, 2006, the varying degrees of compliance required by ratifying States in its application, and the place occupied by social protection and social security in the MLC, 2006. **Sections 2, 3** and 4 discuss the specific requirements of the social security provisions of the MLC, 2006 and their implications for ratifying countries, in connection with seafarer ordinarily resident in their territories. This section also examines flag State responsibilities for non resident seafarers working on board their ships. **Section 5** includes some examples of national social security schemes covering seafarers, and in some cases their dependants, in compliance with these provisions, for a better understanding of the approaches that have been taken in differing countries to implement these requirements.

Part 3 contains references to website and other publications that may be useful. **Part 3** contains five appendices containing additional background information and tools and resources including, the text of the MLC, 2006 provisions on social security, a background report and model national legal provisions, that may be of interest to some Members.

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¹ Resolution concerning social security, ILC, 94th (Maritime) session, Feb. 2006.

² See for instance paragraph 47 of the *Background Paper*, Preparatory Tripartite MLC, 2006, Committee, Geneva, 20-22 September 2010.

Part 1: The ILO, Social Protection and Social Security

Social security is a human right laid down in the *Universal Declaration on Human Rights*³ as well as in major international human rights instruments adopted under the auspices of the United Nations. The furtherance of social security for all in need is also at the heart of the ILO's constitutional mandate. In line with this mandate, the ILO has adopted a number of international standards (Conventions and Recommendations), which have guided the Organization's activities and its assistance to its member States, towards the realization of this right.

According to ILO estimates, however, 80 per cent of the world population is still without any access to social security. Like most workers worldwide, seafarers lack social security protection. The globalized nature of the maritime labour sector and the particularly hazardous nature of maritime work presents specific challenges for the provision of social security to seafarers, which need to be addressed by appropriate measures aimed at ensuring that workers and their dependants enjoy a certain degree of social security protection. It was therefore of utmost importance to make provision for the social security rights of seafarers and their dependants in the MLC, 2006, in continuity with previous ILO Conventions and Recommendations adopted for such purpose, and to ensure that, through the establishment of appropriate mechanisms, they too can enjoy this fundamental right.

1.1 The human right to social security⁴

As mentioned above social security has been declared a human right in the major United Nations human rights instruments such as:

- *The Universal Declaration of Human Rights*, adopted by the United Nations General Assembly (1948)⁵

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 25

1) *Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*

- *The International Covenant on Economic, Social and Cultural Rights*, adopted by the United Nations General Assembly (1966)⁶

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

The ILO's first standard-setting activities in the field of social security date back to its origins and have evolved together with the mandate conferred on the ILO. The Preamble to the ILO's Constitution adopted in 1919 recognized the need to improve conditions of labour in respect of "prevention of unemployment, ... the protection of the worker against sickness, disease and injury arising out of his employment, ... provision for old age and injury".

In 1944, the *Declaration of Philadelphia* empowered the ILO to consider "all international economic and financial policies and measures" and to cater to "all human beings, irrespective of race, creed or sex" (Part II (a)). Shaping the world order where economic, financial and social policies should work in unison to relieve the peoples from fear and want, the Declaration included the new concept of "social security" among the "fundamental principles" for the work of the Organization. The ILO was called "to extend social security measures to provide a basic income to all in need of such protection and comprehensive medical care" (Part III (f)). This new mission and mandate of the ILO gave rise to the adoption of a series of international Conventions and Recommendations which maintain their relevance.

³ *Universal Declaration of Human Rights*, UN GA res. 217A (III), 1948, Art. 22 and 25.

⁴ The content of this section is mainly drawn from the publication "*Setting Social Security Standards in a Global Society – An analysis of present state and practice and of future options for global social security standard setting in the International Labour Organization*", Social Security Department, ILO, Geneva, 2008.

⁵ *Universal Declaration of Human Rights*, UN GA res. 217A (III), 1948, Art. 22 and 25.

⁶ *International Covenant on Economic, Social and Cultural Rights*, UN GA res. 2200A (XXI), 1966, Art. 9.

Most recently, the ILO constituents reaffirmed the Organization's fundamental role in the promotion and extension of social security and its obligations in this regard at the 2001 International Labour Conference (ILC)⁷ and through the adoption of the 2008 ILO *Declaration on Social Justice for a Fair Globalization*.⁸ In 2009, the *Global Jobs Pact* adopted by the ILO underlined the importance of social security in times of crisis and beyond and of establishing a basic social protection floor.⁹

1.2 The need for security protection in the maritime labour sector

It is widely recognized today that social security is fundamental to the creation of social cohesion, the furtherance of political inclusion and the development of democracy. It is an important tool for the prevention and alleviation of poverty through the enhancement of productivity. In conjunction with a growing economy and active labour market policies, social security constitutes an instrument for sustainable social and economic development.

Yet, vast numbers of the world's population still lack access to adequate levels of social protection and, in some countries, to any meaningful form of social protection. Seafarers are among the categories of workers for whom the lack of adequate coverage is of concern.

Seafaring is widely recognized as one of the most globalized industries. Seafarers from many different countries can work on board a ship that is registered in a country other than their countries of residence or nationality and is owned or operated by a shipowner who may be a national of yet another country. Often seafarers work on many different ships for varying periods of time and under differing employment agreements. They may also be recruited and hired through third party agencies operating in other countries. Under international law, the country with legal responsibility for conditions on board ships flying the country's flag is the "flag State". However, in many cases, seafarers are not residents or nationals of the flag State and have no connection with the flag State other than the fact that he or she is working (often briefly) on board a ship flying the State's flag. This situation presents challenges for national social security schemes or systems most of which are developed to cover persons who are nationals or who live and work (ordinarily resident) in the country concerned. (Appendix 5 of this Handbook contains a list of the current ratifications of all the ILO relevant security standards).

Gaps in coverage may, therefore, appear when seafarers are employed on a ship flying a flag of a different country than their country of residence, and/or when they are resident for a time in a different country than their country of nationality or ordinary residence. Varying levels of protection between the national social security schemes, in terms of contingencies covered and levels of benefits can also lead to inequalities in social security coverage between the seafarers working on a same ship, depending on their nationality or country of residence. Often seafarers are drawn from countries that have limited or no social security systems. This means that they may have no coverage at all in their country of residence. In the absence of bilateral or multilateral agreements between the countries concerned, namely the countries of residence or nationality of seafarers and the flag State, it is very difficult to ensure the provision of social security and equality in social security coverage between seafarers from different countries. It is also difficult to ensure maintenance of social security rights of seafarers that move from one national system to another.

Due to the particular coverage challenges deriving from seafarers' employment circumstances, a significant number of Conventions and Recommendations specifically dealing with the social security rights of this category of workers have been adopted since 1920 by the ILO. These international legal standards – the Conventions and Recommendations – have been elaborated mostly based on general ILO social security standards, and contain many references to the principles and requirements they lay down.

1.3 Laying the foundation for the MLC, 2006 – 85 years of international maritime social security standard-setting

A review of ILO standard-setting activities in the field of social security shows that while the ILO has been very active in this area, it has treated the social security of seafarers by way of specific instruments, recognizing the peculiar nature of maritime work.

The ILO adopted the first international instruments on social security protection of seafarers as early as in 1920. Following the prevailing pattern in the first decades of ILO standard-setting, the first Conventions adopted in this field, i.e. the *Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)*, the *Shipowners' Liability (Sick and Injured Seamen)*

⁷ *Resolution and conclusions concerning social security*, ILC, 89th Session, Geneva, 2001.

⁸ *ILO Declaration on Social Justice for a Fair Globalization*, ILC, 97th Session, 2008.

⁹ *Recovering from the crisis: A Global Jobs Pact*, ILC, 98th Session, 2009.

Convention, 1936 (No. 55) and the *Sickness Insurance (Sea) Convention, 1936 (No. 56)* made provisions for the coverage of seafarers, as a specific category of workers, in respect of specific contingencies.

A shift occurred in 1946, with the adoption of a new international legal framework for social security protection of seafarers and their dependants, embodying a more comprehensive approach to social security that reflected developments that were taking place in the field of international social security standard-setting. This new framework, comprised the *Social Security Seafarers Convention, 1946 (No. 70)*, the *Seafarers' Pensions Convention, 1946 (No. 71)*, and the *Seafarers' Social Security (Agreements) Recommendation, 1946 (No. 75)*.

The key characteristics of these instruments are:

Convention No. 70:

- The right of seafarers and their dependants, when working on board a ship that flies the flag of the State in which they reside, to medical benefit, benefit in case of incapacity for work, due to employment injury or not, unemployment benefit, old-age benefit and survivors' benefit, at least at the same level as shoreworkers.
- The determination of the minimum level of the respective benefits and coordination with general schemes for shoreworkers so as to ensure continuity in social security protection.
- Shipowners' liability in respect of sickness, employment injury or death of seafarers which occurred during their engagement on board a

Convention No. 71:¹⁰

- Establishes the obligation of ratifying countries to establish or guarantee the establishment of a scheme for the payment of pensions to seafarers working on board ships flying their flag.
- Determination of the rate of such pensions and for their financing.
- Qualifying conditions for the entitlement of seafarers to old-age pension.
- Provision for the maintenance of rights in course of acquisition.

Recommendation No. 75:

- Laid down guidelines for the conclusion of reciprocal agreements between member States so as to ensure that seafarers belonging to one country and employed on board the ships of another country either remained subject to compulsory social insurance schemes or employers' liability schemes in their own country, or were subject to the corresponding schemes of the other country.

Four decades later, the primary objective of ensuring comprehensive social security protection to all seafarers led to the adoption of the *Social Security (Seafarers) Convention (Revised), 1987 (No. 165)*.¹¹

The main characteristics of Convention No. 165 are:

- Extended coverage to all nine branches of social security, in line with the provisions of the cornerstone general social security standard – *Social Security (Minimum Standards) Convention (No. 102)* – requiring ratifying States to initially provide seafarers with protection not less favorable than that enjoyed by shore workers for which the State has legislation in force, for at least three of the nine branches of social security covered by the Convention.
- As to the level of benefits, member States were given the choice to apply either minimum standards specified in convention No. 102 or the higher standards set by social security instruments adopted subsequently.
- Reaffirmed the principle of shipowners' liability for medical care and sickness benefit (payment of wages) for seafarers during engagement.

Convention No. 165 also laid down provisions for:

- The determination of which national legislation is to be applicable for the coverage of migrant seafarers.

¹⁰ The Seafarers' Pensions Convention, 1946 (No. 71) was not revised by the MLC, 2006. It is currently ratified by Algeria, Argentina, Bulgaria, Djibouti, Egypt, France, Greece, Italy, Lebanon, the Netherlands, Norway, Panama and Peru.

¹¹ This instrument revised the Sickness Insurance (Sea) Convention, 1936 (No. 56) and the Social Security Seafarers Convention, 1946 (No. 70). To date it has been ratified by three Members, Hungary, Philippines and Spain.

- The equality of treatment of migrant seafarers with the nationals of their State of residence.
- The conclusion of agreements for the maintenance of their acquired rights and rights in course of acquisition, and the provision of their social security benefit, irrespective of their place of residence.

In spite of the clear will among ILO constituents to ensure that seafarers would benefit from adequate social security protection and equality of treatment, the relevant Conventions have not received wide spread ratification. At the same time they undisputedly influenced the content of both collective bargaining agreements and national laws and regulations in the sector, thereby have an impact on the progressive development of this area of international law.

| <i>Conventions</i> | <i>Number of ratifications</i> |
|---|--------------------------------|
| Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8) | 59 |
| Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) | 18 |
| Sickness Insurance (Sea) Convention, 1936 (No. 56) | 19 |
| Social Security (Seafarers) Convention, 1946 (No. 70) | 7 |
| Seafarers' Pensions Convention, 1946 (No. 71) | 13 |
| Social Security (Seafarers) Convention (Revised), 1987 (No. 165) | 3 |

| <i>Recommendations</i> |
|--|
| Unemployment Insurance (Seamen) Recommendation, 1920 (No. 10) |
| Seafarers' Social Security (Agreements) Recommendation, 1946 (No. 75) |
| Seafarers' (Medical Care for Dependants) Recommendation, 1946 (No. 76) |

In early 2000, following a lengthy review process, the Governing Body of the ILO declared that among all ILO maritime social security standards, only Convention No. 165 should be categorized as up-date as it responded to current needs. Following the recommendation made by the Joint Maritime Commission in 2001, the Governing Body called for the elaboration of a high impact framework instrument on labour and social security standards in the maritime sector which would revise all the earlier adopted Conventions which was to become the MLC, 2006.

The consolidation of international labour standards by the MLC, 2006 offered a unique occasion to reaffirm both the necessity of ensuring adequate social security protection to all seafarers and the core principles on which such protection should be based and which are at the core of sustainable social security systems.

Part 2: The Maritime Labour Convention, 2006 and Social Security

This Part provides, first, a brief overview of the structure of the MLC, 2006. This is followed by a detailed explanation of its social security requirements (the basic provisions are reproduced in Appendix 2 and the background report regarding them is found at Appendix 4). Some examples are given of countries in different situations as far as social security is concerned, so as to provide concrete guidance on how the MLC, 2006 provisions on social security might be implemented in practice.

Appendix 3 contains extracts from the ILO Handbook *Guidance on Implementing the Maritime Labour Convention, 2006, Model National Provisions*. These model provisions may be of assistance in implementing the Convention's requirements.

2.1 Overview of the Structure of the MLC, 2006

When the MLC, 2006 was adopted by the 94th (Maritime) Session of the International Labour Conference of the ILO in February 2006, it was described as an historic event. The MLC, 2006 is also sometimes called the "seafarers' bill of rights" which will help ensure "Decent Work" for seafarers, no matter where ships¹² sail and no matter which flag they fly.¹³ Shipowners also support the MLC, 2006 as it is seen as an important new tool to help ensure a level playing field for quality shipowners that may have to compete with ships that have substandard conditions.¹⁴ The MLC, 2006 is also important for governments because it brings together 37 international labour Conventions and the related Recommendations in one comprehensive modern document that covers almost every aspect of decent work in this sector.

A key feature of the MLC, 2006 is that it builds on the strengths of the ILO approach to make sure that, in each country, international labour standards are effectively implemented at the "ground level" and enforced. At the same time the MLC, 2006 meets the challenges of this globalized industry by taking over many elements that are found in other major maritime Conventions and have contributed to the success of those Conventions in ensuring safer and secure shipping and preventing marine pollution.

The *Preamble* to the MLC, 2006 sets out the intentions and the objectives of the Members of the ILO in adopting the Convention. The *Preamble* refers to the global nature of the shipping industry and the need for seafarers to have special protection. It also links the MLC, 2006, to the other key international Conventions that establish minimum standards for the shipping industry in connection with safety, security and marine environmental protection. The MLC, 2006, complementing other major international maritime conventions, reflects international agreement on the minimum requirements for working and living conditions for seafarers.

Like other international labour standards, the MLC, 2006, only sets out minimum international standards. However, recalling paragraph 8 of article 19 of the Constitution of the International Labour Organization, the *Preamble* goes on to clarify that:

"...in no case shall the adoption of any Convention and Recommendation by the Conference or the ratification of any Convention by any Member be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation."

This principle was considered so important in the context of social security that (as will be seen below) it was repeated in the Regulation in the Convention relating to social security.¹⁵

The Convention comprises three different but related Parts (see also: Explanatory note to the Regulations and Code of the Maritime Labour Convention, 2006 in Appendix 1):

¹² A ship, as defined in the MLC, 2006, is 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 (Article II, paragraph 1 (i)). The MLC, 2006 applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. This Convention does not apply to warships or naval auxiliaries. 9 Article II, paragraph 4.

¹³ Under the MLC, 2006, a seafarer is defined as any person who is employed or engaged or works in any capacity on board a ship to which the Convention applies, (see "ship" above) (Article II, paragraph 1 (f), MLC, 2006).

¹⁴ A shipowner is defined in the MLC, 2006, as the owner of a ship or another organization or person, such as the manager, agent or bare boat 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, regardless of whether any other organization or persons fulfill certain of the duties or responsibilities on behalf of the shipowner (Article II, paragraph 1 (j)).

¹⁵ See paragraph 1 of Regulation 4.5.

- **Articles:** set out the **core rights and principles**
Articles relevant for social security: **Article IV, para 4.**
- **Titles:** contain provisions relating to a particular right or principle (or enforcement measures)
Titles especially relevant for social security:
Title 4 – Health protection, medical care, welfare and social security protection
Title 5 – Compliance and enforcement
- **Regulations:** contain the **basic obligations** of ratifying Members
Regulations especially relevant for social security:
 - **Regulation 4.1** – Medical care on board ship and ashore
 - **Regulation 4.2** – Shipowners’ liability
 - **Regulation 4.5** – Social Security
 - **Regulation 5.3** – Labour- supplying responsibilities
- **Code:** contains the **details for the implementation** of the Regulations:
 - **Part A:** contains mandatory standards
Standards especially relevant for social security:
 - **Standard A4.1** – Medical care on board ship and ashore
 - **Standard A4.2** – Shipowners’ liability
 - **Standard A4.5** – Social security
 - **Standard A5.3** – Labour- supplying responsibilities
 - **Part B:** contains non-mandatory guidelines (that must be give due consideration Article VI, para 2.)
 - **Guideline B4.1** – Medical care on board ship and ashore
 - **Guideline B4.2** – Shipowners’ liability
 - **Guideline B4.5** – Social security
 - **Guideline B5.3** – Labour- supplying responsibilities

There are also four appendices located at the end of Title 5 of the MLC, 2006:

- Appendix A5-I: List of matters for flag State inspection for certification purposes
- Appendix A5-II: Model documents relating to the flag State inspection and certification system established in Title 5
 - Maritime Labour Certificate
 - Interim Maritime Labour Certificate
 - Declaration of Maritime Labour Compliance (DMLC (two parts – Part I and Part II))
- Appendix A5-III: List of areas that may be the subject of a more detailed inspection in a port State
- Appendix B5-I: Example of a National Declaration of Maritime Labour Compliance Parts I and art II

National flexibility in implementing the MLC, 2006

The Code, Parts A and B, of the MLC, 2006 allows a considerable degree of flexibility in the way member States implement the rights and principles laid down in the Articles and Regulations. Such flexibility is found in two main areas:

1. Member States, where necessary,¹⁶ may give effect to the detailed requirements of Part A of the Code (other than Title 5) through substantial equivalence, as defined in Article VI, paragraph 4 of the MLC, 2006.
2. When implementing Part A Standards Member States have a certain scope for discretion as to the precise actions and measures to be taken at the national level; Part B provides guidance on implementation of Part A but is non-mandatory and thereby helps Members which have ratified this Convention to ascertain the kind of action that might be expected of them under the corresponding general obligation in Part A, as well as action that would not necessarily be required.

¹⁶ See Article VI, paragraph 3, MLC, 2006.

2.2 Social Protection and Social Security in the MLC, 2006

2.2.1 The right to social protection

Social protection is laid down as a right of **all seafarers** in Article IV of the MLC, 2006, a right which ratifying States have the obligation to ensure.¹⁷

Article IV – Seafarers’ Employment and Social Rights

4. Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.
5. Each Member shall ensure, within the limits of its jurisdiction, that the seafarers’ employment and social rights set out in the preceding paragraphs of this Article are fully implemented in accordance with the requirements of the Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice.

Reflecting the ILO’s conception of social protection, the term is used in the MLC, 2006 in a wider sense: under Title 4 of the MLC, 2006 and means social protection as health protection, medical care, welfare and social security protection. Social protection under Title 4 of the MLC, 2006 deals with medical care on board ship and ashore (**Regulation 4.1**); Shipowners’ liability (**Regulation 4.2**) and social security (**Regulation 4.5**).

2.2.2 Implementation and enforcement of social protection

The general principle concerning the implementation and enforcement responsibilities of ratifying States is set out in **Article V** of the **MLC, 2006**, which provides that:

1. Each Member shall implement and enforce laws or regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to ships and seafarers under its jurisdiction.

The majority of the obligations in the MLC, 2006 are directed to **flag States** and competent authorities in flag States largely in connection with setting and enforcing standards for ships and shipowners, because of the international responsibility for ships flying their flag. However there are several Regulations under the MLC, 2006 that are directed to countries in their capacity as a seafarer’s place of residence or nationality. These countries have what are described as “Labour-supplying responsibilities” (**Regulation 5.3, MLC, 2006**).

Regulation 5.3 – Labour-supplying responsibilities

Purpose: To ensure that each Member implements its responsibilities under this Convention as pertaining to seafarer recruitment and placement and the social protection of its seafarers

1. Without prejudice to the principle of each Member’s responsibility for the working and living conditions of seafarers on ships that fly its flag, the Member also has a responsibility to ensure the implementation of the requirements of this Convention regarding the recruitment and placement of seafarers as well as the social security protection of seafarers that are its nationals or are resident or are otherwise domiciled in its territory, to the extent that such responsibility is provided for in this Convention.

2.2.3 Background to the adoption of the social security protection provisions in the MLC, 2006¹⁸

The social security protection requirements of the MLC, 2006 are set out in its **Title 4**, in **Regulation 4.5** and in the related **Code** comprised of **Standard A4.5** and **Guideline B4.5** (reproduced in Appendix 2).

These provisions were initially considered controversial and it was very difficult to reach agreement on the scope of the requirements. At the same time, it was recognized that a comprehensive Convention on maritime labour must contain provisions on the social security. The content of this Regulation, and the related Code provisions, is the result of focused attention over the five years of international tripartite meetings leading up to the adoption of the MLC, 2006. An extensive discussion (see the report in Appendix 4 of this Handbook) that took place prior to the Preparatory Technical Maritime Conference (PTMC) in 2004 led to the design of provisions that would address the complex problem of seafarers working on foreign-flag ships, who may not be eligible for protection under the social security system of the flag State and whose country of residence or nationality may also not provide social security protection. The overall concern was to avoid a situation where, because of reasons relating to national laws of States that do not extend coverage to non-residents or non-nationals or to the lack of any system in the country of residence or nationality, seafarers are left without any protection at

¹⁷ MLC, 2006, Article IV, para. 4.

¹⁸ See Report I(1A), *Adoption of an instrument to consolidate maritime labour standards*, ILC, 94th (Maritime) Session, ILO, Geneva, 2006, p. 45.

all for themselves or their dependants. An additional broader problem in this area that was also considered related to the differing range of coverage in national social security systems, where they do exist.

Taking these difficulties into account, it is commendable that the MLC, 2006, in its social security protection provisions, succeeded in adopting a realistic approach to the promotion of social security protection which could otherwise have created an obstacle to the wide-scale ratification of the Convention. The social security provisions of the MLC, 2006, explained in detail below, have achieved a high degree of political agreement, demonstrating that the provision of social security to all seafarers is an ongoing and shared objective for all countries.

2.3 The comprehensive requirements under the MLC, 2006 – Regulation 4.5

The MLC, 2006, while consolidating the previous ILO maritime social security Conventions and taking into account the particular obstacles which seafarers face, also adopted a **new approach** aimed at:

- promoting social security coverage for *all seafarers* and
- reflecting the ILO approach described above with respect to **flexibility** and recognizing the reality of most social security systems, while
- emphasizing an approach that recognizes the **complementary** role of the, often shorter term, social protection provided by employers/shipowners.

Regulation 4.5 and the associated *provisions of the Code (Standard A4.5 and Guideline B4.5)* of the MLC, 2006 cover social security, primarily with respect to its provision through national social security systems.

Regulation 4.5 – Social security

Purpose: To ensure that measures are taken with a view to providing seafarers with access to social security protection

1. Each Member shall ensure that all seafarers and, to the extent provided for in its national law, their dependants have access to social security protection in accordance with the Code without prejudice however to any more favourable conditions referred to in paragraph 8 of article 19 of the Constitution.
2. Each Member undertakes to take steps, according to its national circumstances, individually and through international cooperation, to achieve progressively comprehensive social security protection for seafarers.
3. Each Member shall ensure that seafarers who are subject to its social security legislation, and, to the extent provided for in its national law, their dependants, are entitled to benefit from social security protection no less favourable than that enjoyed by shore workers.

Regulation 4.5 addresses all ratifying countries with responsibilities for seafarers because either:

- the seafarer is working on a ship flying the country's flag (flag State), and/or
- the seafarer is ordinarily resident in the country (the State of residence).

It also covers all countries whatever their stage of development and reflects an approach that seeks to address the complex problems in this area relating to the differing coverage between national social security systems, where they do exist, and a workforce and employers that may be nationals of, or resident in, countries other than the flag State.

Regulation 4.5 also makes it clear, in **paragraph 1**, that the associated *provisions of the Code* (which specify the nature of Members' obligations) are without prejudice to any more favourable conditions that may already be applicable in the country, in accordance with paragraph 8 of Article 19 of the ILO Constitution. In **paragraph 2**, Regulation 4.5 requires that ratifying Members take steps, *according to their national circumstances*, individually and through international cooperation, to achieve progressively comprehensive social security protection for seafarers. **Paragraph 3** recognizes the right of seafarers *who are subject to a Member's social security legislation and, to the extent provided for in national law, their dependants*,¹⁹ to benefit from social security protection no less favourable than that enjoyed by the ratifying Member's shore workers.

The coverage required under **Regulation 4.5** and the related provisions of the Code **complements** the protection provided for under **Regulations 4.1, on medical care, and 4.2, on shipowners' liability** for the economic consequences of sickness, injury and death occurring in connection with seafarers' engagement (consisting of the costs of medical care and the payment of wages), and under other titles of the MLC, 2006 so as to ensure that there are no gaps in protection.

¹⁹ The dependants of the person covered, i.e., of the seafarer, are the persons who are dependent on his/her support, to the extent prescribed in national legislation. Under ILO social security standards, this term includes the person's children, defined as children under the prescribed school-leaving age and the person's spouse, when incapable of self-support.

Regulation 4.1 – Medical care on board ship and ashore

Purpose: To protect the health of seafarers and ensure their prompt access to medical care on board ship and ashore

1. Each Member shall ensure that all seafarers on ships that fly its flag are covered by adequate measures for the protection of their health and that they have access to prompt and adequate medical care whilst working on board.
2. The protection and care under paragraph 1 of this Regulation shall, in principle, be provided at no cost to the seafarers.
3. Each Member shall ensure that seafarers on board ships in its territory who are in need of immediate medical care are given access to the Member's medical facilities on shore.
4. (...)

Regulation 4.2 – Shipowners' liability

Purpose: To ensure that seafarers are protected from the financial consequences of sickness, injury or death occurring in connection with their employment

1. Each Member shall ensure that measures, in accordance with the Code, are in place on ships that fly its flag to provide seafarers employed on the ships with 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.
2. This Regulation does not affect any other legal remedies that a seafarer may seek.

The aim of **Regulation 4.5**, in conjunction with **Regulations 4.1** and **4.2** and the **Code** provisions, is the comprehensive provision of social security protection, in the sense of full social security protection, to cover **all risks** provided for in the **nine branches of social security**, for **all seafarers and their dependants**, throughout the whole duration of the contingencies that may occur.

2.3.1 The specific obligations in the MLC, 2006 – Standard A4.5

Specific obligations for ratifying States are laid down in **Standard A4.5**. It requires, in **paragraph 1**, that the **nine branches** of social security protection are to be considered with a view to achieving progressively comprehensive social security protection under Regulation 4.5:

Standard A4.5 – Social security

1. The branches to be considered with a view to achieving progressively comprehensive social security protection under Regulation 4.5 are: **medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit**, complementing the protection provided for under Regulations 4.1, on medical care, and 4.2, on shipowners' liability, and under other titles of this Convention.
2. At the time of ratification, the protection to be provided by each Member in accordance with Regulation 4.5, paragraph 1, shall include at least three of the nine branches listed in paragraph 1 of this Standard.
3. Each Member shall take steps according to its national circumstances to provide the complementary social security protection referred to in paragraph 1 of this Standard to all seafarers ordinarily resident in its territory. This responsibility could be satisfied, for example, through appropriate bilateral or multilateral agreements or contribution-based systems. The resulting protection shall be no less favourable than that enjoyed by shoreworkers resident in their territory.

These social security branches correspond to the nine classical branches of social security laid down and defined in the *Social Security (Minimum Standards) Convention, 1952* (No. 102), which should be referred to for guidance on the components and protection required under the respective branches.

These nine branches are:

- **Medical care:** The contingencies covered include any morbid condition, whatever its cause and the medical care required as a result, as well as the medical care necessitated by pregnancy, confinement and their consequences; medical care of a preventive nature is also covered.
- **Sickness benefit:** The contingency covered includes incapacity for work resulting from a morbid condition and involving suspension of earnings.
- **Unemployment benefit:** The contingency covered includes suspension or loss of earnings due to inability to obtain suitable employment.
- **Old-age benefit:** The contingency covered is survival beyond a prescribed age (normally not more than 65 years).
- **Employment injury benefit:** The contingencies covered include a morbid condition, incapacity for work, invalidity or a loss of faculty due to an industrial accident or a prescribed occupational disease.
- **Family benefit:** The contingency covered is the responsibility for the maintenance of children, i.e. under school-leaving age or under 15 years of age.
- **Maternity benefit:** The contingencies covered are the medical care required by pregnancy, confinement and their consequences and the resulting suspension of earnings.
- **Invalidity benefit:** The contingency covered is the inability to engage in any gainful activity where such inability is likely to be permanent or persists after the period during which the beneficiary is entitled to benefit from temporary incapacity.
- **Survivors' benefit:** The contingency covered is the loss of support suffered by the widow or children as a result of the death of the breadwinner.

As noted above this coverage complements the shorter term coverage provided, under Regulations 4.1 and 4.2, by shipowners.

Paragraph 2 of **Standard A4.5** stipulates that, at the time of ratification, protection must be provided for *at least three* out of these nine social security branches, while **Guideline B4.5, paragraph 1**, recommends in this regard that at least *medical care, sickness benefit and employment injury benefit* should be included in these three branches.

Guideline B4.5 – Social security

1. The protection to be provided at the time of ratification in accordance with Standard A4.5, paragraph 2, should at least include the branches of medical care, sickness benefit and employment injury benefit.

In this regard, **Standard A4.5, paragraph 10** requires that at the time of ratification, the branches of protection must be specified and the Director General of the ILO notified of additions made to coverage (the ILO is to keep a register and make it available to all interested parties). **Paragraph 11** requires that the reports to the International Labour Office pursuant to Article 22 of the Constitution include information about efforts made to extend social security protection to other branches.

As indicated above **Standard A4.5, paragraph 3** requires that a ratifying country “takes steps according to its national circumstances to provide the **complementary** social security protection referred to in paragraph 1 of this Standard **to all seafarers ordinarily resident in its territory.**” (emphasis added) In applying this provision, it is necessary to ensure that both nationals and non-nationals that are ordinarily resident in the country are covered. The resulting social security protection must be no less favourable than that enjoyed by shoreworkers resident in its territory.

Country example:

Social Security Protection of Filipino Seafarers

As one of the main seafarer supplying countries in Asia, the Philippines cover, under its general scheme for employees, all seafarers residing in the country, whether nationals or non-nationals, and whether they work on national flag ships or on ships flying the flag of another country. The social security rights of these seafarers stem from the Social Security Act of 1997 as well as, incidentally, from the Migrant Workers and Overseas Filipinos Act No. 8042 of 1995 and the Standard Employment Terms and Conditions Governing Employment of Filipino Seafarers On-Board Ocean-Going Vessels (SETC). Shipping companies and employment agencies are required to use the SETC or a collective bargaining agreement that meets or exceeds the minimum requirements established by the SETC. The social security protection provided by the SETC includes the obligation of employers to affiliate seafarers, unless otherwise provided in multilateral or bilateral agreements, to the Philippine Health Insurance Corporation, Social Security System (SSS) and Employees’ Compensation Scheme which provide for medical care, sickness benefits, maternity benefits, old-age benefits, employment injury benefits, disability benefits and survivors’ benefits.

2.3.2 Built-in flexibility

It is important to note that the MLC, 2006 does not oblige each country to provide comprehensive coverage in all branches outright. At the time of ratification, the starting point for each ratifying country is to give seafarers who are its nationals or are ordinarily resident (and for other seafarers, if the country’s system provides for coverage, that are working on its ships) access to social security conditions which are no less favourable than those already enjoyed by shoreworkers in the country (see paragraph 1 of Regulation 4.5). Provided however that this protection must at least meet the basic minimum requirements set out in paragraph 3 of Standard A4.5 referred to above.

This means that at the time of ratification, all countries must:

- provide social security protection, according to its national circumstances, in at least three of the nine branches;
- provide this protection at least to seafarers ordinarily resident in their territory;
- ensure that this protection is no less favourable than that enjoyed by their shoreworker residents.

In addition, all countries have an obligation to **progress towards greater protection**: to take steps to achieve progressively comprehensive social security protection for seafarers (Regulation 4.5, paragraph 2). While this is a firm international obligation, as with other social security Conventions, the pace at which countries must progress towards the ultimate goal is *flexible*. It is set according to their national circumstances and having regard also to the possibilities for progressing through international cooperation. As it is an obligation, however, a ratifying country could be requested for an explanation by the ILO bodies supervising the application of ratified Conventions if it was progressing more slowly than other countries with similar national circumstances, especially where appropriate bilateral or multilateral arrangements in the field of social security were available to it.

A country at an early stage of implementing a social security protection scheme could take advantage, where available, of the *flexibility* introduced by *paragraph 4 of Standard A4.5*. This provision provides for the possibility for *arrangements* to be developed through bilateral and multilateral agreements and through arrangements within regional economic integration organizations. *Additional flexibility* is provided as to the manner in which the country ensures protection. *Standard A4.5, paragraph 7* recognizes that this coverage could be provided in laws or regulations or in private schemes or in collective bargaining agreements or in a combination of these.

Standard A4.5, paragraph 9 stipulates that ratifying countries have to establish fair and effective procedures for the settlement of disputes (see also *Guideline B4.5, paragraphs 3 and 4*).

2.3.3 Responsibilities of flag States for non-national / non-resident seafarers

As noted earlier *Regulation 4.5* is primarily directed to countries with seafarers (and their dependants) ordinarily resident in the country. However all States have responsibilities for social security.

Each country is also given a certain responsibility with respect to seafarers who are not covered by its national system, as they are not ordinarily resident, but are working on ships that fly its flag, to the extent that they are not adequately covered by the national schemes of the country in which they are ordinarily resident or nationals (see *Standard A4.5, paragraphs 5 and 6* and *Guideline B4.5, paragraph 5*).

Standard A4.5 – Social security

5. Each Member's responsibilities with respect to seafarers on ships that fly its flag shall include those provided for by Regulations 4.1 and 4.2 and the related provisions of the Code, as well as those that are inherent in its general obligations under international law.
6. Each Member shall give consideration to the various ways in which comparable benefits will, in accordance with national law and practice, be provided to seafarers in the absence of adequate coverage in the branches referred to in paragraph 1 of this Standard.

Guideline B4.5 – Social security

5. Each Member which has national seafarers, non-national seafarers or both serving on ships that fly its flag should provide the social security protection in the Convention as applicable, and should periodically review the branches of social security protection in Standard A4.5, paragraph 1, with a view to identifying any additional branches appropriate for the seafarers concerned.

The **main responsibility** of a country as a *flag State* under Regulation 4.5 and Standard A4.5 is to ensure that the shipowners' social security protection obligations are respected for seafarers on their ships, particularly those set out in *Regulations 4.1 and 4.2* (see *Standard A4.5, paragraph 5*) which, respectively, concern the provision of medical care on board ship and ashore, and shipowner's liability for the costs of medical care and financial compensation of seafarers and their families, as the case may be, in case of sickness, injury or death occurring while they are serving under an employment agreement or arising from their employment.

Standard A4.5 – Social security

5. Each Member's responsibilities with respect to seafarers on ships that fly its flag shall include those provided for by Regulations 4.1 and 4.2 and the related provisions of the Code, as well as those that are inherent in its general obligations under international law. Source:

While exercising their jurisdiction over social matters, the MLC, 2006 also recommends that flag States verify that shipowners are meeting their social security obligations, and notably, that shipowners are making any contributions that may be required by other countries under their national social security systems, in respect of seafarers (*Guideline B4.5, paragraph 7*).

Guideline B4.5 – Social security

7. The Member whose flag the ship flies should, in effectively exercising its jurisdiction over social matters, satisfy itself that the shipowners' responsibilities concerning social security protection are met, including making the required contributions to social security schemes. Source:

It is also important to note that information on the "complementary" social security protection provided by shipowners must be included in the seafarers' employment agreements under *Standard A2.1 paragraph 4(h)*. This is a matter that a flag State must inspect and in the case of some ships also certify under the MLC, 2006.²⁰

²⁰ See *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*, ILO, Geneva, 2009, pp. 69-70.

Standard A2.1 – Seafarers’ employment agreements

4. Each Member shall adopt laws and regulations specifying the matters that are to be included in all seafarers’ employment agreements governed by its national law. Seafarers’ employment agreements shall in all cases contain the following particulars:

(...)

h) the health and social security protection benefits to be provided to the seafarer by the shipowner; Source:

Other responsibilities: Flag States also have the obligation to cooperate with seafarers’ States of residence to ensure the maintenance of their social security rights acquired during employment or in course of acquisition, through bilateral or multilateral agreements (*Standard A4.5, paragraph 8*). In addition, a flag State is responsible for verifying, where contributions are required by another country under its national social security system for seafarers, that these contributions are made by the seafarers working on board the ships that fly its flag.

Standard A4.5 – Social security

8. To the extent consistent with their national law and practice, Members shall cooperate, through bilateral or multilateral agreements or other arrangements, to ensure the maintenance of social security rights, provided through contributory or non-contributory schemes, which have been acquired, or are in the course of acquisition, by all seafarers regardless of residence.

The example of Norway

As a flag State, Norway has established an old-age insurance (pension) scheme which covers:

- all residents
- all nationals living in other countries
- all nationals of countries which are part to a multilateral agreement to which that Nordic country is also part, and
- all nationals of third countries residing in any other Nordic States, under another multilateral agreement

The pension legislation stipulates that all employees who are covered by the scheme, working on board ships flying that country’s flag, must contribute to the scheme, as well as their employer, the shipowner. The shipowner is responsible for deducting every employee’s contribution on board and for remitting its contribution and its employees’ contributions to the “national pension agency”.

Norway has also established an “international pension agency”, specifically responsible for the payment of pensions to pensioners residing in another country, which operates along side the “national pension agency”.

Source: <http://www.pts.no>

2.4 Implementing the MLC, 2006: Differing country situations

As mentioned earlier *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 in each country with respect to the provision of social security. This means that *Regulation 4.5* and *Standard A4.5* can be implemented in very different ways depending upon national conditions and coverage.

All countries that ratify the MLC, 2006 are required:

- to give consideration, as part of their obligation in connection with international cooperation (see also *Article I*), to ways in which comparable benefits could be provided to seafarers who do not have adequate social security coverage and to, possibly, arrange for the needed protection to be provided;
- to play an important role in promoting the protection of all seafarers and in cooperating to help ensure such protection; and
- to seek to achieve progressively comprehensive social security coverage for seafarers in all nine branches of social security.

2.4.1 Obligations for countries that already have social security systems in place

For countries that already have established national social security systems covering workers including seafarers ordinarily resident in the country concerned, and, where applicable, 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 required formality would be to specify which at least three of the nine branches of social security are covered under the MLC, 2006 and to seek to move

to progressively cover all nine branches, if these are not yet covered (Standard A4.5, paragraph 10 and Regulation 4.5, paragraph 2, respectively).

Standard A4.5 – Social security

10. Each Member shall at the time of ratification specify the branches for which protection is provided in accordance with paragraph 2 of this Standard. It shall subsequently notify the Director-General of the International Labour Office when it provides social security protection in respect of one or more other branches stated in paragraph 1 of this Standard. The Director-General shall maintain a register of this information and shall make it available to all interested parties.

Regulation 4.5 – Social security

2. Each Member undertakes to take steps, according to its national circumstances, individually and through international cooperation, to achieve progressively comprehensive social security protection for seafarers.

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, where applicable, their dependants, at a level at least equal to the protection enjoyed by shoreworkers (Regulation 4.5, paragraph 3).

General Trends

Over the last decades, many countries have extended coverage under their general national social security scheme to seafarers, who were previously excluded and/or covered by special schemes, often providing limited benefits. Not only can this extension ensure equality of treatment of seafarers and their families with shoreworkers in social security, and ensure, generally, that these workers and their dependants enjoy wider social security protection, but it may also contribute to simplifying and mainstreaming the administration of social security and facilitate the coordination of social security between countries.

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 are in course of acquisition (*Standard A4.5, paragraph 8*). Arrangements should also be made with shipowners and flag States concerned to ensure coverage and the due payment and collection of contributions, where applicable.

Multilateral agreement example

In the European Union (EU), member States are bound by common (community) rules (regulations) concerning certain matters. Some of these rules concern the application of social security schemes to employed persons and their families moving within the area and on the coordination of social security systems, which apply to all nationals of all countries that are part of the area, including seafarers, and their families and survivors. The main regulation in force at the moment in the EU is based on the principle of equality of treatment, according to which nationals of all the countries within the EU, as well as all persons including third country nationals, residing in those countries are equal in terms of the social security rights and obligations provided for in the national legislation, for all nine branches of social security. It applies to general and special contributory and non-contributory social security schemes and to employers and shipowners' liability schemes. Regulation (EC) No **883/2004** of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

The regulation also recognizes the principle of the aggregation of periods, pursuant to which periods of insurance, employment or residence in a country of the area are taken into account in all the other countries of the area. For seafarers working on board ships flying another flag than the flag of their country of residence, this means that the acquisition of the right to benefits in their State of residence must take account of periods of insurance or employment completed while under the jurisdiction of flag States which are also part of the area. Under the regulation, a person is subject to the legislation of only one member State, the legislation of the country where the worker pursues a gainful activity. Therefore, a person employed on board a ship flying the flag of a member State is subject to the legislation of that State, unless his/her earnings are paid by an undertaking in the state of residence, in which case the social security legislation of the state of residence would apply since the person paying the wages is considered as the employer. To be covered, a national or resident of one of the countries of the area needs to be insured (and pay contributions) in the State where the ship is flagged.

2.5 Minimum obligations for countries which have not yet established social security systems

As noted earlier under *Standard A4.5, paragraph 3*, a ratifying country is required to:

- *take steps* according to its national circumstances *to provide the complementary social security protection* referred to in paragraph 1 of this Standard to *all seafarers ordinarily resident* in its territory, and
- *ensure* that the resulting protection is *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 Convention as far as its obligation to provide social security to seafarers is concerned. Flexibility is provided for in that this obligation can be met:

(a) through various bilateral orl agreements or contribution-based systems (*Standard A4.5, paragraph 3*);

Standard A4.5 – Social security

3. (...) This responsibility could be satisfied, for example, through appropriate bilateral or multilateral agreements or contribution-based systems. The resulting protection shall be no less favourable than that enjoyed by shoreworkers resident in their territory.

(b) 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.

Standard A4.5 – Social security

7. The protection under Regulation 4.5, paragraph 1, may, as appropriate, be contained in laws or regulations, in private schemes or in collective bargaining agreements or in a combination of these.

Part 3: Appendices and other social security information resources

The Part contains five appendices with additional background information, tools and other resources, including model national legal provisions.

- **Appendix 1: Explanatory Note to the Regulations and Code of the Maritime Labour Convention, 2006**
- **Appendix 2: Regulation 4.5, Standard A4.5 and Guideline B4.5**
- **Appendix 3: Model national legal provisions** (Extracts from ILO Handbook *guidance on Implementing the Maritime Labour Convention, 2006-Model National Provisions*)
- **Appendix 4: Addendum to the Commentary on the recommended draft of the Maritime Labour Convention concerning Regulation 4.5: Social security** (Report PTMC/2004/4, ISBN 92-2-116774-7)
- **Appendix 5: Tables of ratification of ILO social security Conventions**

Appendix 1

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

1. This explanatory note, which does not form part of the Maritime Labour Convention, is intended as a general guide to the Convention.
2. The Convention comprises three different but related parts: the Articles, the Regulations and the Code.
3. The Articles and Regulations set out the core rights and principles and the basic obligations of Members ratifying the Convention. The Articles and Regulations can only be changed by the Conference in the framework of article 19 of the Constitution of the International Labour Organization (see Article XIV of the Convention).
4. The Code contains the details for the implementation of the Regulations. It comprises Part A (Mandatory standards) and Part B (Non-mandatory guidelines). The Code can be amended through the simplified procedure set out in Article XV of the Convention. Since the Code relates to detailed implementation, amendments to it must remain within the general scope of the Articles and Regulations.
5. The Regulations and the Code are organized into general areas 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.
6. Each Title contains groups of provisions relating to a particular right or principle (or enforcement measure in Title 5), with connected numbering. The first group in Title 1, for example, consists of Regulation 1.1, Standard A1.1 and Guideline B1.1 relating to minimum age.
7. The Convention has three underlying purposes:
 - (a) to lay down, in its Articles and Regulations, a firm set of rights and principles;
 - (b) to allow, through the Code, a considerable degree of flexibility in the way Members implement those rights and principles; and
 - (c) to ensure, through Title 5, that the rights and principles are properly complied with and enforced.
8. There are two main areas for flexibility in implementation: one is the possibility for a Member, where necessary (see Article VI, paragraph 3), to give effect to the detailed requirements of Part A of the Code through substantial equivalence (as defined in Article VI, paragraph 4).
9. The second area of flexibility in implementation is provided by formulating the mandatory requirements of many provisions in Part A in a more general way, thus leaving a wider scope for discretion as to the precise action to be provided for at the national level. In such cases, guidance on implementation is given in the non-mandatory Part B of the Code. In this way, Members which have ratified this Convention can ascertain the kind of action that might be expected of them under the corresponding general obligation in Part A, as well as action that would not necessarily be required. For example, Standard A4.1 requires all ships to provide prompt access to the necessary medicines for medical care on board ship (paragraph 1(b)) and to “carry a medicine chest” (paragraph 4(a)). The fulfilment in good faith of this latter obligation clearly means something more than simply having a medicine chest on board each ship. A more precise indication of what is involved is provided in the corresponding Guideline B4.1.1 (paragraph 4) so as to ensure that the contents of the chest are properly stored, used and maintained.
10. Members which have ratified this Convention are not bound by the guidance concerned and, as indicated in the provisions in Title 5 on port State control, inspections would deal only with the relevant requirements of this Convention (Articles, Regulations and the Standards in Part A). However, Members are required under paragraph 2 of Article VI to give due consideration to implementing their responsibilities under Part A of the Code in the manner provided for in Part B. If, having duly considered the relevant Guidelines, a Member decides to provide for different arrangements which ensure the proper storage, use and maintenance of the contents of the medicine chest, to take the example given above, as required by the Standard in Part A, then that is acceptable. On the other hand, by following the guidance provided in Part B, the Member concerned, as well as the ILO bodies responsible for reviewing implementation of international labour Conventions, can be sure without further consideration that the arrangements the Member has provided for are adequate to implement the responsibilities under Part A to which the Guideline relates.

Appendix 2

Regulation 4.5, Standard A4.5 and Guideline B4.5

Regulation 4.5 – Social security

Purpose: To ensure that measures are taken with a view to providing seafarers with access to social security protection

1. Each Member shall ensure that all seafarers and, to the extent provided for in its national law, their dependants have access to social security protection in accordance with the Code without prejudice however to any more favourable conditions referred to in paragraph 8 of article 19 of the Constitution.
2. Each Member undertakes to take steps, according to its national circumstances, individually and through international cooperation, to achieve progressively comprehensive social security protection for seafarers.
3. Each Member shall ensure that seafarers who are subject to its social security legislation, and, to the extent provided for in its national law, their dependants, are entitled to benefit from social security protection no less favourable than that enjoyed by shoreworkers.

Standard A4.5 – Social security

1. The branches to be considered with a view to achieving progressively comprehensive social security protection under Regulation 4.5 are: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit, complementing the protection provided for under Regulations 4.1, on medical care, and 4.2, on shipowners' liability, and under other titles of this Convention.
2. At the time of ratification, the protection to be provided by each Member in accordance with Regulation 4.5, paragraph 1, shall include at least three of the nine branches listed in paragraph 1 of this Standard.
3. Each Member shall take steps according to its national circumstances to provide the complementary social security protection referred to in paragraph 1 of this Standard to all seafarers ordinarily resident in its territory. This responsibility could be satisfied, for example, through appropriate bilateral or multilateral agreements or contribution-based systems. The resulting protection shall be no less favourable than that enjoyed by shoreworkers resident in their territory.
4. Notwithstanding the attribution of responsibilities in paragraph 3 of this Standard, Members may determine, through bilateral and multilateral agreements and through provisions adopted in the framework of regional economic integration organizations, other rules concerning the social security legislation to which seafarers are subject.
5. Each Member's responsibilities with respect to seafarers on ships that fly its flag shall include those provided for by Regulations 4.1 and 4.2 and the related provisions of the Code, as well as those that are inherent in its general obligations under international law.
6. Each Member shall give consideration to the various ways in which comparable benefits will, in accordance with national law and practice, be provided to seafarers in the absence of adequate coverage in the branches referred to in paragraph 1 of this Standard.
7. The protection under Regulation 4.5, paragraph 1, may, as appropriate, be contained in laws or regulations, in private schemes or in collective bargaining agreements or in a combination of these.
8. To the extent consistent with their national law and practice, Members shall cooperate, through bilateral or multilateral agreements or other arrangements, to ensure the maintenance of social security rights, provided through contributory or non-contributory schemes, which have been acquired, or are in the course of acquisition, by all seafarers regardless of residence.
9. Each Member shall establish fair and effective procedures for the settlement of disputes.
10. Each Member shall at the time of ratification specify the branches for which protection is provided in accordance with paragraph 2 of this Standard. It shall subsequently notify the Director-General of the International Labour Office when it provides social security protection in respect of one or more other branches stated in paragraph 1 of this Standard. The Director-General shall maintain a register of this information and shall make it available to all interested parties.
11. The reports to the International Labour Office pursuant to article 22 of the Constitution, shall also include information regarding steps taken in accordance with Regulation 4.5, paragraph 2, to extend protection to other branches.

Guideline B4.5 – Social security

1. The protection to be provided at the time of ratification in accordance with Standard A4.5, paragraph 2, should at least include the branches of medical care, sickness benefit and employment injury benefit.
2. In the circumstances referred to in Standard A4.5, paragraph 6, comparable benefits may be provided through insurance, bilateral and multilateral agreements or other effective means, taking into consideration the provisions of relevant collective bargaining agreements. Where such measures are adopted, seafarers covered by such measures should be advised of the means by which the various branches of social security protection will be provided.
3. Where seafarers are subject to more than one national legislation covering social security, the Members concerned should cooperate in order to determine by mutual agreement which legislation is to apply, taking into account such factors as the type and level of protection under the respective legislations which is more favourable to the seafarer concerned as well as the seafarer's preference.
4. The procedures to be established under Standard A4.5, paragraph 9, should be designed to cover all disputes relevant to the claims of the seafarers concerned, irrespective of the manner in which the coverage is provided.
5. Each Member which has national seafarers, non-national seafarers or both serving on ships that fly its flag should provide the social security protection in the Convention as applicable, and should periodically review the branches of social security protection in Standard A4.5, paragraph 1, with a view to identifying any additional branches appropriate for the seafarers concerned.
6. The seafarers' employment agreement should identify the means by which the various branches of social security protection will be provided to the seafarer by the shipowner as well as any other relevant information at the disposal of the shipowner, such as statutory deductions from the seafarers' wages and shipowners' contributions which may be made in accordance with the requirements of identified authorized bodies pursuant to relevant national social security schemes.
7. The Member whose flag the ship flies should, in effectively exercising its jurisdiction over social matters, satisfy itself that the shipowners' responsibilities concerning social security protection are met, including making the required contributions to social security schemes.

Appendix 3

Model national legal provisions

Extracts¹ from the ILO Handbook guidance on Implementing the Maritime Labour Convention, 2006-Model National Provisions

Introduction

This Handbook contains a model for legal provisions that implement the Maritime Labour Convention, 2006 (MLC, 2006).² This model closely follows the provisions of the Convention. It is not a proposal for a national law (although with some adjustments it could be used as such), but, rather, it is intended as an aid, in whole or in part, for national legislators and legislative counsel in drafting the necessary legal texts to implement the MLC, 2006.

It should be noted that Article IV, paragraph 5 of the MLC, 2006, provides that:

5. *Each Member shall ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights set out in the preceding paragraphs of this Article are fully implemented in accordance with the requirements of this Convention. Unless specified otherwise in the Convention, **such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice.***

The present model has been prepared to provide guidance on the drafting of national provisions implementing the MLC, 2006, which **might** be included in legislation. It would be up to each country to decide whether a particular 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 orders or 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 such as collective bargaining agreements. Or perhaps, where an MLC, 2006 provision essentially relates to action to be taken by the governments themselves, through administrative instructions. In some cases, a country might decide that no further legal measures need to be devised because, for example, a seafarer's right under the Convention is already adequately covered by the general law applied by the courts. **These model provisions cover all subjects in the MLC, 2006, but this is only for the sake of completeness in implementing that Convention: it should not be understood as necessarily recommending that a single law or legislation is the most appropriate way of dealing with a particular subject, especially as in each country the situation will differ depending on its legal system and other factors.** Account will also need to be taken of the legal terminology used, which again differs from country to country, as well as of the status of international agreements (treaties or conventions), such as the MLC, 2006 under the Constitution of the country concerned.

In addition, in some cases a country may already have significant legislation in place, for example, under a general shipping law, addressing a range of maritime labour standards, including matters such as minimum age, social security and occupational safety and health, and enforcement of international maritime conventions through ship inspection and certification, perhaps because of ratification of earlier conventions adopted by the International Labour Organization (ILO) or other maritime conventions adopted by the International Maritime Organization (IMO). In that case there may only need to be minor adjustments to update provisions or fill gaps. In other cases there may be countries with little or even no legislation in place. In that case a single law or other instrument may be a preferable approach. In every case a national legislative review (gap analysis) should be undertaken to ascertain the most appropriate approach. Reference should also be made to the ILO form³ for drawing up reports to be made pursuant to Article 22 of the ILO Constitution, which indicates the documentation that would be expected by the ILO supervisory system after ratification.

[...]

How to use this Handbook

The following provides, on the **left-hand page** a commentary explaining the purpose of the proposed text on each issue and noting particular points to be considered. The facing **right hand page** sets out model provisions that could be adapted by legislative drafters to fit the national circumstances. The **footnotes** are not intended for adoption in national law, but are there only to indicate the specific requirements in the MLC, 2006 that are addressed by the provisions. The information in the footnotes will however, also be useful for administrations when developing their national Declaration of Maritime Labour Compliance, Part I (DMLC, Part I: see MLC, 2006, Appendix A5-II), which is to be carried on board

¹ The extract has been edited for purposes of this *Handbook on social security*.

² To be found at: http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_090250/lang--en/index.htm.

³ To be found at: http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_145296/lang--en/index.htm.

the ships that are in the category that must be certified. It would also be useful for governments when completing the *Article 22 report* to the ILO (see **Appendix** to this handbook).

Text in the model provisions that is in **bold type** is taken from the mandatory Regulations and Code, Part A (Standards) of the Convention. Text in ordinary type indicates text that is not in the Convention but is suggested as obviously necessary or useful to enable the Convention to be properly implemented. Text in *italics* is taken from the Code, Part B, the Guidelines to the MLC, 2006, which in accordance with Article VI, paragraph 2 of the Convention, must be given due consideration when drafting the national provisions implementing the mandatory provisions of the Convention. Text located between square brackets [...] indicates changes or additions that need to be made to address particular national terminology, situations or determinations (for example to decide the period to be considered as “night” in the context of seafarers under 18) or the name of a competent authority or ministry. Text that may not be applicable to a particular country because of its national situation, for example, has also been placed inside square brackets [].

In several sections there is reference to “**Schedules**”. These model provisions propose nine schedules (Schedules I-IX)⁴ as listed at the end of this handbook. The content of these schedules is not set out. This is suggested as one legislative approach to address the need for subsidiary provisions or measures that need to be addressed later through consultations in each country or otherwise determined, perhaps through other national regulations or law. In some cases they contain other country specific information.

[...]

Regulation 4.5; Code Standard A4.5 and Guideline B4.5

Commentary

Social security

Purpose: To ensure that measures are taken with a view to providing seafarers with access to social security protection

The majority of the obligations under the MLC, 2006, Regulation 4.5 and the Code, which deal with social security, are directed to the country in which the seafarer is ordinarily resident. There are also some specific obligations directed to flag States, essentially confirming the complementary obligations under Regulation 4.1 and 4.2 and other provisions in the MLC, 2006 related to social protection. There is also a more general obligation on all countries to cooperate to try to ensure that seafarers are not left without social security protection when working outside their country of residence. The legal form and system for implementing these requirements is flexible and may take the form of laws or regulations or private schemes or collective bargaining agreements or a combination of these. It can also involve bilateral or multilateral agreements to ensure maintenance of coverage under contributory or non-contributory systems or involve provisions adopted within the framework of regional economic integration organizations. The details of the coverage in question will usually be found in the national laws or regulations relating to the particular social security benefits. However some provisions are also required in one of the above noted formats, in order to clarify the general right to protection provided by the country of residence. The main requirements are:

- Ratification of the MLC, 2006 must not diminish the level of social security protection already existing in the country concerned;
- The level of obligations relating to social security protection in any given country will depend upon the national circumstances of that country and the availability of international cooperation;
- Each country must take steps to achieve progressively comprehensive social security for seafarers;
- At a minimum, steps need to be taken, in accordance with national circumstances, to ensure that all seafarers ordinarily resident (and their dependants, to the extent provided by national law) in the territory of the country are entitled to social security protection in the branches of social security notified by the country concerned to the Director-General of the International Labour Office, which must include at least three of the following nine branches: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit;
- Social security protection must be no less favourable than that enjoyed by shoreworkers resident in the country's territory;
- Consideration must also be given to ways in which, in accordance with national law and practice in the country, comparable benefits will be provided to seafarers in the absence of adequate coverage in the branches specified;

⁴ Relevant to social security, only one schedule (Schedule VI) in the Model National Provisions is suggested.

- Countries must cooperate with each other to ensure the maintenance of acquired social security rights or rights in the course of acquisition.

Section 4.5 Social security

1. Seafarers and their **dependants**⁵ are covered by the social security scheme [set out in to this [insert name of instrument]] in accordance with the below paragraphs, **with this coverage being progressively extended and increased from time to time, by decisions of the competent authority, until comprehensive social security protection is achieved.**⁶
2. **This scheme consists of [three or more as specified below] of the following branches of social security protection, which complement the protection provided for under [Sections 4.1 and 4.2 of the Model national provisions]:**
 - (a) *medical care,*
 - (b) *sickness benefit,*
 - (c) *unemployment benefit,*
 - (d) *old-age benefit,*
 - (e) *employment injury benefit,*
 - (f) *family benefit,*
 - (g) *maternity benefit,*
 - (h) *invalidity benefit,*
 - (i) *survivors' benefit.*⁷
3. As from the entry into force of this [insert name of instrument]:
 - (a) **all seafarers who are ordinarily resident in [insert name of country] shall enjoy the protection set out [in schedule VI] in the branches of social security specified in paragraph 2 under [insert (a), (b), (c), ... according to the branches covered in the country at the time of entry into force of the instrument⁸];**
 - (b) [subparagraph (a) shall also apply to seafarers who are nationals of [insert name of country]⁹];
 - (c) [subparagraph (a) shall also apply to seafarers who are nationals of or ordinarily resident in countries designated by the competent authority;¹⁰ *the seafarers concerned will be advised of the means by which the various branches of social security protection will be provided,*¹¹]
 - (d) seafarers shall also enjoy any social security benefits that **are inherent in the general obligations of [insert name of country] under international law** as determined by the competent authority;¹²
 - (e) seafarers under [(a) to (c)] shall also enjoy **any more favourable conditions** to which seafarers in their situation were entitled under the law of [insert name of country] prior to the entry into force of this [insert name of instrument];¹³
 - (f) the **dependants** of the seafarers referred to in this paragraph will also be covered by the social security protection enjoyed by the seafarers concerned, **to the extent provided for in the law of [name of country]** as determined by the competent authority.¹⁴

⁵ Regulation 4.5 para 1. Paragraph 1 describes the *full* coverage by social security protection that must be made progressively available to seafarers *as and when national circumstances permit*. The *actual* (more limited) coverage at the time of entry into force of the new instrument must be specified in paragraph 2 below (paragraph 3(f) would specify the extent to which *dependants* are covered) or the coverage can be left to the competent authority to determine in accordance with national circumstances.

⁶ See Regulation 4.5, para. 2.

⁷ See Standard A4.5 para. 1.

⁸ At the time of ratification, the protection to be provided must include at least three of the nine branches. Guideline B4.5, para. 1 recommends that these branches be medical care, sickness benefit and employment injury benefit. The list of branches should also include any branches of social security covering other (non-seafarer) workers ordinarily resident in the country – see Regulation 4.5 para. 3 and Standard A4.5, para. 3.

⁹ See Guideline B4.5, para. 5.

¹⁰ See Standard A4.5, para. 6, Guideline B4.5, paras 2 and 5.

¹¹ See Guideline B.4.5, para. 2.

¹² See Standard A4.5, para. 5.

¹³ See Regulation 4.5, para. 1.

¹⁴ See Regulation 4.5, para. 1.

4. In order to achieve progressively comprehensive social security protection for all seafarers¹⁵ under the jurisdiction of [insert name of country], the competent authority shall periodically review¹⁶ the social security protection available to seafarers in accordance with paragraph 3, giving consideration to any subsequent improvement **in the national circumstances** as well as to the prospects for making use, where possible and appropriate, of **bilateral or multilateral agreements, contribution-based systems¹⁷, insurance or other effective means¹⁸** for increasing or extending the protection **or providing comparable benefits to seafarers in the absence of adequate coverage.**¹⁹
5. **The competent authority shall cooperate, through bilateral or multilateral agreements or other arrangements, to ensure the maintenance of social security rights, provided through contributory or non-contributory schemes, which have been acquired, or are in the course of acquisition, by all seafarers regardless of residence.**²⁰ *Where seafarers are subject to more than one national legislation covering social security, the competent authority shall cooperate in order to determine by mutual agreement which legislation is to apply, taking into account such factors as the type and level of protection under the respective legislations which is more favourable to the seafarer concerned as well as the seafarer's preference.*²¹
6. **The competent authority shall establish fair and effective procedures for the settlement of disputes²²** to cover all disputes *relevant to the claims of the seafarers concerned, irrespective of the manner in which the coverage is provided.*²³

Schedule VI Social Security scheme

Note: The Model National Provisions contain in connection with flag State responsibilities the following provisions with respect to regulation of seafarers' employment agreements under Standard A2.1 of the MLC, 2006:

Section 2.1 Seafarers' employment agreements

6. Seafarer's employment agreements shall in all cases contain the following particulars:

[...]

(h) **the health and social security protection benefits to be provided to the seafarer by the shipowner, including information on any mandatory social security contributions;**

[...]

¹⁵ Regulation 4.5, para. 2.

¹⁶ Guideline B4.5, para. 5.

¹⁷ Standard A4.5, para. 3.

¹⁸ Guideline B4.5 para. 2.

¹⁹ Standard A4.5 para. 6.

²⁰ Standard A4.5 para. 8.

²¹ Guideline B4.5 para. 3.

²² Standard A4.5 para. 9.

²³ Guideline B4.5 para. 4.

Appendix 4

Addendum to the Commentary on the recommended draft of the Maritime Labour Convention concerning Regulation 4.5: Social security (Report PTMC/2004/4)

1. This addendum, concerning *Regulation 4.5*, “Social security”, of the recommended draft of the maritime labour Convention, should be read in the light of comment 34 of the Commentary on the recommended draft.¹ It will be recalled that agreement for specific provisions on the subject could not be reached at the last meeting in Nantes of the High-level Tripartite Working Group on Maritime Labour Standards. At the suggestion of the Officers of the High-level Group, the Office consulted experts from Governments and Shipowner and Seafarer representatives in April this year and has inserted, in the recommended draft, provisions which have achieved a high measure of tripartite agreement.
2. The provisions are under the proposed *heading* “Social security”, recommended by the experts, who pointed out that the term “social protection” was normally used in a much wider sense. It is recommended that the term social security rather than social security protection be used to describe the protection offered under Regulation 4.5. It should be noted at the same time that some of the other provisions in Title 4 of the Convention are also considered as relating to aspects of social security by some Governments. The terms used in the Convention would not of course affect the terminology used in ratifying countries.
3. The proposed Regulation clarifies that the obligations of ratifying Members relate to the matters or branches identified in the Code with respect to seafarers and their dependants that are subject to their social security legislation. It also reminds Members of the overriding obligation under the ILO Constitution that the adoption and the ratification of international labour Conventions do not affect other provisions ensuring more favourable conditions for workers (*paragraph 1*). *Paragraph 2* would look forward to the progressive achievement of comprehensive social security protection for seafarers (and, to the extent provided for in national laws, their dependants), who would (*paragraph 3*) in any event be entitled to protection not less favourable than shoreworkers.
4. Despite the history of some difficulty with respect to this topic a high degree of agreement was achieved among the experts consulted. This was largely due to the fact that they started their work by adopting a matrix indicating the branches of protection to be covered and identifying the entities that should be responsible for providing the various aspects of coverage. The branches, identified in *Standard A4.5, paragraph 1*, are the nine branches that form the subject of the Social Security (Minimum Standards) Convention, 1952 (No. 102), in so far as they complement the shorter term protection offered by shipowners that is already provided for under Regulations 4.1 and 4.2 of the maritime labour Convention (as well as other provisions of the Convention, such as those relating to the seafarers’ employment agreement, repatriation and the shipwreck indemnity). Thus, the Title 4 protection would begin with the short-term protection, which is provided by shipowners and regulated by flag States, relating to medical care and sick pay. The protection would continue where applicable into the medium term in accordance with provisions such as paragraph 3 of Standard A4.2 on sick pay. This basic protection would include responsibility for occupational illness and injury in the short term, and also in the long term in the sense that the shipowner is to obtain insurance for death or long-term disability in accordance with paragraph 1(b) of Standard A4.2. Although this latter paragraph has been placed inside square [] brackets as its precise terms are controversial, its general substance was considered an essential part of the protection to be provided under the Convention.
5. At the time of ratification, Members would be required to provide protection in at least three of the branches (*paragraph 2*). This is drawn from the requirements of Convention No. 102 and should not be an onerous requirement, particularly as *paragraph 1* of *Guideline B4.5* recommends that those branches should be medical care, sickness benefit and employment injury benefit, already provided for by shipowners to the extent indicated above.
6. *Paragraph 3* of *Standard A4.5* refers to the obligation of the State in which the seafarer is ordinarily resident to take steps to provide “complementary protection” (to that already to be provided by shipowners) in the branches selected. While it must be at least equivalent to the protection enjoyed by shoreworkers in the country concerned, it may be provided through various mechanisms such as international agreements or contribution-based systems. In the latter case, the flag State should be responsible for ensuring that the contributions are paid (*paragraph 7* of *Guideline B4.5*).
7. *Paragraph 4* of the Standard refers to the obligations of the flag State with respect to:

¹ Adoption of an instrument to consolidate maritime labour standards, Report I (1A), International Labour Conference, 94th (Maritime) Session, ILO, Geneva, 2006, pp. 45-47.

Ensuring matters under Regulations 4.1 and 4.2 and also to the responsibilities inherent in its general obligations under international law, which would include in particular the obligation to exercise jurisdiction and control in social matters (see comment 1 of the Commentary on the recommended draft). The Seafarer experts at the meeting referred to in point 1 above considered that this paragraph did not adequately cover the responsibilities of the flag State with respect to social security. One Government expert also considered that the paragraph could be developed. This paragraph in the Standard is complemented by *paragraph 5 of Guideline B4.5*, which was proposed by the Seafarer experts but did not obtain agreement. The proposed Guideline recommends that each flag State “should seek to take steps ... according to its national circumstances and as far as practicable” to ensure that all seafarers serving on its ships are able to benefit from the same branches of social security protection as seafarers resident and insured on its territory.

8. *Paragraph 5* of the Standard addresses the important question of how Members’ longer term (not 4.1, 4.2) social security obligations towards seafarers are to be implemented in the absence of protection from the entities normally responsible for providing it. For example, the State in which the seafarer is ordinarily resident may not have ratified the Convention or it may not be able to provide protection in the branch concerned. This is a serious gap in the social security protection coverage for seafarers and can undermine the idea of a level playing field. In such cases, the country of residence and/or the flag State, as the case may be, must “give consideration” to the various ways in which comparable benefits will be provided in accordance with national law and practice. Methods for providing comparable benefits are suggested in *paragraph 2 of Guideline B4.5*. This provision means that Members should seriously consider ways of providing benefits that are comparable to those that are missing and to strive to provide such benefits to the extent that this is feasible and in accordance with their national law and practice.
9. Considerable flexibility is also given to the means by which Members will implement their social security obligations, in general. In particular, *paragraph 6* of the Standard would allow them to take account of collective bargaining agreements and even private schemes. To the extent that their obligations are satisfied by appropriate agreements or schemes, there would be no requirement for legislation or other state measures.
10. *Paragraph 7* of the Standard deals with the question (covered by Convention No. 102, for example) of the “seamless” maintenance of social security rights of seafarers, who will often serve under many shipowners and under many different flags in the course of their career.
11. *Paragraph 8* of the Standard, on fair and effective dispute settlement procedures, is complemented by *paragraph 3 and 4 of Guideline B4.5*, which emphasize that the procedures developed by each Member (with respect to the social security protection for which it is responsible) should be able to deal with all disputes concerning the coverage concerned, irrespective of the mechanism for providing the coverage (private or public).
12. *Paragraphs 9 and 10* of the Standard are usual provisions for international labour Conventions.
13. The question of conflict of laws is dealt with in *paragraph 3 of Guideline B4.5*, which requires Members whose legislation may apply, to cooperate in determining which legislation should apply, with the more favourable type and level of protection as well as seafarer preference accorded a primary role in the choice of law.
14. *Paragraph 6 of Guideline B4.5* addresses the treatment of the social security aspects in the seafarers’ employment agreement. It would therefore need to be coordinated with the provisions of Title 2 of the recommended draft Convention, in connection with paragraph 4(h) of Standard A2.1, which relates to the same subject (see comment 20, point 7, and the relevant provision in square [] brackets). Paragraph 6 represents the greatest consensus that could be reached on an initial proposal by the Seafarer experts, which the Shipowner experts considered to be administratively burdensome.

Appendix 5

Table of ratifications of Social Security (Minimum Standards) Convention, 1952 (No. 102)

| Country | Ratification year | II | III | IV | V | VI | VII | VIII | IX | X |
|--|-------------------|--------------|------------------|----------------------|-----------------|---------------------------|----------------|-------------------|--------------------|-------------------|
| | | Medical care | Sickness benefit | Unemployment benefit | Old-age benefit | Employment injury benefit | Family benefit | Maternity benefit | Invalidity benefit | Survivors benefit |
| Albania | 2006 | x | x | x | x | x | | x | x | x |
| Austria | 1969 | x | | x | x | | x | x | | |
| Barbados | 1972 | | x | | x | x | | | x | x |
| Belgium | 1959 | x | x | x | x | x | x | x | x | x |
| Bolivia, Plurinational State of | 1977 | x | x | | x | x | x | x | x | x |
| Bosnia and Herzegovina | 1993* | x | x | x | x | x | | x | | x |
| Brazil | 2009 | x | x | x | x | x | x | x | x | x |
| Bulgaria | 2008 | x | x | | x | x | x | x | | x |
| Congo, Democratic Republic of the | 1987 | | | | x | | x | | x | x |
| Costa Rica | 1972 | x | | | x | x | x | x | x | x |
| Croatia | 1991 | x | x | x | x | x | | x | | x |
| Cyprus | 1991 | | x | x | x | x | | | x | x |
| Czech Republic | 1993 | x | x | | x | | x | x | x | x |
| Denmark | 1955 | x | | x | x | x | | | x | |
| Ecuador | 1974 | | x | | x | x | | | x | x |
| France | 1974 | x | | x | x | x | x | x | x | |
| Germany | 1958 | x | x | x | x | x | x | x | x | x |
| Greece | 1955 | x | x | x | x | x | | x | x | x |
| Iceland | 1961 | | | | x | | x | | x | |
| Ireland | 1968 | | x | x | | | | | | x |
| Israel | 1955 | | | | x | x | | | | x |
| Italy | 1956 | | | | x | | x | x | | |
| Japan | 1976 | | x | x | x | x | | | | |
| Libyan Arab Jamahiriya | 1975 | x | x | x | x | x | x | x | x | x |
| Luxembourg | 1964 | x | x | x | x | x | x | x | x | x |
| Macedonia, The former Yugoslav Republic of | 1991 | x | x | x | x | x | | x | | x |
| Mauritania | 1968 | | | | x | x | x | | x | x |
| Mexico | 1961 | x | x | | x | x | | x | x | x |
| Montenegro | 2006 | x | x | x | x | x | | x | | x |
| Netherlands | 1962 | x | x | x | x | x | x | x | x | x |
| Niger | 1966 | | | | x | x | x | x | | |
| Norway | 1954 | x | x | x | x | x | x | | | |
| Peru | 1961 | x | x | | x | | | x | x | |

| Country | Ratification year | II | III | IV | V | VI | VII | VIII | IX | X |
|--------------------------------------|-------------------|--------------|------------------|----------------------|-----------------|---------------------------|----------------|-------------------|--------------------|-------------------|
| | | Medical care | Sickness benefit | Unemployment benefit | Old-age benefit | Employment injury benefit | Family benefit | Maternity benefit | Invalidity benefit | Survivors benefit |
| Poland | 2003 | x | | | x | | x | x | | x |
| Portugal | 1994 | x | x | x | x | x | x | x | x | x |
| Romania | 2009 | x | x | | x | | x | x | | |
| Senegal | 1962 | | | | | x | x | x | | |
| Serbia | 2000 | x | x | x | x | x | | x | | x |
| Slovakia | 1993 | x | x | | x | | x | x | x | x |
| Slovenia | 1992 | x | x | x | x | x | | x | | x |
| Spain | 1988 | x | x | x | | x | | | | |
| Sweden | 1953 | x | x | x | | x | x | x | | |
| Switzerland | 1977 | | | | x | x | x | | x | x |
| Turkey | 1975 | x | x | | x | x | | x | x | x |
| United Kingdom | 1954 | x | x | x | x | | x | | | x |
| Uruguay | 2010 | x | | x | | | x | x | | |
| Venezuela, Bolivarian Republic of | 1982 | x | x | | x | x | | x | x | x |
| Total number of ratifications | 47 | | | | | | | | | |

* Voluntary declaration to Art. 3, para. 1 of Convention No. 102 (temporary exceptions of the conditions of the scope).
Source: ILOLEX database.

For an exhaustive list of the status of ratifications of other social security Conventions (i.e. Conventions Nos 118, 121, 128, 130, 157, 168 and 183) as well as those applying specifically to seafarers (i.e. Conventions Nos. 8, 55, 56, 70, 71 and 165), please refer to the following internet address: [www.ilo.org/normes].

