

# Introduction to the MLC, 2006

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Workshop on the ILO MLC, 2006  
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# The International Labour Organization

# International Labour Organization

- United Nations specialised Agency
- Founded in 1919
- 185 Member States
- Tripartite structure

# International Labour Organization

## Mission

- To promote social justice
- To promote decent work for women and men

# International Labour Organization

- Objectives
  - Promote and realize standards and fundamental principles and rights at work
  - Create greater opportunities for women and men to decent employment and income
  - Enhance the coverage and effectiveness of social protection for all
  - Strengthen tripartism and social dialogue

# International Labour Standards

- Conventions and Recommendations
  - 189 Conventions
  - 202 Recommendations
- Adoption
  - Tripartite process
  - Use
- Supervision

## Background and rationale

# Why a new convention?

- In the late 1990s in response to the phenomenon of “globalization” the ILO began to review all of its standard setting and supervisory activity to better ensure that its standards are designed to achieve universal acceptance and that issues such as effective enforcement and compliance are explicitly addressed
- In 2001 the Shipowners and Seafarers in the Joint Maritime Commission (JMC), jointly proposed a new approach and preferred solutions (the “Geneva Accord”) for the existing maritime labour standards in order to better achieve two goals: seafarers’ right to “decent work” and help ensure fair competition (a ‘level playing field”) for shipowners
- Many reasons for change including changes in the structure of the industry, and concerns about the harmful impact of substandard operators and conditions in the shipping industry, see for e.g.. 2000 ICONS report Ships, Slaves and Competition



## Entry into force

# Status -Entry into force

## Article VIII

Convention requires 30 ratifications from Members representing 33% of world gross tonnage of ships

- Convention enters into force 12 months after the 30/33 formula is met
- Convention entered into force on 20 August 2013 for the first 30 Members

# Status- Entry into force

- The Convention entered into force on 20 August 2013 **for the first 30 Members** with registered ratifications
- The "first 30" ( \*in order of ratification) **Liberia, Marshall Islands, Bahamas, Panama, Norway, Bosnia and Herzegovina, Spain, Croatia, Bulgaria, Canada, St Vincent and the Grenadines, Switzerland, Benin, Singapore, Denmark, Antigua and Barbuda, Latvia, Luxembourg, Kiribati, Netherlands, Australia, Tuvalu, St Kitts and Nevis, Togo, Poland, Palau, Sweden, Cyprus, Russian Federation, Philippines**  
(combined world GT of nearly 60%)

# Status- Entry into force

**May 2015** –Tonnage element for entry into force exceeded in 2009 ( now 80 % of world **GT of ships covered**) with 36 more ratifications since August 20, 2012 and more expected 36 more ratifications ( total 66 ratifications):

- 35 registered - Morocco, Finland, Greece, Malta, France, Serbia, Vietnam, Nigeria, Barbados, South Africa, Hungary, Japan, United Kingdom, Germany, Ghana, Malaysia, Lithuania, Belgium, Italy, Samoa, Nicaragua, Seychelles, Korea, Congo, Argentina, Mauritius, Iran, Belize, Ireland, Kenya, Gabon, Maldives, Fiji, Bangladesh, Montenegro
- 1 registrations pending info on Standard A4.5 para 10 Lebanon, NB Standard A4.5 para 10- (social security info) is posted online

<[http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312331](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO::P11300_INSTRUMENT_ID:312331)>

## Key concepts

# MLC – The “fourth pillar”

Consolidation of existing maritime instruments

For seafarers: comprehensive & effective protection of working and living conditions

For governments & shipowners: a level playing field & flexibility on details



# MLC – a comprehensive convention

MLC, 2006 is **comprehensive**

- “consolidates” almost\* all of the existing 37 Conventions & related Recommendations - “a one stop shop”

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

# Structure

- 1<sup>st</sup> level – **Articles** (core rights)
- 2<sup>nd</sup> level – **Regulations** (basic obligations)
- 3<sup>rd</sup> level – Code (Parts A and B)
  - mandatory **Standards** (“shall”)
  - non-mandatory **Guidelines** (“should”)





# The Articles of the Maritime Labour Convention, 2006

Example of vertical integration (extracts)

- **Regulation 1.2 – Medical certificate**  
Purpose: To ensure that all seafarers are medically fit to perform their duties at sea  
1. Seafarers shall not work on a ship unless they are certified as medically fit to perform their duties.
- **Standard A1.2 – Medical certificate**  
1. The competent authority shall require that, prior to beginning work on a ship, seafarers hold a valid medical certificate attesting ...
- **Guideline B1.2 – Medical certificate**  
**Guideline B1.2.1 – International Guidelines**  
1. The competent authority ... should follow...

## Exercise 1: Understanding MLC, 2006 structure (vertical integration)

Write down the missing information on the handout where you see \_\_\_\_

**Guideline B2.4 “*Entitlement to leave*”** appears in Title \_\_\_\_ of the MLC, 2006. It is part of the Code for the implementation of Regulation \_\_\_\_, and will be found immediately after Standard \_\_\_\_.

## Part B of the Code

- Guidelines must be given due consideration
- Not simple recommendations
- They contain the level of detail which would make the MLC over prescriptive



# Scope of application



- Drafters intention for comprehensive coverage
- MLC applies to **all** seafarers (Art.II(2))
- MLC applies to **all** ships (Art.II(4))
- Cases of doubt (Art.II(3),(5))

# Definition of “seafarer”



- **Any** person who is employed or engaged or works in **any** capacity on board a ship
- Resolution VII gives guidance in cases of doubt

## Exercise 2: Who is a seafarer?

Discuss at your table and assign a person to indicate your group's answers

Assuming that the ship is covered, are these workers seafarers? – Yes // No // Maybe

1. The master
2. The ship doctor
3. A port pilot
4. Hotel waiter in passenger restaurant
5. Cook
6. Entertainer (pianist, magician, dancer)
7. Armed guards
8. Cadets
9. Repair crew

# The specificity of cruise industry

- Hybrids between ships and 5-star hotels
- Hotel staff far outnumber crew members
- Positions include retail shop, fitness, entertainment, food, photography, beauty, child care, shore excursions, medical

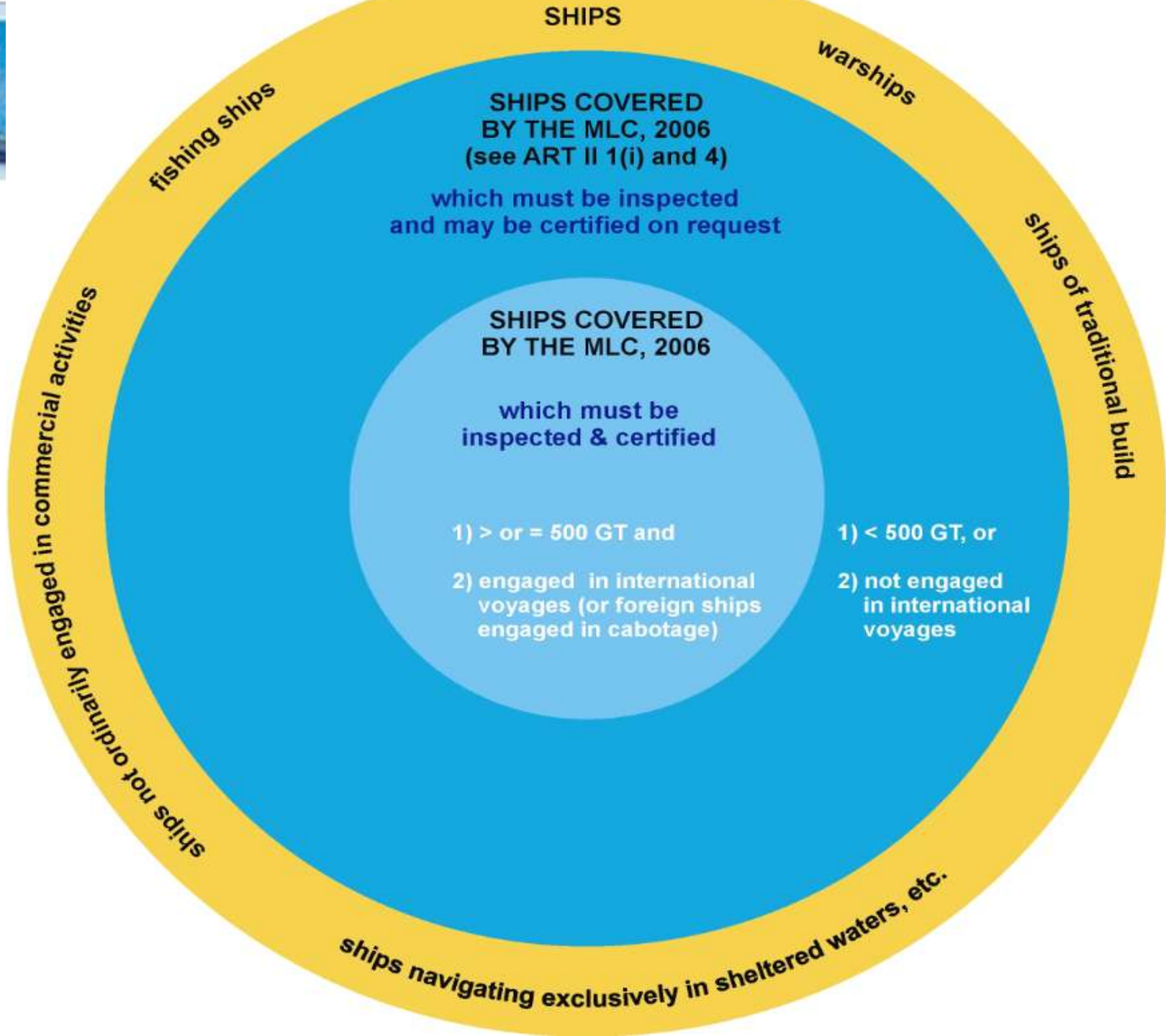


# Definition of “ship”

- Any ship other than those navigating exclusively in inland waters, sheltered waters or port areas
- Ordinarily engaged in commercial activities
- Excluding fishing vessels, warships, junks







## Definition of “shipowner”

- Owner of the ship, or
- Organization or person responsible for ship operation (e.g. manager, agent, bareboat charterer)



## The need for flexibility

- Built-in flexibility precondition for widespread ratification
- Different forms of flexibility
  - General exemption
  - Substantial equivalence
  - Exceptions in Title 3
  - Use of flexible terms



# Importance of “national determinations

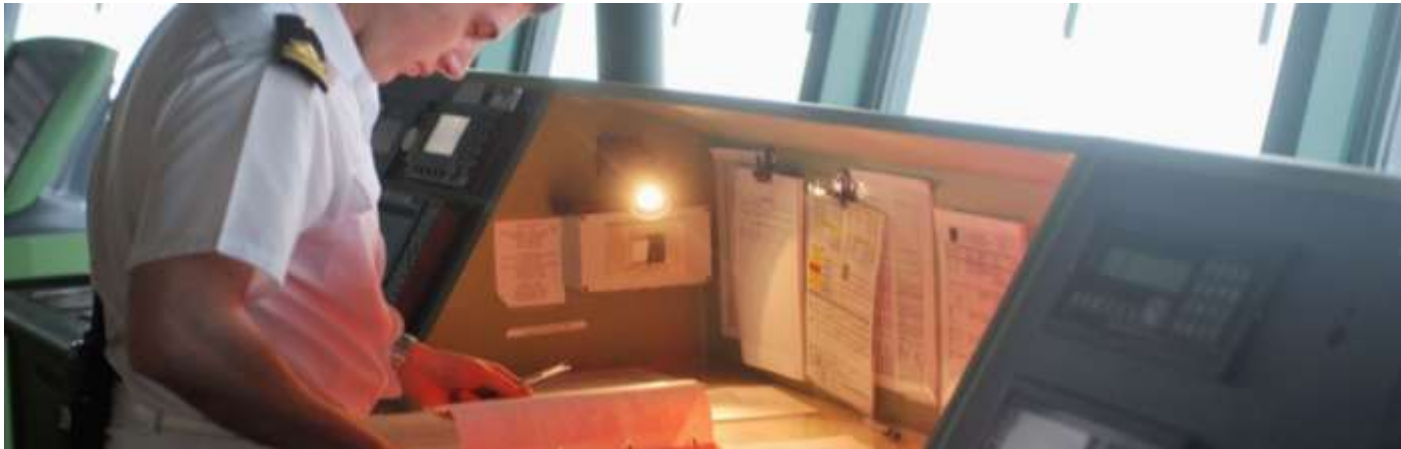
- What is a national determination?
- Which provisions in the Articles allow for national determination?
- Tripartism

# Exemption possibility

- Exemption possibility (Art.II(6))
  - only in consultation with E+W organizations
  - with respect to ships < 200 GT not engaged in int'l voyages
  - Provided question is dealt with differently



# Substantial equivalence



- Substantial equivalence (Art. VI(3))
  - Member satisfies itself that alternative solution is conducive to achievement of general object and purpose and gives effect to provision in question

## Seafarers' fundamental rights (Art. III)

- Freedom of association
- Elimination of forced labour
- Abolition of child labour
- Elimination of discrimination



## Seafarers' employment and social rights (Art. IV)



- Safe and secure workplace
- Fair terms of employment
- Decent working and living conditions
- Health protection, medical care, social protection



## Implementation

- Flag State responsibilities (Art.V(2), (3))
- Port State responsibilities (Art.V(4))
- Labour supplying countries responsibilities (Art.V(5))



# Special Tripartite Committee (Art. XIII)

- Keeping the Convention under continuous review
- special competence in the maritime field
- weighted voting power



## Amendment procedure (Art. XV)

- Accelerated procedure for Code
- Amendment proposal from 5 Members
- Six-month period for observations
- Approval by Special Tripartite Committee and Int'l Labour Conference
- Two years for formal disagreement, otherwise tacit acceptance



# First Amendments to the MLC

- Amendments to the Code of the MLC, 2006 were **adopted and approved in 2014** to address
  - financial security to protect seafarers in case of abandonment,
  - financial security for shipowners' liability for compensation for the death and personal injury of seafarers
- Both matters will be included in the ship certification and inspection/PSC system
- Using the tacit acceptance procedure they are expected to come into force by 2017