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**Report I(1A)**

# **Adoption of an instrument to consolidate maritime labour standards**

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# **Part I**

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## **Introduction**

### **Overview of the background to the proposed consolidated maritime labour Convention and its expected impact**

1. At its 286th Session (March 2004), the Governing Body of the International Labour Office decided to place the adoption of an instrument to consolidate maritime labour standards on the agenda of a Maritime Session of the International Labour Conference. The Governing Body also decided that this issue would be governed by the single-discussion procedure under article 38 of the Standing Orders of the Conference and that it would be preceded by a Preparatory Technical Maritime Conference. At its 292nd Session (March 2005), the Governing Body decided that this Maritime Session would take place in Geneva from 7 to 23 February 2006.

#### **The preparatory work up to now**

2. The instrument envisaged by the Governing Body, the proposed consolidated maritime labour Convention, has been under discussion for several years. It could be said to have originated with the resolution concerning the review of relevant ILO maritime instruments that was unanimously adopted by the Joint Maritime Commission (JMC) in January 2001. This resolution is known as the Geneva Accord between the Shipowner and Seafarer representatives, who make up the JMC under a Government chairperson and with the participation of an Employer and a Worker representative from the Governing Body. These representatives had expressed serious concerns about the situation with the existing maritime labour standards and had put forward eight “preferred solutions” to deal with their concerns.<sup>1</sup> The JMC recommended that the Governing Body convene a Maritime Session of the Conference in 2005 (which has been deferred until the beginning of 2006 for budgetary reasons) to adopt a single instrument consolidating as much as possible of the existing body of ILO maritime standards. On the JMC’s recommendation, the Governing Body established, at its 280th Session (March 2001), a High-level Tripartite Working Group on Maritime Labour Standards (HTLWG), to assist with the work of developing such an instrument.

3. At the HTLWG’s first meeting in December 2001, the Government representatives fully supported the eight points put forward as the Shipowners’ and Seafarers’ preferred solutions. This meeting was the first in a highly intensive and extensive consultation process. Four week-long meetings of the HTLWG took place between 2001 and 2004 to

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<sup>1</sup> ILO: *Final report*, High-level Tripartite Working Group on Maritime Labour Standards, TWGMLS/2001/10 (Geneva, 2001), para. 48, and appendix (pp. 26-27); ILO: Briefing for discussion at the High-level Tripartite Working Group on Maritime Labour Standards, TWGMLS/2001/1 (Geneva, 2001), para. 3.23.

review previous drafts of the envisaged Convention.<sup>2</sup> These meetings generated considerable interest from Members, with the fourth meeting in January 2004 involving 126 participants, including 45 Government delegations. In addition, two week-long meetings of an almost equally large Subgroup of the HLTWG met during this period to discuss text and proposals. This consultation process was complemented by specific opportunities for Governments and the Shipowner and Seafarer representatives to make written submissions on the various drafts, which were considered by the Office, under the guidance of the Officers of the HLTWG.

4. The consultation process culminated in a recommended draft for a Convention on maritime labour standards, which was submitted to the Preparatory Technical Maritime Conference (PTMC) referred to in paragraph 1 of Part I, Introduction. The PTMC was held from 13 to 24 September 2004. It also generated considerable interest from Members, with 551 delegates drawn from 88 countries. The PTMC established three technical committees,<sup>3</sup> supported by a drafting committee, to seek to achieve agreement on text (known as “bracketed text”) which either was controversial or simply needed discussion and a decision. The remainder of the over 100 pages of provisions was considered mature text and left for discussion through the traditional amendment process. Despite extended sittings during the PTMC, it was not possible to consider the proposals for amendments that had been submitted, and a number of areas of the Convention remained unresolved at the end of the PTMC. Since the PTMC was not able to complete its work, it adopted those provisions of the proposed Convention on which agreement had been reached,<sup>4</sup> and made arrangements, in a number of resolutions,<sup>5</sup> for further preparatory work to be carried out prior to the International Labour Conference.

5. With respect to the amendments that had been submitted but not considered for reasons of time, one of the PTMC’s resolutions, *inter alia*:

Requests the Governing Body to instruct the Office to examine all receivable amendments submitted to the PTMC and to prepare a Compendium accompanied by an Explanatory note;

Establishes a tripartite working group, composed of the Officers of the PTMC and which will be open to the governments of all member States and representatives designated by the international organizations of shipowners and seafarers, to consider the Compendium prepared by the Office; the working group shall communicate to the Office any amendment or group of amendments on which there is tripartite consensus for inclusion in the report to be prepared by the Office for the Maritime Session of the Conference in accordance with article 38, paragraph 4(b), of the Standing Orders of the Conference; ...<sup>6</sup>

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<sup>2</sup> First meeting: ILO: *Final report*, High-level Tripartite Working Group on Maritime Labour Standards, TWGMLS/2001/10 (Geneva, 2001); second meeting: ILO: *Final report*, High-level Tripartite Working Group on Maritime Labour Standards, TWGMLS/2002/13 (Geneva, 2002); third meeting: ILO: *Final report*, High-level Tripartite Working Group on Maritime Labour Standards, TWGMLS/2003/10 (Geneva, 2003); fourth meeting: ILO: *Final report*, High-level Tripartite Working Group on Maritime Labour Standards, TWGMLS/2004/19 (Nantes, 2004). These and other reports and papers relating to the consolidation process are available at <http://www.ilo.org/public/english/dialogue/sector/sectors/mariti/consol.htm>.

<sup>3</sup> ILO: *Record of Proceedings* Nos. 4(Rev.), 5(Rev.) and 6(Rev.), Preparatory Technical Maritime Conference, Geneva, 13-24 September 2004. Committee No. 1 was tasked with addressing the Preamble, Articles, Explanatory note and Title 5 (including appendices); Committee No. 2, with Titles 1-3; and Committee No. 3, with Title 4.

<sup>4</sup> ILO: *Record of Proceedings* No. 10, Preparatory Technical Maritime Conference, Geneva, 13-24 September 2004, p. 10. The Convention text that was adopted is to be found in *Record of Proceedings* No. 7(Rev.).

<sup>5</sup> ILO: *Record of Proceedings* No. 10, op. cit., pp. 20-23.

<sup>6</sup> ILO: *Record of Proceedings* No. 10, op. cit., p. 20.

6. In the same resolution, the PTMC also appointed “a tripartite drafting group composed of one Government representative, a representative of the Shipowners and a representative of the Seafarers to review *in extenso* the wording of the draft instrument adopted by the PTMC, as well as the agreement between the English and French versions of the text, along the lines of the terms of reference of drafting committees appointed under the Standing Orders of the General Conference”. A report on the work of the PTMC Drafting Group is found in Appendix A to this Report.

7. With respect to addressing the unresolved areas of the proposed Convention text, the PTMC requested the Governing Body to instruct the Office:

- (a) to convene a meeting, at no direct cost to the Office, which will be open to the governments of all member States and to representatives designated by the international organizations of shipowners and seafarers, for the purpose of providing the Office with advice concerning generally acceptable wording for the previously bracketed provisions on which agreement has not been reached;
- (b) to provide the participants, in advance of the meeting, with information on the substance of the provisions concerned accompanied by the necessary explanations concerning the intentions and background for each such provision;
- (c) to communicate, for comment, all new wording on which tripartite consensus is reached, accompanied by the necessary explanations, to the governments of all member States as well as to the international organizations of shipowners and seafarers; and
- (d) to include, in the report that it is to prepare for the Maritime Session of the General Conference in accordance with article 38, paragraph 4(b), of the Standing Orders of the Conference, an account of all new wording referred to, together with a summary of the constituents’ views communicated to it.<sup>7</sup>

8. The requests of the PTMC were approved and its actions endorsed by the Governing Body at its 291st Session (November 2004). A Tripartite Intersessional Meeting on the Follow-up of the Preparatory Technical Maritime Conference took place from 21 to 27 April 2005. It was attended by 171 Government representatives from 69 countries, 44 Shipowner representatives and 34 Seafarer representatives, as well as by experts from international organizations, including the Secretariat of the Paris Memorandum of Understanding on Port State Control. This Intersessional Meeting, which operated in plenary throughout, considered two documents prepared by the Office in response to the PTMC resolutions.<sup>8</sup> The Intersessional Meeting considered all the proposals for amendment submitted to the PTMC and, in accordance with the resolutions referred to in paragraphs 5 and 6 of Part I, Introduction, identified those which had obtained tripartite consensus.<sup>9</sup> It was also able to provide advice on generally acceptable wording for all the provisions on which the PTMC had been unable to reach agreement, apart from a few provisions (such as those relating to the requirements for entry into force), which it considered could best be left for the International Labour Conference.

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<sup>7</sup> ILO: *Record of Proceedings* No. 10, op. cit., p. 21.

<sup>8</sup> ILO: *Unresolved issues for the draft consolidated maritime labour Convention, 2006*, and *Compendium of proposed amendments to the draft consolidated maritime labour Convention, 2006*, reports of the Tripartite Intersessional Meeting on the Follow-up of the Preparatory Technical Maritime Conference (Geneva, 2005), PTMC/2005/1 and PTMC/2005/2, respectively.

<sup>9</sup> ILO: *Report of the discussion*, Tripartite Intersessional Meeting on the Follow-up of the Preparatory Technical Maritime Conference, Geneva, 21-27 April 2005, PTMC/2005/23. The report of the Intersessional Meeting was circulated to all Members.

Also in accordance with the relevant resolution, the agreed wording of the previously unresolved provisions was communicated, for comment, to the governments of all member States as well as to the international organizations of shipowners and seafarers. A summary of the constituents' views communicated to the Office concerning each such provision is found in the relevant Note in the detailed discussion in Part II of this Report.

9. In accordance with article 39bis of the Standing Orders of the Conference, the Office has also consulted the United Nations, the International Maritime Organization (IMO), the World Health Organization (WHO) and the World Trade Organization (WTO) in respect of provisions of the proposed Convention which could affect the activities of those organizations.

10. In accordance with article 38, paragraph 4(b), of the Standing Orders of the Conference, the proposed consolidated maritime labour Convention contained in a separate volume (Report I(1B)) of this Report, to be submitted to the International Labour Conference, has been drawn up by the Office on the basis of the draft Convention adopted by the PTMC, as completed by the provisions on which tripartite consensus was reached at the Intersessional Meeting in accordance with the PTMC's resolutions. The remainder of this Introduction (Part I) explains the background to the new Convention and outlines the impact that is expected from it. Part II of the present Report I(1A), which follows, contains a commentary on the various provisions of the proposed consolidated maritime labour Convention which is submitted in Report I(1B).

### The background to the new Convention

11. Since 1920, the ILO has adopted some 40 maritime labour Conventions and 29 maritime labour Recommendations covering a wide variety of issues, including recruitment and placement, minimum age, hours of work, safety, health and welfare, labour inspection and social security. Following the conclusions of the Governing Body Working Party on Policy regarding the Revision of Standards, which examined pre-1985 standards, 26 maritime labour Conventions, one Protocol and 18 Recommendations were considered sufficiently up to date and relevant to the industry.<sup>10</sup> This body of standards represents a considerable achievement for the protection of the workers concerned and for the industry as a whole. Each of these 26 Conventions retains its intrinsic validity. Some of them have very novel features, in particular, the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), which, in keeping with the globalized nature of the maritime sector, places responsibility on all countries for ships flying their flag or coming within their territorial jurisdiction. Another is the Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187) (and its predecessor), which contains a procedure for international collective bargaining on the basic minimum wage for able seafarers.

12. The serious concerns expressed in January 2001 by the representatives of Shipowners and Seafarers (Part I, Introduction, paragraph 2) did not call into question the validity of the existing maritime labour standards. As a body of international law, they have been recognized as comprehensive and adequate. The main concern was that these international standards were still not having a sufficient "on the ground" impact on the working and living conditions experienced by seafarers. The relevant Conventions,

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<sup>10</sup> ILO: *Reports of the Committee on Legal Issues and International Labour Standards: Second report: International labour standards and human rights*, Governing Body, 273rd and 274th Sessions, Geneva, Nov. 1998 and Mar. 1999, GB.273/8/2 and GB.274/10/2; ILO: *Report of the Working Party on Policy regarding the Revision of Standards*, Governing Body, 273rd and 274th Sessions, Geneva, Nov. 1998 and Mar. 1999, GB.273/LILS/4(Rev.1) and GB.274/LILS/4(Rev.1).

many of which deal with a single issue, are unevenly ratified and even more unevenly implemented and enforced. In addition to the lack of decent working conditions for many seafarers, this also created a potential economic disadvantage and unfairness for shipowners and governments committed to providing decent conditions of work for seafarers. One of the problems for ratification is the excessive detail of some Conventions, which creates a barrier for certain countries interested in ratifying them, even though the level of protection in the areas covered may be at least as strong in the countries concerned as that required under the relevant Conventions. The Conventions, moreover, have no legal mechanisms to provide for rapid changes to their standards to keep pace with developments in the shipping industry; even amendments of minor technical details call for resort to costly revision procedures, requiring full consideration at a Maritime Session of the International Labour Conference and needing several years to enter into force for a significant number of ILO Members. Finally, the standards are often difficult to understand, as they are set out in complex, uncoordinated and overlapping provisions. The ILO's numerous, but fragmented and disparate, maritime Conventions, despite the continuing validity of their substantive content, have significantly less impact, at present, than other widely ratified Conventions in the maritime sector addressing the areas of safety at sea and protection of the marine environment.

### The envisaged impact of the new Convention

13. The new Convention, the proposed consolidated maritime labour Convention, has been designed to become a global instrument known as the “fourth pillar” of the international regulatory regime for quality shipping, complementing the key conventions of the IMO: the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, the International Convention on Standards of Training, Certification and Watchkeeping (STCW), 1978, as amended, and the International Convention for the Prevention of Pollution from Ships (MARPOL), 73/78. It will contain a comprehensive set of global standards, based on those provided for in existing maritime labour instruments. Such a set of standards will necessarily contribute to the achievement of decent employment and social conditions throughout the industry worldwide. This ambitious objective will be achieved through the early ratification of the Convention by a majority of nations active in the maritime sector.

14. The ratification of the Convention at a sufficient level to make it a truly global instrument can realistically be expected for three reasons. First, an exceptional tripartite momentum has characterized the preparatory work; as a result, the new instrument is recognized by the Shipowner and Seafarer representatives as providing an effective response to their serious concerns about the relevance of the existing maritime standards (despite the intrinsic merits of those standards). In addition, this instrument in a sense already “belongs” to the governments which will be invited to ratify it. It will be a tripartite creation with a prominent governmental input: the initial impetus came from the Geneva Accord of the Shipowners and Seafarers in January 2001 (Part I, Introduction, paragraph 2); however, from the first meeting of the HLTWG, Government representatives in unexpectedly high numbers assumed a leadership role and many provisions or concepts in the text of the Convention can be attributed to their input. Second, as a result of this tripartite guidance, which included strong participation from governments, the substantive provisions of the Convention are designed to protect the seafarers’ rights provided for in existing Conventions, but in a way that would make the provisions acceptable to all governments and shipowners committed to ensuring decent conditions of work for seafarers. This will be explained in the commentary in Part II. Third, the Convention should lead to a level playing field with a certification system

providing clear incentives for ratification: the shipowners of countries that already protect seafarers' rights in accordance with existing Conventions may, in fact, have no or few additional substantive obligations under the new Convention. Accordingly, their ships will benefit from a certificate allowing them to avoid delays as a result of detailed port state inspections, in normal cases. They will also have a certain protection against unfair competition from substandard ships, because of the principle of no more favourable treatment, referred to in paragraph 15 of Part I, Introduction, which is also embodied in the Convention. Because of this principle (already well established in the IMO conventions), many countries that do not at present require ships flying their flag to observe the existing maritime labour standards may find it in their interest to do so and to join the Convention in order to benefit from the certification system.

15. The legal obligations under the Convention will only apply in the case of seafarers on ships flying the flag of member States for which the Convention has entered into force after ratification. However, because of the principle of no more favourable treatment, the authorities of countries that have ratified the Convention may require all ships that visit their ports to respect many of the standards of the Convention regardless of whether or not the country whose flag the ships fly is bound by the Convention. Most ships trading internationally will not, therefore, be able to ignore the requirements of this Convention. This means that knowledge of the Convention standards will become essential knowledge for all seafarers. It will be the responsibility of all concerned – governments, social partners and also training institutions – to make seafarers aware of the Convention's provisions. Seafarers should, consequently, become more aware of their rights through the promotion of a single Convention addressing all decent work matters, which has, as much as is possible with a legal instrument, been prepared in "plain language" so that its contents are more accessible to those most affected by it.

16. In many countries, prompt ratification will be facilitated where social dialogue in the shipping industry is active. In other countries, the ratification procedures might well provide the opportunity to improve social dialogue at national level since it would be necessary for the Government to have consultations with the social partners in order to apply the Convention properly. It would also be an opportunity for the social partners to come together to participate fully in the appropriate consultation process. This could also have a positive impact on the participation of national organizations of seafarers and shipowners in international social dialogue – for example, through membership of the international federations, and increased interest in the discussions of the special tripartite committee to be established by the Governing Body, discussed in paragraph 20 of Part I, Introduction. This committee is given a consultative role under the Convention (Article VII) in cases where representative organizations of shipowners or seafarers do not yet exist in a ratifying country. The Convention should, therefore, have a positive influence on social dialogue at all levels.

17. The consolidated maritime labour Convention will have a strong enforcement component. The International Labour Organization's greatest strength in the context of the implementation of international labour Conventions is undoubtedly its supervisory system, carrying the necessary institutional guarantees and authority and an important tripartite component. With the Convention, there will be a continuity of "compliance awareness" at every stage, from the national systems of protection up to the international system. It will start with the individual seafarers, who, under the Convention, will have to be properly informed of their rights and of the remedies available in case of alleged non-compliance with the requirements of the Convention and whose right to make complaints, both on board ship and ashore, will be recognized in the Convention. It will continue with the shipowners, who will be required to develop and carry out plans for

ensuring that the applicable national laws, regulations or other measures to implement the Convention are actually being complied with. The masters of the ships concerned will then be responsible for carrying out the shipowners' stated plans, and for keeping proper records to evidence implementation of the requirements of the Convention. As part of its updated responsibilities for the inspection of ships, the flag State will review the shipowners' plans and verify and certify that they are actually in place and being implemented. They will also have to carry out periodic quality assessments of the effectiveness of their national systems of compliance, and their reports to the ILO under article 22 of the Constitution will need to provide information on their inspection and certification systems, including on their methods of quality assessment. This general inspection system in the flag State (which is founded on ILO Convention No. 178) will be complemented by procedures to be followed in countries that are also or even primarily the source of the world's supply of seafarers; these countries will similarly be reporting under article 22 of the ILO Constitution. The system will, moreover, be reinforced by voluntary measures for inspections in foreign ports (port state control). An international information base will be developed, benefiting from the reports exchanged between port States or transmitted by them to the ILO as well as the documentation relating to complaints made by seafarers and other interested parties, under the Convention's procedures.

18. In this enforcement framework, the Convention will have a special and positive impact for maritime labour inspectors. In the first case, there will be a certain global uniformity. As compared with the existing situation where member States can pick and choose among the maritime labour Conventions they wish to ratify and apply, the new situation will be much simpler and clearer to all. There will be one basic point of reference – the Convention – for the flag state inspection of ships. This will be supplemented by more detailed practical guidance materials for inspectors, which will be developed by the ILO in the near future. Many States are likely to delegate some of their responsibilities for the inspection and certification of vessels to "recognized organizations" to the extent permitted by the Convention. The training of inspection staff will be particularly important in the context of the Convention. Training and other implementation-related support through technical cooperation arrangements will be available, particularly for countries where the maritime labour inspection system is not well developed.

19. The success of the Convention, if measured by the global applicability of standards, may well depend on the effectiveness or perceived effectiveness of the voluntary port state inspection system. The practical guidance materials and training, referred to in paragraph 18 of Part I, Introduction, will be particularly important in providing competent authorities with support for the development of inspection policies. They will assist authorized officers carrying out port state inspections with specific examples and information that will enable them to deal with the full range of labour concerns, some of which involve qualitative aspects. There will be a large-scale training effort with the cooperation of other interested expert bodies such as the secretariats of the regional port state control Memoranda of Understanding and the IMO, combined with enhanced contact with port state control officers in other countries and full use of the exchange of information that will be promoted by the new Convention. The aim will be to ensure that port state officers have the tools to verify, confidently and uniformly, when called on to do so, that the working and living conditions of seafarers comply with the Convention. With respect to the improved possibility of seafarers making complaints in foreign ports (one of the major progressive aspects of the Convention), the port state authorities would be expected to undertake an investigation of the complaint and, also, in

some instances, to undertake a detailed inspection of conditions on the ship, but would not be expected to resolve every issue. Rather, they would seek to promote, in appropriate cases, the resolution of issues at the ship-board level. Information regarding resolved and unresolved complaints would be forwarded to the flag State with information to the social partners and the ILO.

20. Thus, the Convention – if it is widely ratified and properly implemented – will provide an effective response to the concerns expressed by the Shipowner and Seafarer representatives in 2001. It will have all the necessary tools to provide this response, including mechanisms to identify and, in most cases, promptly correct defects encountered in practice, since the working of the Convention will be kept under continuous review through the special tripartite committee (Part I, Introduction, paragraph 16) to be established by the Governing Body under Article XIII of the Convention. This committee will consist of representatives of governments, shipowners and seafarers. In order to limit the cost, it is envisaged that both the timing of meetings and the composition of this committee, as far as the shipowners and seafarers are concerned, will be aligned with the Organization's JMC.

21. Where defects in the detailed working of the Convention are found or provisions establishing technical details (the Code) need to be updated, the special tripartite committee will be able to develop and adopt the necessary amendments, subject to the approval of the International Labour Conference. Under this simplified amendment procedure (provided for in Article XV of the Convention), the approved amendments will come into force within a period of normally 30 months from their submission to the member States that have ratified the Convention (to the extent that the amendments did not receive expressions of disagreement from a significant number of the Members concerned). In other words, the Convention can be rapidly updated as and when improvements are needed without the cost and delays that are required by the present ILO Convention revision procedures.

## **Part II**

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### **Commentary**

#### **Discussion of the Convention**

##### **General discussion of the Convention**

1. The proposed consolidated maritime labour Convention set out in Report I(1B) is a “consolidating” Convention which would replace almost all of the more than 60 maritime labour instruments (Conventions and Recommendations) adopted by the International Labour Conference since 1920. As indicated in Part I, Introduction, the proposed Convention could be said to have originated with the resolution concerning the review of relevant ILO maritime instruments (the Geneva Accord) that was unanimously adopted by the JMC in January 2001 and presented to the Governing Body of the International Labour Office at its 280th Session in March 2001. This resolution noted that the shipping industry had been described as “the world’s first genuinely global industry” which “requires an international regulatory response of an appropriate kind – global standards applicable to the entire industry”, and called for “the development of an instrument which brings together into a consolidated text as much of the existing body of ILO instruments as it proves possible to achieve” as a matter of priority “in order to improve the relevance of those standards to the needs of all the stakeholders of the maritime sector”. The new instrument should “comprise a number of parts concerning the key principles of such labour standards as may be determined, together with annexes which incorporate detailed requirements for each of the parts. The instrument should also provide for an amendment procedure which would ensure that the annexes might be revised through an accelerated amendment procedure”.<sup>1</sup> These requests were later formulated as the eight “preferred solutions”, referred to in paragraph 2 of Part I, Introduction, which received the full support of the Government representatives at the first meeting of the HLTWG in December 2001.

2. The proposed consolidated maritime labour Convention has remained true to the principles established in 2001 in all respects: substantive content, structure and approach:

- (a) With respect to *substantive content*, the Convention brings together into a consolidated text as much of the existing body of ILO instruments as it has so far proved possible to achieve. While full account has been taken of the conclusions of the Governing Body Working Party on Policy regarding the Revision of Standards<sup>2</sup> relating to the maritime labour Conventions, modifications of existing standards have essentially been restricted to updating matters of detail that were not considered to give rise to controversy or to resolving inconsistencies among the Conventions concerned. In the proposed Convention, the underlying legal source of

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<sup>1</sup> ILO: *Final report*, Joint Maritime Commission, 29th Session, Geneva, 22-26 January 2001, Appendix 2.

<sup>2</sup> See the earlier discussion in paragraph 11 of Part I, Introduction.

the provisions, an existing international labour Convention or Recommendation, is shown inside round ( ) brackets in the text. These references are for the purpose of information only. They would not form part of the final text of the Convention.

- (b) The *structure* of the Convention has remained as originally envisaged, apart from changes in terminology with respect to Regulations, and Part A and Part B of the Code, with provision in the Articles of the proposed Convention for a simplified (or what could be called an accelerated) amendment procedure applying to the more detailed provisions that are set out in the Code.
- (c) On the general *approach*, as will be seen below, considerable thought has been given to improving the relevance of existing maritime labour standards from the viewpoint of ensuring their general applicability, which implies two aims: first, that the new consolidated Convention is ratifiable on a wide scale by the Members of the ILO active in the maritime sector; and second, that its provisions will be properly enforced. For these purposes, as summarized by the Chairperson of the HLTWG at its first meeting, the instrument should be “inflexible with respect to rights” and “flexible with respect to implementation” and “the principal consideration should be the achievement and maintenance of a level playing field”.<sup>3</sup>

3. In order to achieve the aims established at the start of the exercise, the proposed consolidated maritime labour Convention, in addition to consolidating existing standards, has had to embody a number of innovative solutions, which have from time to time prompted questions from Government representatives familiar with the ILO’s traditional Conventions. Many of these apparently novel features for the ILO in fact rely on recognized and accepted approaches in other Conventions in the maritime sector – namely, those of the IMO. This is the case with the general structure of the Convention (Part II, General discussion, paragraphs 4-9), its simplified (accelerated) amendment procedure and the inspection and certificate-based system to better ensure compliance with the requirements of the Convention while obviating or lessening the need for detailed inspections in ports visited by the ships. Despite their widespread acceptance in connection with ships’ safety, security, environmental protection and seafarer training, it is important to realize that the IMO solutions have not been simply imported en bloc. Rather, they have been carefully considered and then developed, on a tripartite basis, with a view to the very different constitutional requirements, procedures and philosophy of the ILO (especially those inherent in tripartism). The overall approach adopted, particularly with respect to enforcement and compliance, is to try to operate within the existing operational framework for matters, such as inspections in foreign ports, set out under the various regional Memoranda of Understanding and current IMO guidance on practice regarding port state control measures, to avoid significant additional administrative burdens. At the same time, the approach followed does not simply adopt the status quo in the maritime sector, which was not developed with a view to the unique issues posed in enforcing labour standards; rather, it seeks to build upon and advance these best practices to better ensure decent work for all seafarers.

4. As indicated above, one of the innovative solutions required to achieve the objectives of this instrument relates to the structure of the Convention. In accordance with the guidance provided to the Office, the proposed consolidated maritime labour Convention has different parts which together would make up the Convention. The

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<sup>3</sup> ILO: *Final report*, High-level Tripartite Working Group on Maritime Labour Standards, TWGMLS/2001/10 (Geneva, 2001), appendix, section 1.

Convention comprises three different but related parts: the Articles, the Regulations and the Code (Parts A and B).

- 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 General Conference in the framework of article 19 of the Constitution of the International Labour Organisation (see Article XIV of the Convention).
- The *Code* contains the more technical 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 article 19 process or through a simplified and accelerated procedure, which is 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. In order to understand the reason why a specific innovation, such as this particular structure for the Convention, has been considered necessary, it is useful to see the feature in the context of the problem that it is designed to resolve. This is especially true in connection with the technical requirements set out in the Code and its two parts, the mandatory Part A, Standards, and the non-mandatory Part B, Guidelines. A question asked in this respect is: Why does the new Convention not follow the approach that is usually (but not always) followed in ILO instruments of placing the mandatory provisions in an international labour Convention and the non-mandatory provisions in an international labour Recommendation supplementing the Convention? The answer is related to the basic challenge of making the new Convention as universally ratifiable as possible, overcoming the stumbling blocks to ratification created by the excessive detail contained in one or two provisions of many existing Conventions (Part I, Introduction, paragraph 12). How can this all-comprehensive Convention, embodying the substance of a large number of existing Conventions with often low levels of ratification (see Appendix B for lists of ratifications of maritime labour Conventions) be presented in a way which allows wide-scale ratification? The relationship between Part A and Part B of the Code, and the special treatment given to Part B, is the result of a long-discussed and carefully balanced application of the maxim referred to earlier (Part II, General discussion, paragraph 2(c)) of flexibility with respect to implementation, and inflexibility with respect to rights, thus helping to find a solution to what would otherwise appear an insoluble problem.<sup>4</sup>

6. The Convention is organized with the Articles coming first, followed by the Regulations and Code provisions, which are integrated and organized into general areas of concern under five Titles:

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

7. These Titles are presented in what may be called an integrated or vertical format. Each Title contains groups of provisions relating to a particular principle or right (or

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<sup>4</sup> See the discussion in Note 6 of Part II, Detailed discussion.

enforcement measure, in Title 5), with connected numbering. The first group in Title 1, for example, dealing with the minimum age to work on board a ship, comprises Regulation 1.1, followed by Standard A1.1 (from Part A of the Code) and then by Guideline B1.1 (from Part B of the Code). Thus, the reviewer can immediately see the overall scope of the particular Regulation and related obligation. In addition, the appendices to the Convention, relating to Title 5, contain the model documents used in the compliance and enforcement system and also provide an example of the documents to illustrate how these might be completed by a Member and a shipowner.

8. In addition to addressing the challenges described in paragraph 5 of Part II, General discussion, the Convention's structure is intended to help achieve three underlying purposes:

- (a) to lay down (in its Articles and Regulations) a firm set of principles and rights;
- (b) to allow (through the Code) a considerable degree of flexibility in the way Members implement those principles and rights; and
- (c) to ensure (through Title 5) that the principles and rights are properly complied with and enforced.

9. There are two main areas for flexibility in implementation of the Convention. The first is the possibility for a Member, where necessary (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). The second is provided by formulating the mandatory requirements of many provisions in Part A of the Code 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, to which Members must give "due consideration" (Part II, Detailed discussion, Notes 6 and 14). In this way, ratifying Members would be able 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).

10. The representatives of Governments are urged to come to the Conference recognizing the intense preparation and the extent of the tripartite consultation and discussion that has already occurred in the past four years in connection with all provisions in this Convention. Members should be in a position to specifically point to aspects of provisions where, despite the discussion and consultation that has already taken place, they still feel there may be significant difficulty in achieving an unprecedented ILO objective: namely, the wide-scale ratification of a maritime labour Convention containing, in so far as possible, the substance of all up-to-date international labour Conventions, which have individually been the subject of varied and often relatively low levels of ratification.

11. In particular, it is hoped that the representatives of Governments that have a significant problem with specific provisions will be in a position to put forward solutions that are acceptable to their Governments and the Workers' and Employers' groups. In this respect, it is important to note that, at the fourth meeting of the HLTWG, in January 2003, Governments indicated acceptance of the fact that a new Convention could entail adjustments to existing legislation: to require that the status quo be maintained at the national level in every country would, in fact, defeat the purpose of the new Convention.

12. The Notes in Part II, Detailed discussion, address the individual provisions of the proposed consolidated maritime labour Convention, which is presented in Report I(1B). They indicate the origin of the provisions concerned. Unless otherwise stated, the provisions correspond in substance to those contained in the text adopted by the PTMC

in September 2004 and referenced in footnote 4 of this Report (Part I, Introduction, paragraph 4). This text is subsequently referred to as the PTMC draft Convention. Where a provision has a different source, reference will in most cases be made to the report of the discussion of the Tripartite Intersessional Meeting on the Follow-up of the Preparatory Technical Maritime Conference held in April 2005 (refer to Part I, Introduction, paragraph 8, footnote 10). The Notes also contain comments and observations received from constituents as a result of the follow-up consultation with all Members and the international organizations of shipowners and seafarers on the solutions to unresolved areas of the PTMC draft Convention that were adopted by tripartite consensus at the Intersessional Meeting.<sup>5</sup> This consultation implemented paragraphs (c) and (d) of the PTMC resolution discussed in paragraph 7 of Part I, Introduction. The Notes also refer to any comments or observations made by the United Nations, the IMO and the WHO, which were consulted pursuant to article 39bis of the Standing Orders of the Conference. The Notes take account of relevant considerations made at the PTMC and subsequently, as well as major considerations that arose during the preparatory work leading up to the PTMC.

## Detailed discussion: Preamble and Articles

### *Note 1 (Preamble)*

1. Preambles do not create legal obligations. The Preamble to the proposed consolidated maritime labour Convention provides information as to the overall context and intention of the Convention in relation to other relevant international law and principles. In particular, it indicates a clear intention that the new Convention should, *inter alia*, embody the fundamental principles to be found in the ILO's fundamental Conventions (second paragraph) and recalls the *ILO Declaration on Fundamental Principles and Rights at Work, 1998*.
2. The Preamble places the principles to which it refers within the general legal framework of the overarching international Convention in the maritime sector: the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (eighth paragraph). In that context, particular reference is made (ninth paragraph) to Article 94 of UNCLOS, which provides, with respect to the importance of flag state responsibility for ships:

Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. ... In particular every State shall: ... assume jurisdiction under its internal law over each ship flying its flag and its master,

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<sup>5</sup> At the time this Report went for publication, comments had been received from 20 governments: Argentina, Australia, Bahrain, Bangladesh, Brazil, Egypt, Finland, Germany, Greece, Honduras, Hungary, Japan, Mauritius, Myanmar, Panama, Philippines, Poland, Portugal, South Africa and the United Kingdom. Of these, a number stated that, after conducting a review including consultations with organizations of workers and employers, they did not have any specific comments on the text that was circulated. It is understood that such a view would not prejudice the ability of a government to propose amendments at the Conference. The governments stating this position were: Bahrain, Egypt, Finland, Myanmar, Poland and the United Kingdom. The Government of Hungary noted that its position was consistent with that of other European Union members and that the Commission and the Member States would endeavour to ensure that the Convention was consistent with the relevant Community legislation. Other governments, such as those of Germany and Greece, combined general comments with comments on specific issues: the Government of Greece made a more general statement as to its overriding philosophy and the Government of Germany considered that it was of major importance that the Regulations and Standards of the maritime labour Convention were unambiguous and with as little "red tape" as possible. In its view, the Intersessional Meeting achieved this result, so that it was likely that the Convention would receive wide-scale ratification. A similar view was expressed by the Government of Greece: its major concern was to have a pragmatic and realistic Convention that would not only be widely ratified but also uniformly implemented; it considered it necessary for guidelines to be prepared for port state control officers before the Convention entered into force in order to ensure a level playing field. The Government of the Philippines considered that the proposed Convention provided a framework that would benefit its seafarers working on ocean-going ships.

officers and crew in respect of administrative, technical and social matters concerning the ship ...

In its comments (Part II, General discussion, paragraph 12), the United Nations noted other relevant Articles of UNCLOS, but considered that the general reference to UNCLOS could obviate the need for a new Convention to refer to them specifically.

3. It is important to note the following, as stated by the ILO Legal Adviser during the PTMC (in connection with a discussion regarding the ILO Declaration on Fundamental Principles and Rights at Work, but with equal relevance to the ILO's fundamental Conventions, UNCLOS and the other instruments mentioned in the Preamble):

Finally, on the consequences of including a reference to the Declaration in the Preamble to the future Convention, the Legal Adviser recalled that the inclusion of a preambular clause referring to the Declaration, similar to that which exists in the Preambles to the Worst Forms of Child Labour Convention, 1999 (No. 182), and the Maternity Protection Convention, 2000 (No. 183), would not result in any legal obligation for Members. The Preambles to international labour Conventions do not create any legal obligations.<sup>6</sup>

*Note 2 (Article I)*

1. Inflexibility with respect to rights and flexibility with respect to implementation, referred to in paragraph 2(c) of Part II, General discussion, is apparent from the start of the proposed consolidated maritime labour Convention: *paragraph 1 of Article I*, on general obligations, requires Members to give “complete effect” to the provisions of the Convention in order to secure the right of all seafarers to decent employment. However, complete effect is to be given “in the manner set out in Article VI”, and Article VI is the provision which embodies the two main areas for flexibility in implementation of the Convention (Part II, General discussion, paragraph 9).

2. It should also be noted that paragraph 1 begins with, “Each Member which ratifies this Convention ...”. In accordance with ILO practice, subsequent references to a ratifying Member, wherever possible, simply use the term “each Member” or otherwise use “Member” in the singular, unless the context requires otherwise (as in Article I(2)). When reference is made to Members of the Organization in general, the wording will make this clear and normally the plural “Members” will be used.

3. Having referred to the general obligation of “each Member”, *paragraph 2* states the general obligation on all Members which have ratified the Convention to cooperate with each other for the purpose of ensuring its effective implementation and enforcement. There are references to the need, at least, to consider international cooperation throughout the Convention with respect to recruitment and placement, health protection and medical care, occupational safety and accident prevention, seafarers’ welfare facilities, seafarers in foreign ports and social security protection; for example, in addition to Regulation 5.2, whose purpose is: “To enable each Member to implement its responsibilities under this Convention regarding international cooperation in the implementation and enforcement of the Convention standards on foreign ships.” Most of these references are to be found in the non-mandatory Guidelines as, although the general obligation is mandatory, it is recognized that the decision when and how to cooperate with other Members is best left to the discretion of each Member. Two examples of the inclusion of a reference to cooperation in a Regulation or a Standard are

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<sup>6</sup> ILO: *Record of Proceedings* No. 4(Rev.), Preparatory Technical Maritime Conference, Geneva, 13-24 September 2004, para. 104.

found in the provisions relating to social security protection (Regulation 4.5, paragraph 2) and the investigation of marine casualties (Regulation 5.1.6, paragraph 2).

*Note 3 (Article II)*

1. *Article II* sets out general definitions (*paragraph 1*) of terms occurring in different parts of the Convention, as well as the general scope of application of the Convention (*paragraphs 2 and 4*). It is important, in this context, to note the difference between a definition and a scope-related provision. Although the concepts are related in that both are used to address the question of who or what activities – in this case ships, shipowners and seafarers – are governed by the Convention’s provisions, they are distinct ideas and can reflect differing considerations. In the proposed consolidated maritime labour Convention, the basic approach adopted is to provide inclusive or broad definitions. This is combined with some potential for flexibility provided to adopt narrower definitions for particular provisions (under the Titles), or to address particular situations through consultation. The words “unless provided otherwise” in *paragraph 1* would allow a term to be defined differently for the purpose of specific provisions of the Convention. For example, certain kinds of seafarers or ships could, in principle, be excluded from the application of certain provisions of the Regulations and the Code by stating in a specific definition that they are not to be considered as “seafarers” or “ships” for the purposes of those provisions. However, the more logical and preferable policy approach and the one also provided for and followed in the proposed Convention is to use the scope-related provisions (*Article II*, paragraph 2 (for seafarers) and paragraph 4 (for ships)) for this purpose. Both of those paragraphs consequently begin with the phrase “except as expressly provided otherwise”. The result is that, rather than determining that certain seafarers are not to be considered as seafarers or that certain ships are not to be considered as ships for specific matters, the provisions relating to those matters would allow certain categories of seafarers or of ships to be excluded from the application of the provisions concerned.

2. The second sentence of *subparagraph (c)* of *paragraph 1*, clarifying the term “gross tonnage” in the context of ships covered by an earlier system of ship measurement, was not in the PTMC draft Convention. It was one of the amendments proposed to the PTMC, which obtained tripartite support at the subsequent Intersessional Meeting.

3. In *subparagraph (d)* of *paragraph 1*, which defines the maritime labour certificate as “a valid document corresponding to” the maritime labour certificate referred to in Regulation 5.1.3, the PTMC Drafting Group (Part I, Introduction, paragraph 6) considered that the words quoted above might be redundant (Appendix A, paragraph 8).

4. *Subparagraph (e)* of *paragraph 1* contains a definition relating to the “requirements of this Convention” to make it clear that this term only refers to the mandatory provisions of the Convention; namely, those in the Articles, Regulations and Part A of the Code, which, however, also include Article VI requiring Members to give “due consideration” to implementing their responsibilities in the manner provided for in Part B of the Code (Part II, General discussion, paragraph 9, and Part II, Detailed discussion, Note 6).

5. The definition of a “seafarer” in *subparagraph (f)* of *paragraph 1* was the subject of extended discussion throughout the development of the proposed Convention text. Although the current definition or variations on it are found in many international labour Conventions, such as Conventions Nos. 164, 166, 178 and 179 and, more recently, Convention No. 185, there is now a greater awareness of the broad range of people who are employed at sea and who carry out jobs not traditionally understood to be part of the seafaring workforce or thought to be covered by the maritime labour Conventions. The content of many maritime labour Conventions primarily speaks to the employment

situation of personnel involved in some way in the operation of the ship – the crew. In most cases, the crew are engaged directly or indirectly by the shipowner (broadly defined). There are a number of people working on board ships, particularly passenger ships, that may not fall within this category (such as aestheticians, sports instructors and entertainers). The employment situation and protection available to these maritime industry workers is less clear. The difficulty with leaving solely to national law the matter of determining which workers are to be considered as seafarers for the purposes of the Convention is that it may perpetuate unevenness within the global maritime labour force with respect to the application of international standards. However, some national flexibility is provided for in paragraph 3 (Note 3, paragraph 8). Moreover, as indicated in paragraph 1 of Note 3, the issue of who is a “seafarer” (definition) should best be kept distinct from the issue of which categories of seafarers should or should not be covered by certain provisions of the Convention (scope); this latter question is dealt with in paragraphs 7 and 9 of Note 3.

6. The definition of “shipowner” in *subparagraph (j)* of paragraph 1 is based on the definition in the Recruitment and Placement of Seafarers Convention, 1996 (No. 179). It is similar to a definition of a “company” adopted by the IMO in the international safety management provisions of the SOLAS Convention, 1974, as amended. The definition reflects the principle that shipowners are the responsible employers under the Convention with respect to all seafarers on board their ships, without prejudice to the right of the shipowner to recover the costs involved from others who may also have responsibility for the employment of a particular seafarer. This is expressly stated in Standard A2.5 (paragraph 4) on repatriation.

7. *Paragraph 2* addresses the question of scope of application of the Convention and reflects the approach (Note 3, paragraphs 1 and 5) that the Convention would apply to all seafarers, under the inclusive definition set out in paragraph 1(f). The phrase “Except as expressly provided otherwise ...” would allow this scope of application to be narrowed in particular provisions to certain classes of seafarers (such as crew engaged in navigation) in appropriate cases.

8. In addition, as reflected in paragraphs 1 and 5 of Note 3, *paragraph 3* would provide governments with some additional flexibility and an ability to consider some categories of people as outside the protection of the Convention where their inclusion as “seafarers” may be wholly inappropriate. Such a determination would be subject to tripartite consultation on the particular category to be excluded and would be subject to the reporting requirement under paragraph 6.

9. A similar approach is adopted with respect to the related question of which ships the Convention applies to. The answer is found in a combination of the definition of a ship in paragraph 1(i) and paragraphs 4 and 5 of Article II. In accordance with *paragraph 4*, the maritime labour Convention will apply, “except as expressly provided otherwise”, to all ships (and thus to all seafarers working on those ships) covered by the Convention – in other words, to ships defined as such under paragraph 1(i) of Article II (namely, ships ordinarily engaged in commercial activities except those exclusively navigating in inland or similar waters) – with the exclusion of fishing vessels and ships of traditional build referred to in paragraph 4(a) and (b).

10. The Convention does, in fact, provide otherwise with respect to the application of specific provisions to some ships. In the PTMC, it was agreed that certain requirements in Title 3, which deals with the on-board accommodation and facilities, should not apply in the case of older ships and that a number of other requirements in that Title should differ or should not apply depending upon the gross tonnage of the ships concerned

(Note 27). An impasse in the PTMC was, however, reached concerning the appropriateness of having general exclusions of some ships from the application of the entire Convention. Two issues were left for resolution at the Tripartite Intersessional Meeting on the Follow-up of the Preparatory Technical Maritime Conference:

- (a) Should ships below a certain gross tonnage be entirely excluded from the application of the Convention?
- (b) Should it be possible for Members to exclude ships that do not undertake international voyages?

11. These two questions were considered together at the Intersessional Meeting. The discussions were guided by the following underlying considerations. On the one hand, whole cross-sections of seafarers should not be completely excluded from the Convention simply because of the size of the ship on which they were working or the fact that their ship did not undertake international voyages. On the other hand, the Convention should not place unacceptable administrative and financial burdens on shipowners and governments by requiring all of its provisions to be applied with respect to ships of any size and any kind (other than those not included under the definition of a ship or already excluded under paragraph 4(a) and (b)). The main concern in this respect was the mandatory application of the ship certification system in Title 5.

12. Tripartite consensus was reached on the following principles and provisions, which were supported as a package of interrelated solutions, and are now reflected in the proposed consolidated maritime labour Convention. This overall package consists of the following carefully balanced set of principles developed through a working group process, as the best way to address the difficult questions regarding the scope of application mentioned in paragraph 11 of Note 3, including application of the Convention to ships operating within its flag State's waters only:

- *There would be no general or overall exclusion of ships below a certain gross tonnage or of ships not engaged in international voyages; however, the Convention could include some specific scope-related provisions under the various Titles to address particular concerns about application.* It was therefore agreed that the words “Except as expressly provided otherwise,” should be added at the beginning of Article II, paragraph 4, of the Convention (as previously indicated).
- *Ships below a certain gross tonnage, which might be 200 gross tonnage or less, could be excluded from the application of certain provisions of Title 3 on accommodation.* A provision corresponding to paragraph 20 of Standard A3.1 (Note 27, paragraph 9) was accordingly agreed. It allows Members, after tripartite consultation, to exempt ships below a certain gross tonnage from the requirements of specified provisions on accommodation, taking account of the size of the ship and the number of persons on board and subject to the general rule on exemptions set out in paragraph 21 of the Standard.
- *Article II would not contain any provision allowing the exclusion of ships not engaged in international voyages.*
- *The certification requirements in Title 5 would apply to ships of 500 gross tonnage or over that either are engaged in international voyages or are operating in foreign ports.* This limitation of the scope of application is contained in the first part of a new paragraph 1 of Regulation 5.1.3 (Note 35, paragraph 7).

- *The concept of an international voyage should be based on the definition in the SOLAS Convention.* A definition which follows this approach is found in the second part of the new paragraph 1 of Regulation 5.1.3.
- *The certification system under Title 5 must be available, on request, to shipowners that request a certificate, even if the ship is not required to have a certificate.* This is provided for in the new paragraph 2 of Regulation 5.1.3.
- *Control measures in port States for ships that do not have a certificate would follow existing port state control practice already used with respect to IMO conventions for ships below “convention size”.*

13. The new wording developed in this package of solutions was one of the items communicated to constituents for comment in accordance with the PTMC resolution (subparagraph (c)), referred to in paragraph 7 of Part I, Introduction. The following general comments were received.

*Argentina:* We support these proposals as they achieve a proper balance between the need to avoid leaving seafarers without protection when they work on ships that are below a certain size or do not undertake international voyages and the concern about imposing an excessive administrative burden on those ships. This position is without prejudice to the opinion of the seafarers' representatives at the relevant national tripartite meeting; they do not agree that the scope of any of the Convention's provisions should be limited.

*Australia:* The inclusion of ships not on international voyages may be impractical and unnecessarily onerous and poses a problem for Australia in terms of its federal nature and relationships with its states. It may also result in a lack of harmonization with conventions of the IMO. The source of the 200 GT figure is unclear. It may be better to use the SOLAS tonnage figures of 300 and 140 GT for common matters. Either a tonnage limit consistent with IMO conventions, such as 500 GT, should be used or the Convention should be limited to ships on international voyages.<sup>7</sup>

*Brazil:* The 200 GT ceiling is acceptable in this case.

*Egypt (General Trade Union of Maritime Workers):* In comments transmitted to the Office by the Government, the union indicated its agreement with the consensus reached.

*Mauritius:* In order to apply the Convention to all ships, a provision allowing a member State to exempt ships of less than a specified tonnage (to be decided by the Member) for some matters, after consultation, should be included and should apply to other provisions in the new Convention.

*New Zealand:* Application of the Convention to ships engaged in commercial activities subject to express provision to the contrary is accepted. However, there may be some situations where application is impractical. Confining the suggested exclusions to specified Title 3 provisions is realistic. Allowing shipowners the option to request a certification of ships below 500 GT appears to strike a good balance, making it possible for those who may need it without imposing the administrative burden of certifying all ships regardless of need.

*Panama:* Any exclusions should be specified in the particular Titles to which they apply, whether they apply to ships of 200 or 500 GT or ships engaged in international voyages. The aim is to guarantee protection of the rights of all seafarers irrespective of whether the ship undertakes international voyages or its size. The Convention should make it

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<sup>7</sup> The Government also considered that the application of the Convention to warships needed to be clarified.

clear that its provisions would apply to fishing vessels until the Convention on work in fishing is adopted.

*Philippines:* The Government noted that, in its tripartite consultations, the shipowners had expressed the view that ships which did not undertake international voyages should be excluded completely from the coverage of the Convention since domestic vessels were appropriately covered by national law.

*South Africa:* The Convention should provide minimum standards. The application of the standards to different sizes of ships should be decided by the competent authority and should not be entrenched in the Convention.

14. The Office's attention has been drawn by a constituent to an apparent discrepancy between the English and French versions with respect to the words "ordinarily engaged in commercial activities" appearing at the beginning of *paragraph 4* of Article II. In the French version, the word "activities" appears as "maritime navigation": "*normalement affectés à la navigation maritime commerciale*", i.e. "ordinarily engaged in commercial maritime navigation". The Office suggests that this latter wording (corresponding, for example, to Article 2(a) of Convention No. 22, or Article 1 of Convention No. 58, with the addition of the word "commercial") should also be used in the English version. The provision would then read "ordinarily engaged in commercial maritime navigation".

15. *Subparagraph (a)* of paragraph 4 excludes fishing vessels (and fishers) from this Convention. This follows the approach adopted in the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). This exclusion also reflects the view of the Governing Body of the International Labour Office that, although a number of the existing maritime labour Conventions specifically encourage Members to apply them to vessels and personnel engaged in commercial fishing (e.g. Convention No. 180, Article 1, paragraph 2), the new maritime labour Convention should not try also to address the very diverse needs and concerns of the fisheries sector. The new Convention and Recommendation on work in the fishing sector is under development. These instruments, once adopted, will provide protection specifically tailored to meet the needs of the fishing sector. Their adoption would not, of course, preclude Members from giving their fishers the benefit of any additional protection provided by the maritime labour Convention, if they chose to do so.

16. *Paragraph 5* of Article II is similar to paragraph 3 in providing additional national flexibility for dealing with questions that may arise regarding the application of the Convention to a specific ship or category of ships, on the basis of tripartite consultation

17. *Paragraph 6* is a standard provision in international labour Conventions.

#### *Note 4 (Articles III and IV)*

1. These two Articles set out fundamental rights and principles and seafarers' employment and social rights pursuant to the Decent Work Agenda. *Article III* is the result of extended discussion and tripartite agreement. Its purpose is to achieve recognition of the underlying importance of these fundamental rights. Its wording follows the approach of Article 2(a) of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), by requiring each Member to "satisfy itself" that the provisions of its laws and regulations respect, in the context of this Convention, the fundamental rights referred to in Article III. Respect for these fundamental rights and principles has been recognized as an essential condition for the effective exercise of labour rights in general. It should be noted that the obligation on a Member under Article III is not to apply the provisions of the Conventions embodying those fundamental rights (which are referenced in the Preamble), but rather to satisfy itself that

those fundamental rights are reflected in the relevant legislation. With respect to the corresponding reporting obligation, the ILO Legal Adviser informed the PTMC as follows:

Article III will be, as with all obligatory provisions of the Convention, subject to examination by the bodies responsible for the supervision of the implementation of ILO standards. The important issue is to identify the obligation that will be the focus of this supervision. Each Member which ratifies the future Convention will be obliged, in accordance with Article III, to satisfy itself that its legislation respects, in the context of this Convention, the four categories of fundamental rights. As with all obligations arising out of international labour Conventions, this should be carried out in good faith. Subject to what the ILO Governing Body may decide concerning the details to be requested in the report form in the framework of article 22 of the ILO Constitution, examination by the supervisory bodies will concern this specific obligation. This provision does not impose any additional obligation on States that have ratified one or more of the fundamental Conventions, because those Conventions already cover, without exception, the workers who are the subject of the future Convention.<sup>8</sup>

2. *Article IV* requires each ratifying Member to ensure, within the limits of its jurisdiction, decent conditions of work for seafarers. Article IV can be seen as setting out the general rights and principles which are articulated, in greater detail, in the Regulations and Code, under the Titles. *Paragraph 5* makes it clear that the “seafarers’ employment and social rights”, set out in *paragraphs 1-4*, are to be fully implemented, not in the abstract but, rather, “in accordance with the requirements of this Convention” – i.e. in accordance with the relevant provisions of the Articles, Regulations and Part A of the Code (Note 3, paragraph 4).

#### *Note 5 (Article V)*

1. *Article V* provides the legal foundation for the provisions on compliance and enforcement in Title 5 of the Convention. These obligations are implicit in the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and the Labour Inspection (Seafarers) Convention, 1996 (No. 178), both of which are consolidated by this Convention.
2. *Paragraphs 2 and 6* are directed to encouraging each Member to effectively exercise its jurisdiction through the adoption of a systematic approach to compliance and enforcement of the legal standards.
3. *Paragraph 4*, based on Article 4 of Convention No. 147, provides the foundation for voluntary (“may”) inspections of a ship flying a Member’s flag when that ship is in another Member’s port (port state control measures) to help ensure ongoing compliance with the requirements of the Convention.
4. *Paragraph 5* draws upon the obligations found in the Recruitment and Placement of Seafarers Convention, 1996 (No. 179). It relates essentially to the complementary responsibilities of Members from which the world’s seafaring workforce are drawn. It requires Members to “effectively exercise … jurisdiction and control” over seafarer recruitment and placement services, if these are established in its territory. This lays the foundation for the requirements in Title 1 of the Convention (Note 18) that private sector services must be licensed or certified or regulated in some way and for the obligations under Title 5, Regulation 5.3.

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<sup>8</sup> ILO: *Record of Proceedings* No. 4(Rev.), Preparatory Technical Maritime Conference, Geneva, 13-24 September 2004, para. 104.

5. *Paragraph 6* sets out a requirement, consistent with obligations found in other relevant Conventions, such as UNCLOS, that each Member is to enforce its laws with sufficient sanctions or other corrective measures, consistent with international law, to discourage violations of the requirements of the Convention. The geographic scope of the obligation and the level and nature of any sanctions or corrective measures for violations is not specified, beyond the requirement that they be established and that they be adequate to discourage violations.

6. *Paragraph 7* establishes the principle of “no more favourable treatment” adopted by the HLTWG and the PTMC.<sup>9</sup> This principle is also found in the key IMO conventions. It may provide an incentive for ratification of the Convention and help to secure a level playing field with respect to employment rights.

#### *Note 6 (Article VI)*

7. *Article VI* introduces two important innovations as far as international labour Conventions are concerned. One relates to the structure of the proposed consolidated maritime labour Convention, discussed in paragraphs 1-9 of Part II, General discussion. *Paragraphs 1* and *2* of this Article set out the legal relationship between the parts or levels of the new Convention. The Articles are at the first level of the Convention, with further elaboration of the rights and obligations being set out in the binding Regulations (Titles 1-5; second level). Each Regulation is then implemented through a combination of mandatory Standards (Code, Part A, third level) and non-binding Guidelines (Code, Part B, fourth level). The other innovation in Article VI concerns flexibility in implementation in order to help to achieve the objective of wide-scale ratification without diluting the standards of the Convention, referred to at the end of paragraph 2(c) of Part II, General discussion.

8. *Paragraph 2* provides for interaction within the Code of the Convention, under which Members are to give “due consideration” to implementing their responsibilities under Part A of the Code “in the manner provided for in Part B of the Code”. The relationship between Parts A and B of the Code was the subject of a legal opinion given by the ILO Legal Adviser to the HLTWG at its third meeting.<sup>10</sup> This opinion is reproduced in Appendix D to this Report. A breakthrough was achieved at the fourth meeting of the HLTWG at Nantes when agreement was reached on the precise implications for Members that ratify the Convention with respect to the treatment to be given to Part B of the Code. The breakthrough paved the way for the shift of many of the detailed requirements in existing Conventions from the Standards in Part A of the Code to the Guidelines in Part B of the Code. The understandings were formulated in the following set of questions and answers:

*Question:* Is Part B mandatory?

*Answer:* No.

*Question:* Can Part B be ignored by ratifying Members?

*Answer:* No.

*Question:* Is implementation of Part B verified by port state inspectors?

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<sup>9</sup> This is the principle that no more favourable treatment is given to ships entitled to fly the flag of a State that has not ratified the Convention than is given to ships entitled to fly the flag of a ratifying State. See, for example, Article 1, paragraph 3, SOLAS Protocol, 1988.

<sup>10</sup> ILO: *Final report*, High-level Tripartite Working Group on Maritime Labour Standards, TWGMLS/2003/10 (Geneva, 2003), paras. 199-202.

*Answer:* No.

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

*Answer:* No, but if it does not follow the guidance it may – vis-à-vis the competent bodies of the International Labour Organization – need to justify the way in which it has implemented the corresponding mandatory provisions of the consolidated Convention.<sup>11</sup>

9. In order to assist Members, an Explanatory note following the Articles of the Convention has been included in the text of the Convention (Note 14). Paragraphs 10 and 11 of this Explanatory note reflect the understandings reached: they indicate the general context of Part B and give an example of Part B's interaction with Part A. An explanation, rather than a legal text, does indeed seem to be the best approach and responds to the agreement that the understandings set out in paragraph 2 of Note 6 should be clearly reflected in the Convention or related documentation.

10. *Paragraphs 3 and 4* set out the other main element of flexibility introduced by the Convention. With respect to national implementation of the Convention's requirements, *paragraph 3* relates to the concept of "substantially equivalent", a possibility already provided for in the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). The concept is not defined in that Convention nor is it defined in the more recent Convention No. 185, in which it has been used. After extensive discussion, the PTMC decided to include a definition in *paragraph 4* and arrived at a compromise agreement concerning its wording, after considering two alternative definitions proposed in the recommended draft submitted to it. Under the compromise wording of paragraph 4, a national provision implementing the rights and principles of the Convention in a manner different from that set out in Part A of the Code will be considered as "substantially equivalent" if the Member concerned "satisfies itself" that the relevant legislation or other implementing measure "is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned" and "gives effect to the provision or provisions of Part A of the Code concerned". In connection with the expression "satisfies itself", which was used in one of the alternatives considered by the PTMC, the following extract from an opinion given to the PTMC by the ILO Legal Adviser also appears relevant to paragraph 4 as adopted by the PTMC:

The Member's obligation is principally to "satisfy itself", which nevertheless does not imply total autonomy, since it is incumbent on the authorities responsible for monitoring implementation at the national and international levels to determine not only whether the necessary procedure of "satisfying themselves" has been carried out, but also whether it has been carried out in good faith in such a way as to ensure that the objective of implementing the principles and rights set out in the Regulations is adequately achieved in some way other than that indicated in Part A of the Code.<sup>12</sup>

11. It will be noted that the definition in paragraph 4 of Article VI will apply "for the sole purpose of paragraph 3" (i.e. only as far as the provisions of Part A of the Code are concerned) and only "in the context of this Convention"; it is therefore not intended to affect the meaning that might be given to the term "substantially equivalent" in other ILO Conventions (Conventions Nos. 147 and 185) that may remain or come into force for some Members. Furthermore, under paragraph 3, the concept of substantial

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<sup>11</sup> ILO: *Final report*, High-level Tripartite Working Group on Maritime Labour Standards, TWGMLS/2004/19 (Nantes, 2004), para. 139.

<sup>12</sup> ILO: *Record of Proceedings* No. 4(Rev.), Preparatory Technical Maritime Conference, Geneva, 13-24 September 2004, para. 124.

equivalence may be resorted to “unless expressly provided otherwise in this Convention”; its application has, in fact, been excluded with respect to the Standards in Title 5 (Note 34, paragraph 5).

*Note 7 (Article VII)*

1. *Article VII* provides a mechanism which would enable Members to respond to the situation where there may be no representative organization of shipowners or seafarers in a jurisdiction to consult with (as required by a number of provisions in the Convention). The potential impact of this provision was discussed earlier in paragraph 16 of Part I, Introduction.

*Note 8 (Article VIII)*

1. The final clauses in Articles VIII-XII and Article XVI are based on the standard provisions of international labour Conventions, with particular reference to Convention No. 147. Unlike Convention No. 147 (Article 5), there are no preconditions for Members seeking to ratify the maritime labour Convention.

2. The precise formula for entry into force of the Convention and any amendments was one of the areas that was not resolved by the PTMC. At the Intersessional Meeting, it was agreed that these areas should be left blank in the draft Convention as they were matters appropriate for consideration at the International Labour Conference on the basis of Office suggestions. Thus the number and weight of ratifications required for entry into force, in accordance with *paragraph 3 of Article VIII*, still needs to be decided.

3. The following information regarding other Conventions may be useful to consider. The formula of “at least ten Members with a total share in world shipping gross tonnage of 25 per cent” was used in Convention No. 147 (Article 6(2)). The 25 Members/50 per cent of the world gross tonnage of merchant shipping formula is used in the SOLAS Convention, 1974 (Article X(a)). Other options include 15/50 per cent of world gross tonnage of merchant shipping (SOLAS Protocol 1988, Article V, paragraph 1(a)), and requiring ratification by “five Members, three of which each have at least 1 million gross tonnage” (Convention No. 180 (1996), Article 18(2)). In the PTMC, the Shipowner representatives and most Government representatives favoured the SOLAS approach of at least 25 Members with a share of 50 per cent of world gross tonnage. The Seafarer representatives suggested 30 Members with a share of 33 per cent of world gross tonnage, while possibly discounting the tonnage of non-Members of the ILO. The Shipowners were prepared to support the minimum of 30 ratifying Members, but still adhered to 50 per cent of world gross tonnage. The principal justification for the figure of 50 per cent, mentioned by the Shipowner representatives and certain Government representatives, stems from the inclusion in the Convention of a “no more favourable treatment” clause (Article V, paragraph 7): in matters of inspections in foreign ports, ships calling at the port of a ratifying Member will be affected by the Convention, even if the flag State has not ratified it. With this justification, the reference should presumably be to “world” gross tonnage as the Convention provisions will, through the combination of this clause and the measures set out for inspections in foreign ports, also affect ships of non-ILO Members.

4. In determining the most appropriate formula for entry into force (and for amendments to the Convention, see Note 12) it may also be useful to consider examples using the table provided in Appendix C to this Report. The table, based on data drawn from the *World Fleet Statistics 2004*,<sup>13</sup> contains a third column showing the world

<sup>13</sup> Published by Lloyd’s Register-Fairplay. This is an annual publication which shows the composition of the current self-propelled, seagoing merchant fleet of 100 GT or above.

percentage as of 31 December 2004 of the world shipping gross tonnage of each country or territory with a registry. The six ILO Members with the largest tonnage (including territories or regions under their sovereignty) accounted for over 50 per cent of world tonnage. If those countries immediately ratified the Convention, it could come into force with only a small proportion of the countries with larger merchant fleets. On the other hand, if the six countries did not ratify the Convention, ratification by all the 140 or so other ILO Members on the list would not bring the Convention into force. In order to have a more workable arrangement, while retaining the level of 50 per cent, the weighting could be by reference to the number of countries with large shipping tonnages rather than by the gross tonnages themselves, along the lines of Convention No. 180, which provides for entry into force upon ratification by five Members, three of which each have at least 1 million gross tonnage of the world's merchant ships.

5. In addition to the consideration related to the “no more favourable treatment” clause, account needs to be taken of the position adopted by constituents concerning the effects of the Convention’s entry into force that result from Article X of the Convention. As reflected in the discussion in Note 10, the Convention reflects the view that existing maritime labour Conventions should, in most cases, be globally replaced by the new consolidating maritime labour Convention. This means, for example, that a country which is not in a position to ratify the comprehensive maritime labour Convention, but would like to ratify important existing Conventions such as Convention No. 147, would not be able to ratify these after the new Convention has come into force. This position concerning Article X would therefore be justified only if a relatively high level of ratifications is required before the new Convention can come into force. Taking the suggestion (consistent with what has just been said) that the number of ratifying Members should be set at 30, *paragraph 3* of Article VIII might be worded as follows:

3. This Convention shall come into force 12 months after the date on which there have been registered ratifications by at least 30 Members comprising at least half the number of States with a share of at least [one] per cent<sup>14</sup> of the gross tonnage of the world's merchant ships.

6. It is also important to note that *paragraph 4* of Article VIII proposes a 12-month period before ratification becomes effective for a Member ratifying after the Convention has come into force. This is the normal period in the ILO and it is particularly important in the context of Title 3 and the transitional provision it contains for older existing ships and may also be relevant to the issue of adjustments within the domestic systems and to ship construction (Note 27, paragraph 7).

#### *Note 9 (Article IX)*

1. This standard provision regarding the denunciation process is used in all ILO Conventions. The effect of this long-standing practice is to establish the same period during which denunciation is possible for each ratifying Member, regardless of when the Convention entered into force for the Member.

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<sup>14</sup> On the basis of the table in Appendix C, the figure of *1 per cent* would include 21 countries (Antigua and Barbuda, Bahamas, China, Cyprus, Denmark, Germany, Greece, India, Italy, Japan, Republic of Korea, Liberia, Malta, Marshall Islands, Norway, Panama, Russian Federation, Saint Vincent and the Grenadines, Singapore, United Kingdom, United States). A figure of *half of 1 per cent* would include 30 countries (Antigua and Barbuda, Bahamas, Belgium, China, Cyprus, Denmark, France, Germany, Greece, India, Indonesia, Islamic Republic of Iran, Italy, Japan, Republic of Korea, Liberia, Malaysia, Malta, Marshall Islands, Netherlands, Norway, Panama, Philippines, Russian Federation, Saint Vincent and the Grenadines, Singapore, Sweden, Turkey, United Kingdom, United States). A figure of *2 per cent* would include 12 countries (Bahamas, China, Cyprus, Greece, Japan, Liberia, Malta, Marshall Islands, Norway, Panama, Singapore, United Kingdom).

### Note 10 (Article X)

1. Article X lists the existing Conventions which will be revised by the new Convention. The current ratification record of the Conventions listed in Article X is, as already noted, set out in Appendix B to this Report. Until the consolidating Convention is ratified by all of the States that have ratified the existing maritime labour Conventions, it will necessarily have to coexist to varying degrees (depending on their ratification levels) with the obligations under the present international maritime labour Conventions.
2. Under international treaty law, there is no easy way of eliminating existing multilateral Conventions, or replacing them by a new one, unless those Conventions themselves provide a means of doing this. International labour Conventions adopted from 1930 onwards do, in fact, contain an Article that makes it possible for a future “revising Convention” to eliminate most of the effects of the Conventions being revised (but not the Conventions themselves). This Article typically reads as follows:
  1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
    - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of [the Article permitting denunciation after certain intervals] above, if and when the new revising Convention shall have come into force;
    - (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
  2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.
3. Subparagraphs (a) and (b) of paragraph 1 of this typical provision offer two solutions for the transitional problem, which will apply “unless the new Convention otherwise provides”. Subparagraph (a) avoids the problem of a ratifying Member being bound by similar obligations under different Conventions: once the new obligations in the revising Convention enter into force, the old obligations will disappear. Subparagraph (b) blocks the old Convention to further ratifications: once the new revising Convention comes into force, the application of the old Convention will be limited to the Members that have already ratified it (until they denounce it).
4. The proposed consolidated maritime labour Convention does not “otherwise provide” with respect to either subparagraph (a) or subparagraph (b) mentioned above: upon the Convention’s entry into force any Member that has already ratified it or subsequently ratifies it will be deemed to have denounced any Convention adopted after 1930 which it has ratified and which is identified in the new Convention in Article X as having been revised.<sup>15</sup> The revised Conventions will, therefore, remain in force for Members that had ratified them but not ratified the new Convention; the revised Conventions will be closed to further ratifications. The rationale for this ipso facto (automatic) denunciation and closure of the existing Conventions to further ratification is to secure as rapidly as possible transition to a single universally accepted set of international standards and obligations, with an improved “relevance ... to the needs of all the stakeholders of the maritime sector” (Part II, General discussion, paragraph 1).
5. The Conventions listed in Article X include all existing maritime labour Conventions except Conventions Nos. 108 and 185, which are in a slightly different

<sup>15</sup> Until a constitutional amendment of 1996 allowing the abrogation of outdated Conventions subject to certain conditions comes into effect, a pragmatic, common-sense approach will need to be taken with respect to Conventions ratified before 1930.

category to the other Conventions and are not covered in the present text of the Convention. Since Conventions are directed to binding obligations of international law, revising provisions of this kind do not cover international labour Recommendations. If considered necessary or desirable, the existing Recommendations, as well as the listed Conventions that have not yet entered into force<sup>16</sup> can, in due course, be withdrawn by decision of the International Labour Conference taken in accordance with article 45bis of its Standing Orders. The process of withdrawing outdated Recommendations (identified by the Governing Body Working Party referred to in paragraph 11 of Part I, Introduction) is in fact under way. In any event, should the provisions of any Recommendation conflict with any part of the new Convention, these would be regarded as superseded.

*Note 11 (Article XIII)*

1. *Article XIII* invites the ILO Governing Body to establish a special tripartite committee. This committee will be charged with generally reviewing the working of the new Convention, and will be given specific functions with respect to the accelerated or simplified amendment procedure for the Code (Note 13). It will consist of representatives of Governments which have ratified the new Convention and of Shipowner and Seafarer representatives chosen by the Governing Body (who might, in practice, be the same as the members of the JMC).<sup>17</sup> This means that the structure will not be based on national tripartite delegations, as in the International Labour Conference. Rather, the social dialogue in this case will operate on a global basis, on the model of the Governing Body. This is justified in view of the essentially globalized nature of the maritime sector.
2. The Government representatives of non-ratifying Members could participate in the committee, but will have no right to vote. They will, however, have the right to propose amendments and will take part in the process for the approval of such amendments in the International Labour Conference on the same basis as the Members that have ratified the Convention. *Paragraph 4* provides for the Governments on the committee to have twice the voting power of the Shipowner and Seafarer representatives on the committee. This 2-1-1 configuration will mean that, in the (probably unlikely) event of a formal vote being needed in the committee, the Governments will have 50 per cent of the votes, and the Shipowners and the Seafarers will each have 25 per cent. In addition, in the case of the adoption of amendments to the Code, paragraph 4(c) of Article XV protects any one of the three tripartite groups from being outvoted: a vote will not be carried if it does not have the support of at least half the voting power of each of the three groups.

*Note 12 (Article XIV)*

1. Articles XIV and XV address the procedures for amendment of the new Convention. *Article XIV* provides that the Convention can be amended by the General Conference in the framework of article 19 of the ILO Constitution. In addition, the Code can be amended by a simplified, accelerated amendment process that has been developed to meet the need for more rapid updating of the technical parts of the Convention, without the need for an entire revision.
2. Article XIV sets out the procedures, in the framework of article 19 of the Constitution, for amendment of the Convention as a whole, involving an express ratification procedure. The procedure envisaged will be an innovation for the ILO, but the legal effects of this

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<sup>16</sup> These include the Social Security (Seafarers) Convention, 1946 (No. 70), which, in the PTMC draft Convention, was inadvertently omitted from the list in Article X.

<sup>17</sup> See paragraph 20 of Part I, Introduction.

amendment procedure will be the same as that of the procedures used in the ILO for the revision or modification of instruments, with one important exception: there will be no separate revising Convention or Protocol; there will be a single amended Convention.

3. In accordance with *paragraph 1*, amendments will be adopted by the International Labour Conference in accordance with its Standing Orders. There is already a provision which meets the needs of Article XIV, namely article 44 of the Standing Orders, headed “Procedure in case of revision of a Convention”, which has, however, in practice not been used up to now in the case of the revision of Conventions.<sup>18</sup>

4. Once the amendment (or set of amendments) is adopted by the Conference, it will be communicated to all Members of the Organization for their express ratification, whether or not they have ratified the Convention. This is the case in the ILO at present with revising Conventions. There will, however, be a difference in that Members that have already ratified the Convention will receive only the amendment for ratification (*paragraph 2*). Members that have not ratified the Convention, will receive a copy of the whole text as amended (*paragraph 3*).

5. Again, as is already the case in the ILO with revising Conventions, the ratifications of all ILO Members will be counted to see whether the required level has been reached (*paragraph 4*). When this level is reached, the amendment will be “deemed to have been accepted”. “Deemed acceptance” is a convenient term (taken from IMO conventions) to describe an event which will trigger the initial entry into force of the amendment 12 months later. In paragraph 4, this required level has been left blank as the requirements may well depend upon those decided by the Conference for the initial entry into force of the Convention under Article VIII (Note 8). They might be the same as those under Article VIII or they might be set at a lesser amount (this is the case with the requirements for the entry into force of the Protocol to Convention No. 147, for example, as compared with the entry-into-force requirements for that Convention itself).

6. Following the normal practice in the ILO, the amendments will enter into force 12 months after the ratification level has been reached (i.e. deemed acceptance) in the case of the initial ratifications; and 12 months after registration of the ratifications, for subsequent ratifications. The difference from the present situation is that the entry into force will only relate to the amendment itself in the case of Members that have already ratified the Convention (*paragraph 6*) and will relate to the whole Convention as amended in the case of Members that previously had not ratified it (*paragraph 7*).

7. Members that have already ratified the Convention will not be bound by the amendment until they have expressly ratified the amendment (*paragraph 8*). This provision is necessary as Members could not be expected to ratify a Convention (which they would do only after careful consideration of its text) if this meant that they would be bound by new obligations under subsequent texts that they had not approved. This principle is followed in the ILO with regard to revisions of a Convention. It is also embodied in the SOLAS and STCW Conventions.

8. However, Members subsequently ratifying the Convention will be bound by all amendments adopted so far unless provided otherwise in any amendment (*paragraph 9*). The legal effect will thus be the same as that of closing a revised Convention to further ratification. There is, however, a difference of detail which has been brought to light by the PTMC Drafting Group, which noted a discrepancy between paragraph 9 of Article XIV and paragraph 12 of Article XV relating to the tacit acceptance procedure

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<sup>18</sup> Customarily, the procedure for the adoption of a new Convention is also used for the revision of existing Conventions.

applicable only to the Code (Note 13). Paragraph 12 provides that “After *entry into force* of an amendment, the Convention may only be ratified in its amended form” (emphasis added), whereas paragraph 9 of Article XIV in effect closes the prior version of the Convention to ratification after *adoption* of the amendment by the Conference and thus before its subsequent fate is known. The Drafting Group (Appendix A, paragraph 15) wondered whether it was intentional to depart from the SOLAS solution in this respect. The SOLAS Convention, 1974 (Article X(c) on entry into force), provides that the relevant date for ratifications of the Convention subsequent to an amendment – in both the express and the tacit procedures – is the date of deemed acceptance, which in Article XIV is established in paragraph 4 (Note 12, paragraph 5).

9. There are significant differences between Article XIV and Article XV procedures which would justify a different treatment of the question; in particular, Article XV is largely based on the procedure under IMO conventions, whereas Article XIV is designed to have the same effect as the procedures for the revision of ILO Conventions. For this reason, there is a strong argument for allowing ratification of the Convention in its “pre-amendment” version up until the new version enters into force, as the relevant standard provision in ILO Conventions at present does not allow the revised Conventions to be closed to ratification until the entry into force of the revising Convention. Furthermore, with the present wording of paragraph 9, Members that ratify the Convention prior to the deemed acceptance of the amendment – namely, the cut-off date under Article X(c) of the SOLAS Convention, 1974, previously referred to – cannot be sure of their eventual obligations as the amendment might not receive the required level of ratifications to bring it into force.

10. On the other hand, the wording of paragraph 9 of Article XIV may also be understood as intentional in its difference from paragraph 12 of Article XV and from the SOLAS approach. It is consistent with the procedure under which non-ratifying Members are invited to ratify the Convention as amended (Note 12, paragraph 4). It is also consistent with the concerns underlying the new Convention: that the existing Conventions should be replaced by a single uniform Convention and that the new Convention should be widely ratified by Members active in the maritime sector. Although the procedure under Article XIV can be used for the amendment of any provision of the Convention, it is likely (because of the costs and potential delays involved) to be used only if there were an unavoidable need to amend major provisions of the Convention (in the Articles and Regulations). It is therefore reasonable for Members considering ratification of the Convention to assume that such essential amendments will eventually enter into force. If, however, a Member wishes to have complete certainty in this respect it should take steps to ratify the Convention at an early date. In spite of the concern to have a single uniform Convention, the right of ratifying countries to refuse to be bound by subsequent amendments cannot be denied for the reason indicated in paragraph 7 of Note 12. However, this reason does not apply in the case of Members that have not yet ratified the Convention. Indeed, under the Article XIV procedure, amendments could take several years to enter into force (or reach the stage of deemed acceptance), thus helping to perpetuate the coexistence of substantially different versions of the same Convention. It should also be noted that Members that have not ratified the Convention are able to influence the content and fate of an amendment under Article XIV. Unlike the situation under the SOLAS Convention, 1974, where the decision to adopt amendments and their subsequent acceptance is exclusively in the hands of the “Contracting Governments”, all ILO Members (whether or not they have ratified the Convention) are placed on an equal footing: they all have

the right to participate in the decision to adopt an amendment and all ratifications are taken into account with respect to the entry into force of the amendment.

*Note 13 (Article XV)*

1. *Article XV* introduces the most important innovation of the new Convention: the amendment of certain provisions (the Code) through an accelerated amendment or tacit acceptance procedure rather than express ratification. As noted in paragraph 1 of Part II, General discussion, the development of an accelerated amendment procedure to enable easier updating of the more technical details in labour standards had been one of the original objectives of the consolidation exercise. A similar approach to more rapid amendment of the technical parts of a Convention was adopted by the International Labour Conference for the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) (Article 8).
2. This simplified or accelerated amendment procedure developed for the consolidated maritime labour Convention is similar to that provided for in Conventions adopted in the framework of the IMO, such as SOLAS. The procedure has, however, been adapted to the special features of the International Labour Organization, in particular its tripartite structure and the pre-eminent role, given by the Constitution to the Organization as a whole, through the International Labour Conference, with respect to the adoption and revision of Conventions; in particular, the revision of a Convention is a matter for the Organization as a whole rather than only for the Members that have ratified it.
3. *Paragraph 1* of Article XV maintains the constitutional right of the Governing Body to place an item on the Conference's agenda for the amendment of provisions of the Code under the traditional procedures reflected in Article XIV.
4. A flow chart illustrating the six main steps in this accelerated amendment procedure, as set out in paragraphs 5-10 of Note 13, is provided in Appendix E to this Report.
5. *Step 1:* A proposal for an amendment is submitted to the Director-General of the ILO (*Article XV, paragraph 2*); it may be made by the Shipowners' or Seafarers' group on the special tripartite committee (Note 11) or by the government of any Member of the Organization. Proposals made by governments must be supported by a group or by a certain number of ratifying governments. The precise number has been left blank in the proposed Convention. The PTMC and the Intersessional Meeting took the view that this question was more appropriate for discussion by the Conference. There are perhaps two main considerations. One, the proposals should have a certain weight before they are submitted in view of the time and expense that will be required on the part of the Office and constituents in steps 2 and 3, subsequently outlined (examination of the proposal by the Office, its translation and circulation; consideration of the proposal by each government, presumably after consultation with its social partners; formulation of comments by the government; preparation by the Office of a summary of the comments; and discussion of the proposal in the special tripartite committee; the committee might even have to be convened just to consider a single proposal). Two, some governments may have a practical difficulty in coordinating their ideas or positions and consequently obtaining the necessary support. In the PTMC, the Shipowner and Seafarer representatives agreed that amendments should be proposed or be supported by at least ten Governments (i.e. 1 + 9 if the proposer has ratified the Convention) or by the Shipowners' or Seafarers' group. This was supported by most Government representatives in the Intersessional Meeting, although some Governments were in favour of other solutions – in particular, support from four other governments (1 + 4). It is suggested that the 1 + 9 solution be adopted subject to consideration of any particular

difficulties which may be drawn to the Conference's attention in this respect. The second sentence of *paragraph 2* would then read:

An amendment proposed by a government must have been proposed or be supported by at least **ten** governments that have ratified the Convention or by the group of Shipowner or Seafarer representatives referred to in this paragraph.

6. *Step 2:* The Director-General of the ILO then checks that the proposal has been validly made and circulates it to all ILO Members, with any comments or suggestions deemed appropriate (*paragraph 3*), inviting the Members to submit their own observations or suggestions.

7. *Step 3:* After a period which is normally six months, the proposal and a summary of observations or suggestions received is transmitted, in accordance with *paragraph 4*, to the special tripartite committee for consideration with a view to adoption (subject to the approval of the International Labour Conference). The presence of at least half the ratifying Members (*subparagraph (a)*) and a two-thirds majority in favour (*subparagraph (b)*) are required for the adoption of an amendment. As already stated (Note 11, *paragraph 2*), all Members of the Organization can participate in the discussions, but only the committee members (i.e. the ratifying Members in the case of governments) can vote, and the voting rules ensure that none of the tripartite groups can be outvoted (*subparagraph (c)*).<sup>19</sup>

8. *Step 4:* The main difference as compared with the IMO procedures can be seen in the next step, required by *paragraph 5*; namely, the submission of an adopted amendment to the International Labour Conference for approval, so that the Organization as a whole can verify the legality of the amendment and its consistency with the general policy of the Organization. This procedure should be very short as the Conference will only have the task of approving the amendments (by a two-thirds majority) or otherwise. It could not reformulate the amendment. If its approval is not obtained, the amendment will be referred back to the special tripartite committee.

9. *Step 5:* The rest of the procedure – the submission of approved amendments for consideration – is very similar to the IMO procedures. The amendments are notified only to Members that have ratified the Convention, which are given a period to react (normally two years); other ILO Members receive a copy (*paragraph 6*). The amendment is deemed to have been accepted unless a certain number of Members, representing a certain percentage of world gross tonnage, express their disagreement before the end of the period just mentioned (*paragraph 7*). The precise formula required to prevent an amendment from being accepted under *paragraph 7* was not resolved by the PTMC and was not discussed by the Intersessional Meeting, but was referred to the Conference for discussion based on an Office suggestion. There is, in fact, a mistake in *paragraph 7* as presented to the PTMC. That paragraph was intended to follow the

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<sup>19</sup> Questions have been raised as to how far subparagraph (c) can assist Governments, which do not normally vote as a group. On the assumption (for the purpose of mathematical convenience) that the Convention entered into force with 25 member States, the committee would have a membership of 50 ( $2 \times 25$ ) Government representatives. The Shipowners' and Seafarers' groups on the committee would then have 25 votes each (Article XIII, *paragraph 4*) and the Governments would have 50 votes, making a total of 100. Subparagraph (c) would have the following effects:

- (1) an amendment could not be adopted if it was opposed by either the Shipowners' or the Seafarers' group;
- (2) an amendment supported by both the Shipowners' and the Seafarers' groups could not be adopted unless at least 25 of the 50 Government representatives voted in favour; in other words, because of subparagraph (c), 25 Government votes in favour would be required although the two-thirds majority required by subparagraph (b) would be reached if only 17 Governments voted in favour – i.e. a total of 67 ( $25 + 25 + 17$ ) out of the 100 votes.

approach in IMO conventions, which provide for the rejection of an amendment if either the objections amount to one-third of the ratifying Members or the objecting Members constitute 50 per cent of world gross tonnage. By making these two conditions cumulative rather than alternative, paragraph 7, as currently drafted, would make it virtually impossible to oppose amendments under Article XV, at least in the early life of the Convention. Following the substance of the provisions in the IMO conventions, but taking into account the solution concerning the world tonnage percentage proposed in paragraph 5 of Note 8, the following wording is suggested:

7. An amendment approved by the General Conference shall be deemed to have been accepted unless, by the end of the prescribed period, formal expressions of disagreement have been received by the Director-General either from more than one-third of the Members which have ratified the Convention or from Members which have ratified the Convention and comprise at least half the number of States with a share of at least [one] per cent of the gross tonnage of the world's merchant ships.

10. *Step 6:* An amendment enters into force six months after the date of its deemed acceptance for all Members except those that have, within the prescribed period, expressed their disagreement (*paragraph 8*) or have given notice that they will only be bound by their express notification of acceptance (*paragraph 8(a)*). A Member may also, before the amendment enters into force, delay its entry into effect for it by a period normally not exceeding one year (*paragraphs 8(b)* and *10*).

11. It will be seen that this simplified or accelerated procedure nevertheless has a number of constraints or safeguards which do not exist under the IMO conventions. The main saving in time (of several years) will occur during steps 5 and 6, which closely follow the IMO procedures. The internal consideration of amendments, in steps 1-4, will be particularly thorough and will, as already indicated, favour tripartite consensus. Some months (and substantial financial savings) will, however, be gained by the fact that the main discussions will take place in the special tripartite committee, rather than in the International Labour Conference, whose decision will be confined to a "Yes" or a "No".

12. The proposed Convention respects the principle (already referred to in Note 12, paragraph 7) that once a Member has accepted the text of a Convention by ratification, it cannot be bound, against its will, by any changes to that text. New ratifying Members are, of course, in a different situation as they had not agreed to become bound by the original text. If they decide to ratify the Convention, they must accept the text as amended (*paragraph 12*).

13. As discussed in paragraphs 8-10 of Note 12, on Article XIV amendments, the PTMC Drafting Group noted a discrepancy between paragraph 12 of Article XV and paragraph 9 of Article XIV. Paragraph 12 provides that the Convention may only be ratified in its amended form after "entry into force of an amendment". It would seem preferable for this cut-off date to be set at the approval of an amendment by the General Conference (Article XV, paragraph 5), or at least at the date when the amendment is "deemed to have been accepted" (Article XV, paragraph 7), as is the case under the IMO conventions. With the present wording, non-ratifying Members have an advantage over ratifying Members in that the latter will be bound by the amendment unless they inform the ILO Director-General otherwise within the prescribed period, whereas the same requirement would not apply to Members ratifying the Convention after the approval of an amendment by the Conference. On the other hand, the reasoning in paragraph 10 of Note 12, which argues against using the option of entry into force or of deemed acceptance as the cut-off date, is much less persuasive in the case of the present procedure. Under the Article XV procedure, the waiting period before an amendment is deemed to be accepted is relatively short and, although non-ratifying Members have a

role in the proposal and consideration of amendments and take part in the Conference's decision concerning approval of an adopted amendment, they do not (in contrast to the Article XIV procedure) take part in the initial decision to adopt an amendment or in the subsequent tacit acceptance procedure.

14. If the present wording of paragraph 12 is maintained ("After entry into force of an amendment, the Convention may only be ratified in its amended form."), it should be understood that the wording would not preclude a non-ratifying Member from voluntarily deciding to ratify the Convention in its amended form prior to entry into force.

15. A question arises as to what happens if a ratifying Member decides not to accept an amendment, and its ships enter a port of a Member which is bound by the amendment. *Paragraph 13* proposes the SOLAS solution under which the latter Member will have the right to apply the relevant provision in its amended form (except during any period of exemption referred to in paragraph 8(b)). This provision, which has been redrafted by the PTMC Drafting Group, is the same in substance as that appearing in the PTMC draft Convention, although presented in a way that is much clearer and closer to the wording in the relevant SOLAS provision (Appendix A, paragraph 16).

#### Detailed discussion: Explanatory note, Regulations and Code

##### *Note 14 (Explanatory note)*

1. The Regulations and the Code begin with the "Explanatory note", referred to in paragraph 3 of Note 6. The Explanatory note distils the agreements reached by the HLTWG and adopted by the PTMC concerning the approach and structure of the new Convention and the interrelationship between the Articles, Regulations and the Code and between Part A and Part B of the Code. The Explanatory note is included with the Convention, but indicates, in *paragraph 1*, that it should not, from a legal perspective, be considered a part of the Convention. It will have a status similar to that of the Preamble – to assist interpretation. It should also be useful for clarifying a number of matters (such as the treatment to be given to Part B of the Code) for national parliaments considering ratification of the Convention.

##### *Note 15 (Title 1, Regulation 1.1)*

1. *Title 1* sets out the minimum standards that must be observed before seafarers can work on board ship: they must be above a minimum age, have a medical certificate attesting to fitness for the duties they are to perform and have training and qualifications for the duties they are to perform on board. In addition, seafarers have an entitlement to access employment at sea through a well-regulated recruitment and placement system.

2. *Regulation 1.1* sets the minimum age for any kind of work at sea, in accordance with existing maritime labour standards, at 16 years. It consolidates the Minimum Age (Sea) Convention, 1920 (No. 7), and the Minimum Age (Sea) Convention (Revised), 1936 (No. 58), and aspects of the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), which sets the age of 16 as the minimum for work in Part III on the manning of ships. Regulation 1.1 of the proposed Convention sets the initial minimum age at 16. This requirement could be altered in the future through the addition of a provision in Part A of the Code to establish a higher age. Although a detail of this kind would not normally be included in the Regulations, it is included in Regulation 1.1, in view of the importance that might be given to this detail by national parliaments considering ratification.

**Note 16 (Regulation 1.2)**

1. *Regulation 1.2* deals with medical examinations and certificates and consolidates the requirements under the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16), and the Medical Examination (Seafarers) Convention, 1946 (No. 73). Its stated purpose is: “To ensure that all seafarers are medically fit *to perform their duties at sea.*” The words in italics were proposed in an amendment obtaining tripartite support at the Intersessional Meeting.
2. *Paragraph 3* of *Standard A1.2* explicitly recognizes the medical certification requirements under the STCW Convention, 1978, as amended.
3. *Paragraph 9* covers the situation where a medical certificate expires in the course of a voyage. In the PTMC draft Convention, the provision allowed it to continue in force “until the end of that voyage”. As a result of an amendment obtaining tripartite support at the Intersessional Meeting, the quoted phrase has been replaced by “until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months”.

**Note 17 (Regulation 1.3)**

1. *Regulation 1.3* deals with training and qualifications of seafarers. The Regulation explicitly recognizes other applicable training requirements, such as those under the STCW Convention, as amended (paragraph 3).
2. The PTMC decided that this Regulation should not be followed by any indication that its provisions could be the subject of Standards or Guidelines. This was in response to a communication from the IMO regarding its willingness to take responsibility for the training and certification requirements for able seafarers, if these were transferred by the ILO. The PTMC agreed with this transfer, but also agreed with the view that it was necessary to include general provisions on training in the consolidated maritime labour Convention in view of the comprehensive nature of this consolidating Convention and to justify the closure of the Officers’ Competency Certificates Convention, 1936 (No. 53), and the Certification of Able Seamen Convention, 1946 (No. 74), which are listed in Article X (Note 10), and also to ensure that any personnel who may not be covered by the IMO STCW provisions are trained or otherwise qualified. For example, a person hired as a nurse or doctor on a ship would be expected to meet any national standards for those positions. However, the competent authority of a Member will not be responsible for the training or evaluation of the person for that position, but simply for requiring shipowners to ensure that personnel meet relevant national standards. This concept is set out in *paragraph 1* of the Regulation.
3. It should be noted that the transfer of seafarers’ training and certification responsibility to the IMO does not include training of ships’ cooks, a matter that will remain with the ILO and is addressed in the Convention under Title 3 (Note 28).
4. *Paragraph 2* proposes a requirement that would ensure that all seafarers have basic personal safety training for work on board ship. This is already a requirement under the STCW Convention. During consultations it was recommended that the terminology already developed under the STCW Convention and Code be either adopted or referenced. The current provision reflects the advice of the IMO on the appropriate wording to ensure that it is consistent with the STCW. However, in its comments (Part II, General discussion, paragraph 12), the IMO has noted that, unlike the proposed Convention, the STCW does not allow for substantial equivalence, a matter which may be important from the perspective of the ILO oversight process.

5. *Paragraph 3* paves the way for the transfer to the IMO by providing that training and certification in accordance with the instruments adopted by the IMO shall be considered as meeting the generally worded requirements of the Regulation. In the comments just referred to, the IMO has indicated that, at its 80th Session (May 2005), the Maritime Safety Committee (MSC) approved the establishment by the Standards of Training and Watchkeeping (STW) Sub-Committee of an intersessional correspondence group under the coordination of the United Kingdom to facilitate the development of standards of competence of ratings. The STW Sub-Committee also proposed that the ILO should consider the legal status of those countries that have ratified the Certification of Able Seamen Convention, 1946 (No. 74). Accordingly, if the IMO provisions are not sufficiently advanced at the time of the adoption of the present Convention, it might be prudent to add an appropriate transitional provision to this Regulation to take account of Members which have ratified Convention No. 74. Otherwise, the consolidated Convention would, by providing for the ipso facto denunciation of the revised Conventions (Note 10, paragraph 4), have the effect of diminishing existing protection during the interval preceding the adoption of appropriate arrangements under IMO instruments. Accordingly, the following paragraph 4 might be considered for inclusion at the end of the Regulation:

4. Any Member which, at the time of its ratification of this Convention, was bound by the Certification of Able Seamen Convention, 1946 (No. 74), shall continue to carry out the obligations under that Convention unless and until its subject matter is covered by instruments adopted by the International Maritime Organization or until five years have elapsed since the entry into force of this Convention in accordance with paragraph 3 of Article VIII, whichever date is the earlier.

*Note 18 (Regulation 1.4)*

1. *Regulation 1.4* sets out the basic right of seafarers to have access, without charge, to “an efficient, adequate and accountable system for finding employment” (*paragraph 1*) and requires each Member to regulate any recruitment and placement services that may be operating in its territory in accordance with standards to be set out in the Code (*paragraph 2*). *Paragraph 3* of the Regulation obliges flag States to require shipowners using recruitment and placement services that are based in countries where the Convention does not apply to ensure that those services conform to the requirements in the Code. It should be noted that this Regulation and Standard would not, however, require that a shipowner use a recruitment and placement service, but rather that, if a service is used, it must be licensed, or certified or regulated in accordance with the Convention. *Paragraph 8* of *Standard A1.4* elaborates upon this obligation and clarifies that the shipowners’ obligation in this respect is to ensure “as far as practicable”.

2. Paragraph 3 of the Regulation, as clarified by paragraph 8 of the Standard, implies a certain duty on flag States covering the use by their shipowners of recruitment and placement services based in countries that have not ratified the Convention. A question arose in the Intersessional Meeting, in the context of matters to be the subject of inspection, as to the nature of the flag State’s duties where its shipowners make use of recruitment and placement services based in foreign countries that have ratified the Convention. This question is dealt with in paragraph 3 of Note 38.

3. *Standard A1.4* draws a distinction between publicly and privately operated services. *Paragraph 1* requires that publicly operated services be operated in an orderly manner that protects and promotes seafarers’ employment rights. Guidance as to the way in which this obligation could be implemented is provided in Guideline B1.4. *Paragraph 2* of the Standard provides for mandatory requirements regarding development of a standardized system of licensing, certification or other form for regulation, which are,

however, applicable only to private services and only if these are established in a Member's territory. *Paragraph 3* clarifies that the requirement that such a regulatory system be developed does not impose any obligation on a Member to establish a private system for recruitment and placement. *Paragraph 4* sets out minimum requirements for the regulatory system for private services.

4. *Paragraph 7* of Standard A1.4 contains an important requirement which is taken from Article 3 of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and goes well beyond the subject of recruitment and placement services. It relates to the advice to be given to a Member's nationals on the possible problems of signing on a ship of a State that has not ratified the Convention. The PTMC Drafting Group queried whether this paragraph would not be better placed in Standard A5.3 relating to labour-supplying responsibilities (Appendix A, paragraph 20).

5. The PTMC Drafting Group also queried the meaning of "seafarers' identity documents" appearing in paragraph 2(a) of Guideline B1.4.1 (Appendix A, paragraph 21).

*Note 19 (Title 2, Regulation 2.1)*

1. *Title 2* deals with the terms and conditions of employment, including matters such as the context for signing the employment agreement; the basic minimum terms of employment such as wages, annual leave and repatriation; and the requirement that ships have sufficient and qualified personnel on board to provide a safe and secure work environment.

2. *Regulation 2.1* deals with the conditions under which a seafarer signs a seafarers' employment agreement. It consolidates obligations found in Convention No. 22. As much as possible it seeks to ensure that seafarers' employment agreements are signed under conditions that allow the employees' informed consent to the terms governing their employment. The extent to which a Member can monitor each situation is, of course, limited. This is a problem common to all areas of regulatory activity.

3. However, an important first step is to adopt national standards that require consistency with the minimum standards in the Convention and, in cases where there is a violation, to respond. Thus, *Standard A2.1*, in *paragraph 1*, places an obligation on each Member to regulate diverse aspects of agreements for seafarers on ships that fly its flag. One of the conditions (in *subparagraph (a)*) is that seafarers should have a seafarers' employment agreement "signed by both the seafarer and the shipowner or a representative of the shipowner". This phrase was added to the PTMC draft Convention following an amendment that obtained tripartite support at the Intersessional Meeting. It should also be noted that this subparagraph also covers the situation of self-employed personnel. This is important in order to ensure full coverage and avoid creating an incentive to contract out of the Convention's requirements.

4. In *subparagraph (d)*, as a result of another amendment receiving tripartite support, words have been added to make it clear that seafarers' employment agreements should be included in the information to be accessible for review by officers of a competent authority. Since the review concerned may be in a foreign port, an English translation of the agreements will be required (*paragraph 2*), except for ships engaged only in domestic voyages.

5. *Paragraph 4* of the Standard requires Members to adopt laws and regulations that provide for some basic matters to be dealt with in all seafarers' employment agreements covered by their national law, including identification of the seafarer and shipowner

parties to the agreement, termination provisions and the seafarer's health and social security protection benefits for which the shipowner is responsible.

6. *Subparagraph (j) of paragraph 4 (based on Regulation 2.1, paragraph 3)* makes it clear that seafarers' employment agreements could incorporate, by reference, the provisions of relevant collective bargaining agreements covering the matters dealt with by the Convention. Seafarers' employment agreements would thus not have to reproduce the entire text of the relevant collective bargaining agreement, but could simply contain a reference identifying the relevant collective bargaining agreement governing the terms of the employment relationship.

7. *Paragraphs 5 and 6* of the Standard address the issue of minimum and maximum periods of notice for early termination of agreements by both seafarers and shipowners, including situations that justify immediate termination or discharge under national law or a collective bargaining agreement, without the requisite notice.

*Note 20 (Regulation 2.2)*

1. *Regulation 2.2* deals with wages and sets out the basic and uncontroversial requirement that seafarers are to be paid for their work. In the PTMC draft Convention, *paragraph 1* required payment to be made at monthly or other regular intervals; this has been changed to "no greater than monthly intervals" as a result of an amendment obtaining tripartite support at the Intersessional Meeting. *Standard A2.2* contains several mandatory requirements relating to payment methods that are not based on any current international labour Convention, but are understood to be uncontroversial.

2. *Paragraph 6* is worded to reflect the fact that some countries may regulate seafarers' wages in national laws while others may not. The purpose is to make it clear that *Guideline 2.2*, in Part B of the Code, is addressed only to countries that choose to regulate seafarers' wages by law as the Standard in Part A does not contain a requirement to regulate wages. The Guideline covers methods of calculation of wages and overtime and other matters. Its text is drawn from the Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187).

3. In *paragraph 1(d) of Guideline B2.2.2*, the seafarers' endorsement of overtime records "at no greater than monthly intervals" rather than simply "at regular intervals", as in the PTMC draft Convention, results from an amendment obtaining tripartite support at the Intersessional Meeting.

4. *Guideline B2.2.4* contains the provisions for the international negotiation of the basic pay or wages of able seafarers referred to in paragraph 11 (last sentence) of Part I, Introduction.

*Note 21 (Regulation 2.3)*

1. *Regulation 2.3* deals with hours of work or rest and consolidates the obligations in the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180). The PTMC agreed with the view of the HLTWG that the new Convention should closely follow the provisions of Convention No. 180, the text of which had been the subject of extensive debate and delicate compromise.

2. *Paragraphs 13 and 14 of Standard A2.3* provide the ability to respond to specific situations at a national level and to emergency events. At the PTMC, some governments felt that they needed specifically to exclude masters and/or chief engineers from the hours of work and rest requirements. The predominant view, however, was that flexibility is already provided for in the current text based on Convention No. 180 (particularly in paragraphs 13 and 14) and that it was not appropriate to make these

exceptions, especially in the light of growing concerns about the impact of fatigue on safety.

3. *Guideline B2.3.1* contains special provisions for young seafarers. *Paragraph 4* clarifies that young seafarers are not, however, exempt from the general obligation on all seafarers to work during emergencies as provided for in paragraph 14 of Standard A2.3. The PTMC Drafting Group suggested that consideration be given to reflecting that paragraph in the Standard, in view of its importance (Appendix A, paragraph 25).

*Note 22 (Regulation 2.4)*

1. *Regulation 2.4* deals with annual leave entitlements and also reflects the principle that shore leave should be understood as an important aspect of seafarers' health and well-being (*paragraph 2*).
2. In order to meet the difficulties some governments were encountering with the 30 calendar days a year, provided for in the Seafarers' Annual Leave with Pay Convention, 1976 (No. 146) (Article 3, paragraph 3), the proposed Convention takes the monthly equivalent of the annual 30 days as the basis. Thus, *paragraph 2* of *Standard A2.4* provides for calculation on the basis of a minimum of 2.5 calendar days per month of employment. It is understood that this is a viable solution for those governments that were having difficulty with the 30 days.
3. The PTMC Drafting Group queried what was meant, in *paragraph 1* of *Guideline B2.4.1* by service "off-articles", which should be counted as part of the period of service (Appendix A, paragraph 26).

*Note 23 (Regulation 2.5)*

1. *Regulation 2.5* deals with repatriation and consolidates the obligations in the Repatriation of Seafarers Convention (Revised), 1987 (No. 166). The hardship caused when shipowners or flag States fail to respect their obligations under the present labour standards is recognized as a major problem that must be addressed. In an effort to meet concerns that the level of prescriptive detail in Convention No. 166 was providing difficulties for governments, many of the details regarding repatriation have been placed in Part B of the Code (*Guideline B2.5*) to provide guidance in implementation at a national level. A concern was raised by some governments regarding possible confusion about repatriation rights relative to immigration status. It is understood that the choice of location for repatriation does not grant seafarers any new or additional rights in relation to immigration status. These are matters dealt with by immigration and other national laws, and outside the scope of the consolidated maritime labour Convention.
2. In the light of the serious concerns about repatriation, and in view of the discussions still under way within the framework of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, the PTMC included a new provision (*paragraph 2*) in the Regulation which obliges each Member to require that ships that fly its flag provide some form of financial security to ensure that seafarers are duly repatriated in accordance with the Code.
3. *Paragraphs 3 and 5(c) of Standard A2.5* make it clear that, except for the limited circumstances outlined in paragraph 3, seafarers may not be made responsible for the costs of repatriation.
4. Although shipowners are responsible for repatriation expenses for all seafarers on their ships, *paragraph 4* of the Standard recognizes their right to recover costs from others that may have contractual responsibility to them for these costs.

5. Provision is made in *paragraphs 5 and 6* for recoupment of repatriation costs by Members that may end up repatriating seafarers: recoupment can be sought from the shipowner concerned or from the relevant flag State.

6. With respect to *Guideline B2.5.2* concerning seafarers “stranded in foreign ports” or “put ashore in a foreign port”, the PTMC Drafting Group considered that it was not clear precisely which seafarers were intended to be covered; it also suggested that the word “port” might be updated to “place” (Appendix A, paragraph 30).

*Note 24 (Regulation 2.6)*

1. *Regulation 2.6* provides for compensation for seafarers in the event of a ship’s loss or foundering. *Standard A2.6* reflects the requirements for indemnification against unemployment arising from the loss or foundering presently found in the Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8).

2. The PTMC Drafting Group wondered whether the term “foundering”, taken from Convention No. 8, should be updated (Appendix A, paragraph 31).

3. *Paragraph 2* of the Standard makes it clear that unemployment indemnity is not the only remedy to which the seafarer may be entitled under national law for losses or injuries resulting from shipwreck.

*Note 25 (Regulation 2.7)*

1. *Regulation 2.7* updates obligations found in the Seafarers’ Hours of Work and the Manning of Ships Convention, 1996 (No. 180). The Regulation and the related Code provisions on manning levels adopted by the PTMC reflect the view that the concept of manning should encompass more than navigational safety: it should also reflect contemporary concerns with seafarer fatigue and with on-board security matters, as well as the need to take account of the requirements for seafarers to work in the on-board catering services. In its comments (Part II, General discussion, paragraph 12), the United Nations noted that the requirement regarding manning levels in the proposed Convention could, when adopted, form part of the international rules and standards referred to in article 217 of UNCLOS.

2. *Paragraph 3* of *Standard A2.7*, requiring account to be taken of food and catering requirements in the determination of manning levels, has been added to the PTMC draft Convention as a result of an amendment receiving tripartite support at the Intersessional Meeting.

*Note 26 (Regulation 2.8)*

3. *Regulation 2.8* and the related Standard and Guidelines dealing with career and skill development and opportunities for seafarers’ employment were developed by the PTMC. The approach of these provisions is to consolidate the principles found in the Continuity of Employment (Seafarers) Convention, 1976 (No. 145), whilst also taking into account the views of many governments that such a policy with respect to one sector of the workforce is no longer appropriate, although the need to attract people to work in the sector is acknowledged. The provisions were developed to meet the concern about having such a policy for one sector only and are also seen as serving to promote the inclusion of seafarers in full employment policies at a broader national level by focusing on promotion of employment in the sector and on career development and ongoing training and skill development for seafarers.

4. *Guideline B2.8.2* provides guidance for Members that use national registers or lists to govern the employment of seafarers.

**Note 27 (Title 3, Regulation 3.1)**

1. *Title 3*, “Accommodation, recreational facilities, food and catering”, consolidates and updates obligations primarily found in the international labour standards relating to the accommodation of crews and food and catering. It also develops some areas not yet addressed in much, if any, detail in the maritime context in connection with the prevention of noise and vibration in work and living areas.
2. The provisions under *Regulation 3.1*, dealing with on-board accommodation and recreational facilities, are among the most detailed and technical in the Convention and contain numerous requirements affecting the physical design or structural layout of ships. In some instances, they include specific entitlements that are related to the particular duties and positions of seafarers. They are primarily drawn from the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), and the related Recommendations Nos. 140 and 141, but have been updated to reflect the advice of the Shipowner and Seafarer representatives regarding contemporary standards and needs in the sector. The text reflects the agreements reached in the PTMC on specific requirements, such as room sizes and some specific provisions regarding the application to particular ships or sizes of ships.
3. *Paragraph 1* of the Regulation states the basic right of seafarers to have decent living accommodation and recreational facilities consistent with promoting their health and well-being. An amendment which obtained tripartite support at the Intersessional Meeting makes it clear that the right covered by this Regulation (and the related Standard and Guideline) applies to seafarers working and living on board ship or only working or only living on board.
4. It will be recalled (Note 3, paragraph 12) that, under paragraph 4 of Article II, the Convention applies to all ships (as defined in Article II, paragraph 1(i)), subject to specified exceptions and “except as expressly provided otherwise”. Since the requirements under Title 3 can have a significant impact on ship design and construction, *paragraphs 2 and 3* of *Regulation 3.1* set out transitional clauses (which might be an example of “expressly providing otherwise”), excluding ships that were constructed before a certain date from the scope of certain provisions of the Code implementing the Regulation.
5. The exclusion in *paragraph 2* covers ships “constructed on or after the coming into force of the Convention for the Member concerned” – that is, 12 months (or a longer period if the Convention itself was not yet in force) after the Member’s ratification of the Convention (Article VIII, paragraphs 3 and 4). The exclusion in *paragraph 2* concerns the requirements in the Code which relate to “ship construction and equipment”. The other provisions in the Code implementing Regulation 3.1 will continue to apply to those ships, as will the basic right set out in *paragraph 1* of the Regulation.
6. At the Intersessional Meeting, it was recognized that *paragraph 1* would temporarily reduce the protection already available under existing international labour standards. Many of the ships concerned might already be covered by the detailed requirements in Conventions Nos. 92 and 133, or by Convention No. 147 and the Protocol to that Convention, requiring a “substantially equivalent” application of Conventions Nos. 92 and 133, where they have not been ratified by the Member concerned. As a result of Article X (Note 10, paragraph 4), the flag States of those ships will be deemed to have denounced all those Conventions and will no longer be bound by the latter as soon as the new Convention comes into force for them. The exclusion of all existing ships from the application of the Code provisions relating to ship construction

and equipment would thus result in a lessening of existing protection. This would not be in line with the original intentions behind the Convention or with article 19, paragraph 8, of the ILO Constitution. The Intersessional Meeting agreed with the thrust of an amendment proposed in the PTMC to correct this lacuna. It was suggested that the amendment concerned could be redrafted with the advice of the Office and reviewed at the Conference. The following rewording of *paragraph 2* is suggested (with the first sentence remaining the same in substance as the relevant paragraph in the PTMC draft Convention):

2. The requirements in the Code implementing this Regulation which relate to ship construction and equipment apply only to ships constructed on or after the date when this Convention comes into force for the Member concerned. For ships constructed before that date, the requirements relating to ship construction and equipment that are set out in the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), shall continue to apply to the extent that they were applicable, prior to that date, under the law or practice of the Member concerned.
7. The exclusion in *paragraph 3* of *Regulation 3.1* covers ships constructed on or after an amendment to the Code relating to the provision of seafarer accommodation and recreational facilities takes effect for the Member concerned – that is, six months after the amendment's deemed acceptance (Article XV, paragraph 8), assuming that the simplified amendment procedure is followed. Those ships will be excluded from the new requirements established by the amendment. However, this exclusion will apply “Unless expressly provided otherwise”: this clause thus allows the amending provision itself to establish the extent to which it will apply to existing ships.

8. With respect to both *paragraphs 2* and *3*, consideration might be given to what is meant precisely by the concept of ships being “constructed” before a certain date. Article 1, paragraph 1, of Convention No. 133 refers in this context to a ship “of which the keel is laid, or which is at a similar stage of construction”. It is noted that the IMO conventions also adopt extended definitions to clarify this point. Unless the term “constructed” is well understood in the shipbuilding industry or the periods of 12 months following entry into force of the Convention or six months after an amendment are considered sufficient in any event, the following sentence could be added at the end of the paragraph suggested in paragraph 6 of Note 27:

A ship shall be deemed to have been constructed on the date when its keel is laid or when it is at a similar stage of construction.

9. In the PTMC draft Convention, there were other provisions in Title 3 which did not apply to all ships in the sense that they established specific requirements, such as those now in , *paragraph 9* of *Standard A3.1*, which do not apply to some ships, such as passenger ships or “ships of less than 3,000 gross tonnage” or in the case of special purpose ships. As a result of the package of solutions regarding the scope of application and tonnage agreed at the Intersessional Meeting (Note 3, paragraph 12), a new paragraph was added to *Standard A3.1* providing further flexibility. This paragraph, which now appears as *paragraph 20*, allows a Member to exempt smaller ships from the application of specified provisions of the Standard after consultation with the shipowners’ and seafarers’ organizations concerned, “where it is reasonable to do so”, and “taking account of the size of the ship and the number of persons on board”. This possibility has to be seen in the light of *paragraph 21*, which provides that “Any exemptions with respect to the requirements of this Standard may be made only where they are expressly permitted in this Standard and only for particular circumstances in which such exemptions can be clearly justified on strong grounds *and subject to*

*protecting the seafarers' health and safety".* The final words in italics were added to the text in the PTMC draft Convention as part of the agreed package.

10. With respect to paragraph 20, although there was tripartite consensus on the principle to allow the exclusion of smaller ships from some requirements in Standard A3.1, there was no agreement at the Intersessional Meeting on the precise tonnage to be used to designate "smaller ships". The figure of 200 gross tonnage, included in paragraph 20 of Standard A3.1 in the proposed consolidated maritime labour Convention, set out in Report I(1B), seemed to be generally acceptable. There was a concern that the figure should be consistent with any similar provision to be adopted in the proposed Convention on work in fishing, which was on the International Labour Conference agenda for June 2004 (and is again on the agenda for June 2007).

11. *Paragraph 12* of the Standard was formerly found in Title 4. It was transferred to Title 3 as a result of an amendment which obtained tripartite support at the Intersessional Meeting. It refers to the concept of ships engaged in the "coastal trade", a term that is not defined in the Convention. It may be that this term is commonly understood, albeit with perhaps differing parameters, at a national level and does not require further consideration.

12. Apart from the transfer of paragraph 12, the adoption of the new paragraph 20 and the addition of words at the end of paragraph 21, referred to in paragraph 9 of Note 27, the text of Standard A3.1 is the same in substance as the text appearing in the PTMC draft Convention. Its provisions have, however, been substantially rearranged by the PTMC Drafting Committee. The necessary explanations are provided in paragraph 35 of Appendix A. The PTMC Drafting Group also had a query concerning the heading of *Guideline B3.1.1*, "Design and construction" (Appendix A, paragraph 36).

13. In *Guideline B3.1.5*, the wording in *paragraphs 11 and 12* has been slightly changed as a result of an amendment obtaining tripartite support at the Intersessional Meeting.

14. The technical details have been placed in the Guidelines in Part B of the Code, as much as possible, in order to provide further flexibility whilst still respecting essential minimum requirements for decent on-board living conditions. Their placement in the Code (whether in Part A or Part B) will also allow for more rapid updating to meet changes in technology and ship design. In its comments (Part II, General discussion, paragraph 12), the WHO proposed that the Guidelines in Title 3, at an appropriate point, contain a reference to the *Guide to Ship Sanitation*, preferably noting its linkage to the International Health Regulations.

#### *Note 28 (Regulation 3.2)*

1. *Regulation 3.2* and the related Code provisions consolidate and update the obligations in the Food and Catering (Ships' Crews) Convention, 1946 (No. 68), and the Certification of Ships' Cooks Convention, 1946 (No. 69), pertaining to food quality, drinking water and catering standards, including the training requirements for ships' cooks. In its comments (Part II, General discussion, paragraph 12), the WHO suggested that Standard A3.2 or Guideline B3.2 should specifically refer to the *WHO Guidelines for Drinking-water Quality* as the accepted point of reference for issues of drinking-water safety.

#### *Note 29 (Title 4, Regulation 4.1)*

1. *Title 4* comprises the substance of a wide range of international labour standards, covering on-board and onshore matters, including access to and financial responsibility

for medical care (broadly defined), occupational safety and health and welfare on shore. It also adopts a realistic approach to the promotion of social security protection, which would otherwise have created an obstacle to the wide-scale ratification of the Convention.

2. *Regulation 4.1* covers seafarers' entitlement to access adequate medical care on board ship and ashore. The obligation to provide free medical care under the Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164), has been made a little more flexible with the addition of the words "in principle" in *paragraph 2*, concerning the requirement that health protection and medical care should be provided at no cost to the seafarers. *Paragraph 3* sets out the duty of coastal States in respect of medical facilities on shore; their obligation is limited to allowing access to existing medical facilities (they will not be required to establish such facilities).

3. The provisions in *Standard A4.1* elaborate upon these entitlements, including those relating to on-board medical personnel and the contents of medicine chests and other medical assistance matters. The Standard refers to international standards and the recommendations provided by international guides, such as the *International Medical Guide for Ships* developed by the WHO, are referenced in the Guidelines.

4. In the PTMC draft Convention, *paragraph 4* of the Standard also had a subparagraph on hospital accommodation. This has been transferred to Title 3 (Note 27, paragraph 11). With respect to *subparagraph (a)*, containing requirements to carry a medicine chest, medical equipment and a medical guide, the WHO has suggested the addition of the following sentence: "In the absence of a national medical guide, the medical guide carried aboard ship shall be the *International Medical Guide for Ships*, published by the World Health Organization." There is already a provision on the subject, but it forms part of the Guidelines (Guideline B4.1.1, paragraph 4, read in conjunction with paragraph 2), rather than the Standards, and refers to the *International Medical Guide for Ships* as one of a number of relevant guides. *Subparagraph (c)*, relating to the training of persons in charge of medical care on board who are not medical doctors, embodies a reconciliation of the text of Convention No. 164, Article 9, on medical training requirements, with the language of the STCW Code to the STCW Convention, 1978, as amended.

#### *Note 30 (Regulation 4.2)*

1. *Regulation 4.2* deals with "shipowners' liability" for economic consequences of sickness and injury experienced by seafarers during their engagement. These provisions are intended to address shorter term social security protection coverage, currently found in the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), and the Social Security (Seafarers) Convention (Revised), 1987 (No. 165). They complement the longer term social security protection that is dealt with in Regulation 4.5. Since the liability concerned (covering both the costs of care and the payment of wages) is not related to any kind of fault on the part of the shipowner, *paragraph 2* makes it clear that the provisions of the Regulation are not intended to affect liability under the general civil/private law for negligence or fault.

2. The wording of the first two subparagraphs of *Standard A4.2* was not resolved at the PTMC, in part because it was seen as possibly contingent on the outcome of discussions within the framework of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers. However, at the PTMC, agreement had been reached on the content of the Regulation as it relates to the responsibility of shipowners "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". Agreement was not reached, however, on the precise formulation of the minimum standards resulting from the generally worded obligation in the Regulation, with respect to the obligation of medical care, which was to be the subject of paragraph 1(a) of Standard A4.2, and to compensation for death or long-term disability, which was to be the subject of paragraph 1(b) of Standard A4.2.

3. At the Intersessional Meeting, tripartite consensus was reached on wording that had been agreed between the Shipowners' and Seafarers' groups at the Meeting. The new wording, which is set out in the proposed Convention in *subparagraphs (a) and (b)* of *Standard A4.2*, provides the shipowners with more flexibility than under previous drafts with respect to the obligation of compensation for death or long-term disability. In particular, instead of the previous term "insurance coverage", the obligation was linked to the broader concept of "financial security", which includes insurance coverage. Also, under the wording, the amount of compensation will not necessarily be set by the relevant national law, namely that of the flag State.

4. Some Government representatives at the Intersessional Meeting stressed that the compensation granted should not be lower than that set by national law. It was pointed out, however, that the provisions concerned established minimum standards for Members, which were free to adopt laws setting basic levels for compensation; any agreement for compensation below those levels would accordingly be illegal. The wording was agreed on this understanding. It was provided to constituents for comment following the Intersessional Meeting. The following comments were received.

*Argentina:* Expressed its agreement with the criterion underlying the concept of "financial security to assure compensation" in paragraph 1(b) of the Standard.

*Bangladesh:* It is proposed that the shipowner's liability referred to in paragraph 1(a) of the Standard should begin on the "date of engagement of [the seafarers'] service" rather than on the date of their "commencing duty" as under the present wording. It is also proposed that a reference to the "respective company policy" should be added to the reference in paragraph 1(b) to "national law, the seafarers' employment agreement or collective agreement", and that the compensation should be "whichever is higher".

*Brazil:* The language adopted is acceptable, given that in Brazil seafarers already enjoy these rights as provided by the social security system for which contributions are paid by the employer and the individual. It is noted that there is also precedent in Brazilian law in the context of the fishing sector where, over and above social security, the shipowner must insure against personal accidents.

*Egypt (General Trade Union of Maritime Workers):* In its comments transmitted by the Government, the union indicated agreement with the provisions concerned.

*New Zealand:* The principle set out in these provisions is fully supported. It is noted that New Zealand's contributory scheme for compensation for personal injury includes workplace injury suffered in New Zealand and extends to cover New Zealand resident seafarers employed on New Zealand ships or New Zealand operated ships whenever these are outside New Zealand. To the extent that this scheme covers an injury it excludes other claims for injury: any requirement for financial security would be confined under New Zealand law to death, sickness and injury not covered by the existing scheme.

*Panama:* The wording of Standard A4.2 is appropriate and clear.

*South Africa:* Although the principle and intention in the proposed text of paragraph 1(a) of Standard A4.2 is quite clear, the wording that is used might imply that “sickness or injury” relates to all eventualities of “sickness or injury”, whether it is work-related or not. With respect to work-related “sickness or injury”, those that occur while seafarers are on board a vessel and its related eventualities (airlifting, etc.), the intention of the text is supported. It is suggested that the way the text is currently drafted does not make a distinction between that which is previously mentioned or any other “sickness or injury” occurring while in employment but not on board a vessel, in effect implying that employers will be forced to establish medical aid schemes for seafarers at their (employers’) cost. The costs of medical aid throughout the world would make this prohibitive for developing nations.

5. *Paragraph 3* of the Standard relates to the payment of full wages during periods of incapacity while the seafarer is still on board or is landed on a foreign territory and, subsequently ( *subparagraph (b)*), the payment of “wages in whole or in part as prescribed by national laws or regulations *or as provided for in collective agreements*”; the words in italics have been added as a result of an amendment obtaining tripartite support at the Intersessional Meeting.

*Note 31 (Regulation 4.3)*

1. *Regulation 4.3* deals with occupational safety and health protection and accident prevention. It draws upon the text of the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), and the related Recommendation (No. 142), which focus on ensuring that employees have the appropriate equipment and protection to perform their duties safely and are trained how to do so. It also includes requirements for reporting accidents. This is part of a system for monitoring ongoing compliance and conditions on board ship. The PTMC agreed with the need to have provisions encouraging more risk evaluation and management and encouraging the collection and use of statistical information. Much of the text of Regulation 4.3 and the associated Code provisions reflect the recommendation of the Officers of the HLTWG, adopted by the PTMC, that the text should now be modernized to include a wide range of human elements affecting occupational safety and health, such as fatigue, drug and alcohol abuse, and other concerns, such as exposure to chemicals and other workplace risks.

2. Provisions dealing with noise and vibration, complementary to those in paragraph 6(h) of Standard A3.1 and Guideline B3.1.12, are also dealt with as matters of health protection. The text of this Regulation and the related Code provisions reflect advice from the relevant ILO occupational safety and health experts on both the content and the approach in these provisions, including the suggestion that on-board occupational safety and health should take into account and adopt the general approach proposed in the *Guidelines on Occupational Safety and Health Management Systems ILO-OSH, 2001*. In addition, it was suggested that Regulation 4.3 and the Code provisions should be informed by the concepts and standards referred to in other ILO instruments and the other standards to which they refer. The proposed Convention seeks to incorporate these ideas (for example, by requiring ships to have occupational safety and health management systems) in the provisions consolidating the existing maritime Conventions dealing with occupational health and accident prevention.

3. The PTMC Drafting Group was uncertain as to the precise meaning of *paragraph 3 of Guideline B4.3.7* (Appendix A, paragraph 44).

*Note 32 (Regulation 4.4)*

1. *Regulation 4.4* consolidates the obligations in the Seafarers' Welfare Convention, 1987 (No. 163), and deals with seafarers' access to onshore welfare facilities. It is part of a ratifying Member's duty to cooperate and provide onshore relief for seafarers, within the limits, of course, of a State's national requirements relating to, for example, security matters. The Regulation and related Code provisions reflect the concern expressed by some governments regarding the need to ensure that the wording refers to an obligation to promote the development of shore-based welfare facilities without importing any financial obligations to provide or establish these facilities.
2. The PTMC Drafting Group queried the reference to "welfare taxes" in *paragraph 2* of *Guideline B4.4.4*, and the use of the term "competent authorities" in the plural in *paragraphs 3 and 4* of *Guideline B4.4.5* (Appendix A, paragraphs 50 and 51).

*Note 33 (Regulation 4.5)*

1. *Regulation 4.5* and the associated Code provisions cover social security protection primarily with respect to the provision of social security through national security systems, now dealt with by, *inter alia*, the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), which has, however, only been the subject of three ratifications. The content of this Regulation and the related Code provisions was initially considered highly controversial. At the same time, it was recognized in the HTLWG that a comprehensive Convention of this kind must contain provisions on the subject, especially as the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), refers to "appropriate social security measures" (Article 2(a)(ii)), although it leaves the determination of the particulars of coverage to the national law of the flag State.
2. The extensive discussions that took place prior to the PTMC related to the need to develop an acceptable text to 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 the situation where, because of reasons relating to national laws 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 all for themselves or their dependants. An additional broader problem in this area relates to the differing range of coverage between national social security systems, where they do exist.
3. Owing, to a large extent, to the imaginative and pragmatic approach of a tripartite group of social security experts which met in April 2004, a breakthrough was finally made and the resulting provisions formed the basis of an agreed text at the PTMC, except for one Guideline, which was later the subject of tripartite consensus at the Intersessional Meeting. Having regard to the extent of the initial fundamental disagreement and the tremendous good-faith effort to reach tripartite agreement that is reflected in each of the provisions under Regulation 4.5, it would appear difficult for consensus to be reached on any modification that would affect the delicate balance achieved.<sup>20</sup>
4. The Regulation itself:

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<sup>20</sup> This would seem to be confirmed by the relevant discussions in the PTMC; see ILO: *Record of Proceedings* No. 6(Rev.), Preparatory Technical Maritime Conference, Geneva, 13-14 September 2004, paras. 271-416.

- makes it clear that the provisions of the Code are without prejudice to any more favourable conditions that may already be applicable to a Member's seafarers under a national law or international agreements (*paragraph 1*);
- requires all Members to take steps, according to their national circumstances, individually and through international cooperation, to achieve comprehensive social security protection progressively (*paragraph 2*); and
- recognizes the right of seafarers and, to the extent provided for in national law, their dependants, who are subject to a Member's social security legislation, to benefit from social security protection no less favourable than that enjoyed by the Member's shoreworkers (*paragraph 3*).

5. *Paragraph 1* of Standard A4.5 clarifies that the coverage described in the Regulation and associated Code provisions is intended to complement rather than duplicate the social security protection that is to be provided by shipowners under Regulations 4.1 and 4.2 for shorter term protection.

6. *Paragraph 4* introduces some additional flexibility by providing the potential for arrangements to be developed on the basis of bilateral and multilateral agreements and through arrangements adopted within the framework of regional economic integration organizations.

7. The provision that remained unresolved at the end of the PTMC was *paragraph 5* of *Guideline B4.5* relating to the responsibilities of the flag State in the area of social security protection. The wording of this paragraph results from the Intersessional Meeting and was based on a compromise text proposed by the Shipowners' and Seafarers' groups, which obtained tripartite support at that Meeting. This wording was provided to constituents for comment following the Intersessional Meeting. The following comments were received.

*Argentina:* Whatever the merits of establishing residence as the criterion for access to social security protection, flag States cannot disclaim all responsibility in this respect. Because of the criterion of ordinary residence for social security coverage, social security protection in the case of labour-supplying countries, in general, only applies to seafarers working in ships flying the country's flag, and not when they are working on ships under the flags of other countries, whether flags of convenience or otherwise. Since obviously these countries have very few ships flying the country's flag, coverage is almost non-existent. In the absence of relevant contributory systems, the low-cost engagement of these workers leads to a distortion of the global labour market for fishing and maritime navigation and to unfair competition with respect to other fishing vessels, engaging the "more expensive" workers benefiting from social security protection. The compromise text, which obtained tripartite consensus on the subject of flag state responsibility in the area of social security at the Intersessional Meeting, represents a great advance, although the Government's preference, as it stated in the discussions, is that this provision should be placed in the mandatory part of the Convention.

*Brazil:* This provision is supported. It is noted that under Brazilian law all insured employed or self-employed seafarers enjoy universal coverage for health, social security and welfare, whether Brazilians or foreigners residing and working in the country. Health and welfare rights are not subject to payment of contributions, while the right to social security is acquired through payment of contributions, and covers all seafarers, whether Brazilian or foreigners residing and working in the country or on ships flying the Brazilian flag.

*Egypt* (General Trade Union of Maritime Workers): In its comments transmitted by the Government, the union stressed the importance of social protection on the part of flag States.

*Panama*: Social security protection should be in accordance with the system in each country and should establish clear and parallel obligations for shipowners to provide coverage for seafarers not covered by the flag state system, so that seafarers are provided with social protection and security. Under Panamanian law, a social insurance fund covers workers of Panamanian nationality (or married to nationals or with children whose mothers are nationals) that are resident in Panama and working on ships registered in Panama. The national system covers workers abroad as long as the employee and employer contributions are paid. This means shipowners must ensure affiliation with the national insurance scheme for these workers. The system provides coverage for incapacity resulting from occupational risk and disability, illness and maternity. Under Panamanian law, shipowners are required to provide private insurance coverage for foreign seafarers working on ships flying the Panamanian flag and to note in the articles of agreement details of the insurance including the risks covered and limits on coverage

*South Africa*: The provision of social security for national seafarers should be provided for in national legislation. Coverage for non-nationals poses a problem because it is normally funded by the national revenue funds: it can be prohibitively expensive to cover non-nationals if they do not contribute to the system. These issues should be regulated on the basis of either national legislation and/or multinational or bi-national agreements. The maintenance of social security rights should be regulated by multinational or bi-national agreements between the receiving and the accepting countries. With respect to the usage of terms such as resident or non-resident, the terms “nationals” and “non-nationals” are preferred.

#### *Note 34 (Title 5)*

1. *Title 5* deals with compliance and enforcement. It is linked to the obligations of ratifying Members under Article V of the Convention. The Title is divided into three main Regulations: Regulation 5.1 on flag state responsibilities; Regulation 5.2 on inspection in foreign ports (port state control measures); and Regulation 5.3 on the responsibilities of countries that supply seafarers to work on board ships.
2. The broad lines of this key component of the proposed consolidated maritime labour Convention were, in fact, substantially agreed in the HLTWG before the Convention’s substantive provisions, in Titles 1-4, were even discussed. It was generally agreed that the development of this aspect of the maritime labour regulatory system was central to the consolidation exercise (as was the development of the accelerated amendment procedure).
3. For traditional enforcement practices in the maritime sector through flag state inspections and corrective action and inspections in foreign ports, the provisions in *Title 5* draw on the text of the existing ILO standards in the area of compliance and enforcement: the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), the Labour Inspection (Seafarers) Convention, 1996 (No. 178), and the Labour Inspection (Seafarers) Recommendation, 1996 (No. 185). For more contemporary practices, aimed at ensuring continual compliance between inspections, the system provided for in *Title 5* embodies aspects of the well-accepted certificate-based system of the IMO, which has been developed in significant maritime Conventions such as the SOLAS Convention, 1974, as amended, and its related Codes such as the International Safety Management Code and MARPOL 73/78, and its various annexes. However, the

IMO system, as it has evolved to include ongoing compliance and system management and human resource management matters, has been adapted in the proposed Convention to meet the ILO context and the special concerns raised by international labour standards, in particular the inclusion of flag state and on-board and onshore complaint provisions and reporting mechanisms to support and complement the inspection provisions. The certification system in Title 5 will be closely coordinated with the related maritime certifications and inspections, particularly those required under IMO conventions, and will be supported by the procedures under the regional Memoranda of Understanding for port state control. Such an integrated approach is considered essential to the success of the Convention. It does not add a significant new administrative burden for governments or shipowners, but instead operates as much as possible within existing inspection and certification frameworks.

4. Most of the new features in Title 5 are, in fact, developments of measures provided for in existing international labour Conventions, in particular the addition of a system of certification to the inspection system, an extension of the grounds under Convention No. 147 for detention of ships in foreign ports and the procedures for the handling of seafarers' complaints or disputes as well as the provisions relating to reports to the ILO Director-General. The real novelty of the Convention in this area resides in its approach to compliance and enforcement.<sup>21</sup> Title 5 comprises a detailed set of provisions on principles and rights, at the same level of importance as the other Titles, relating to substantive rights, and inseparable from those Titles in keeping with its character of a *sine qua non*.

5. In the *introductory paragraphs* to Title 5, paragraph 2 precludes the use of substantial equivalence (under Article VI, paragraphs 3 and 4, see Note 6, paragraph 4) for the implementation of Part A of the Code under Title 5. It thus removes part of the flexibility that is given to ratifying Members in their implementation of the Titles on substantive rights. The PTMC agreed with the view that this restriction was necessary as there should be greater uniformity among Members in the area of enforcement.

6. The PTMC was unable to reach agreement on a former paragraph 3 of the introductory provisions which would have removed the possibility of amending the provisions of Part A of the Code in Title 5 of the Convention through the simplified procedure set out in Article XV of the Convention. Instead, the procedure under Article XIV requiring express ratification would have had to have been followed. As indicated in paragraph 11 of Note 13, the constraints and safeguards applicable to the actual adoption of amendments under Article XV are comparable to those inherent in the Article XIV procedure; however, the requirement for express ratification under the latter procedure could involve a delay of several years before a much needed amendment would enter into force. At the Intersessional Meeting, there was tripartite agreement that it should be possible to amend the Code provisions of Title 5 in the same way as the Code in Titles 1-4. This outcome was communicated to constituents for comment following the Intersessional Meeting. The following comments were received.

*Argentina:* Supports the Intersessional Meeting solution. It sees no need to include the former paragraph 3 of the introductory provisions.

*New Zealand:* Supports the Intersessional Meeting solution. It may be necessary to "fine-tune" Title 5, like any other Title. The simplified procedure will allow early

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<sup>21</sup> Several international labour Conventions on substantive law matters have included provisions relevant to the enforcement of the Convention concerned; however, those provisions appear as ancillary to the substantive rights and obligations provided for.

resolution of non-contentious issues that may impede the Convention. The simplified amendment procedure has ample safeguards to prevent amendments that do not enjoy a high level of support.

*Panama:* Supports the Intersessional Meeting solution. The amendment procedures should be the same for the whole Convention to avoid confusion.

*Note 35 (Regulation 5.1)*

1. *Regulation 5.1* deals with a ratifying Member's responsibilities under this Convention with respect to seafarers on board ships that fly its flag.
2. *Regulation 5.1.1* articulates the general principles relevant to the flag States; it would be the focal point for shipboard-related compliance and enforcement activities, as required by Article 94 of UNCLOS, mentioned in the Preamble (Note 1). *Paragraph 1* states the general responsibility of each Member, for ships that fly its flag, to ensure the implementation of the Convention as a whole. *Paragraph 2* states the Member's specific responsibility to ensure that the working and living conditions for seafarers on ships that fly the Member's flag meet the standards in the Convention. This is an obligation founded on Convention No. 147, Article 2(b), and Convention No. 178. This is to be done through an effective system of inspection and certification. A distinction is thus made between the working and living conditions that are to be subject to the certification system and the broader range of issues covered by the Convention for which flag States are responsible.
3. *Paragraph 3* reflects the provisions found in the Labour Inspection (Seafarers) Convention, 1996 (No. 178), Article 2(3), permitting governments to authorize public institutions and other organizations to carry out labour inspections on their behalf. This delegation or "authorization" of recognized organizations, such as ship classification societies, of the tasks related to ship survey and inspections and even possibly issuance of required maritime certificates is also found in IMO conventions such as SOLAS and MARPOL. In addition to provisions in these Conventions recognizing the practice and requiring that governments report any such authorizations to the IMO for circulation to other States Parties to the relevant Convention, the IMO has also developed a framework for such delegations, found in IMO Resolutions A.739(18) and A.789(19). These resolutions set the minimum requirements for these organizations, called "recognized organizations", and other matters that governments should consider in making such a delegation. Paragraph 3 makes it clear (in line with the cited provision of Convention No. 178) that the flag State still retains full responsibility for the inspection and certification of working and living conditions on board ships that fly its flag. Delegation is also possible to the public institutions or organizations of another State provided that it has ratified the Convention.
4. *Paragraph 4* states the basic principle that the certification documents – namely, the maritime labour certificate, complemented by a declaration of maritime labour compliance – constitute *prima facie* evidence that the requirements of this Convention relating to working and living conditions of the seafarers have been met. This should considerably facilitate the work of inspectors (see, in this connection, Guideline B5.1.3, paragraph 6(h)). Because of this principle, possession of the documentation appears as a right of shipowners (Note 35, paragraph 7) and not simply as an obligation on them.
5. *Paragraph 5*, relating to the content of the Members' reports on implementation of the Convention under article 22 of the ILO Constitution, is one of the links between the national system of enforcement and the international supervisory system referred to in paragraph 17 of Part I, Introduction.

6. *Regulation 5.1.2* and the related Standard and Guideline develop into detailed provisions the principle, in paragraph 3 of Regulation 5.1.1, relating to delegation to recognized organizations (Note 35, paragraph 3).

7. *Regulation 5.1.3* and the related Code provisions set out the details of the certification system to be established by each Member under the Convention. The first two paragraphs of this Regulation were not contained in the PTMC draft Convention. They implement three of the principles that form the “package of solutions” regarding the scope of application, developed at the Intersessional Meeting (Note 3, paragraph 12). The certification system under Regulation 5.1.3 will only be mandatory for ships above 500 gross tonnage that either are engaged in international voyages (which are defined) or are operating in or between ports of another country (*paragraph 1*). A shipowner has, however, the right to request certification for ships of 500 gross tonnage or less.

8. *Standard A5.1.3* sets out the details of the system which can be summarized as follows:

- (a) Each ship is required to carry:
  - (i) a *maritime labour certificate* (under *paragraph 3* of the *Regulation*), confirming that the working and living conditions on the ship have been inspected and meet the requirements of the flag State’s national law implementing the Convention and that the measures adopted by the shipowner to ensure ongoing compliance are satisfactory; together with
  - (ii) a *declaration of maritime labour compliance* (under *paragraph 4* of the *Regulation*), which will state what those national requirements are and how they are to be complied with.
- (b) The inspection and certification have to relate to the requirements of national law as it is there that the mandatory detailed standards for implementing the Convention will necessarily be found; in the interests of achieving the flexibility for wide-scale ratification of the Convention, many of the details pertaining to implementation of the standards in the Convention are in the form of non-mandatory guidelines in Part B of the Code (Part II, General discussion, *paragraph 9*).
- (c) *Paragraph 1* of *Standard A5.1.3* – through Appendix A5-I – sets out the list of matters that are subject to inspection and verification for flag state certification purposes. The content of this list is discussed in Note 38. Paragraph 1 also sets the period of validity of the certificate at a maximum of five years, subject (*paragraph 2*) to at least one intermediate inspection, on the same scale as the initial inspection, to verify continuing compliance.
- (d) In the limited circumstances set out in *paragraph 5* of *Standard A5.1.3*, an interim certificate could be granted with a validity of a few months (*paragraph 6*). The grant would be subject to an inspection “as far as reasonable and practicable”, for the matters listed in Appendix A5-I (*paragraph 7*). A full inspection would have to be carried out at the end of the period of validity and no further interim certificate could be granted (*paragraph 8*).
- (e) The maritime labour certificate and the declaration of maritime labour compliance and any interim documentation are to follow the model format set out in Appendix A5-II (*Regulation 5.1.3*, *paragraph 5*, and *Standard A5.1.3*, *paragraph 9*). While the wording of the national certificates of each Member is determined by this model, this will be the case only to a varying degree with the

national declarations of maritime labour compliance as much of the wording will depend upon the terms of each Member's national requirements implementing the Convention.

- (f) The main content of the declaration of maritime labour compliance is described in *paragraph 10*. It will be in two parts. Part I will be drawn up by the competent authority of the Member. It will identify the national provisions implementing the relevant provisions of the Convention, including any substantially equivalent provisions under paragraph 3 of Article VI. Part II will be drawn up by the shipowner and certified by the competent authority. It is through this part of the declaration, particularly with respect to maintaining records and ensuring ongoing compliance with the national requirements between inspections, that the shipowners and the masters themselves become part of the system of enforcement under the Convention (Part I, Introduction, paragraph 17). Guidance on the declaration is contained in *Guideline B5.1.3*, which refers to Appendix B5-I as giving an example of the kind of information that might be contained in the declaration.
- (g) *Paragraphs 9 and 10 of Standard A5.1.3 and paragraph 1 of Guideline B5.1.3* regarding the format of the documents were not resolved at the PTMC. The current provisions are, however, based on the work of a working party of the Government group which met during the PTMC and they subsequently obtained tripartite support at the Intersessional Meeting. This wording was provided to constituents for comment following the Intersessional Meeting. The following comments were received.

*Argentina and Panama:* There is no objection to any of the proposed provisions.

*Australia:* Some of the details in the proposed paragraph 10(b) seem to duplicate principles found in the ISM Code 1.2. To avoid duplication and promote administrative efficiency, this section could be reworded to refer to the need to have systems to ensure continuous improvement in place, as required by section 1.2 of the ISM Code.

*Brazil:* Agrees with the Intersessional Meeting proposed solution. It is important to recommend rigour in the use of “substantial equivalence” in the context of rights acquired under existing labour Conventions that are revised by the new Convention, in order to ensure that the new instrument does not encroach upon previously guaranteed rights.

*New Zealand:* The expected level of detail in the declaration of maritime labour compliance is important because exhaustive detail may be impenetrable: very clear, simple statements of key information and measures may be preferable. Paragraph 10(b) of Standard A5.1.3, which relates to Part II of the declaration of maritime labour compliance, contemplates measures to ensure continuous improvement. Part II, however, does not mention “continuous improvement” at all, simply requiring a shipowner to “State the measures drawn up by the shipowner to ensure compliance with each of the items in Part I”. The description in paragraph 10(b) does not seem to match Part II. While continuous improvement is a sound goal, shipowners that are in full compliance with national legislation as required by Part II may have little or no scope for continuous improvement. Maintaining a high level of compliance may be the goal for that group of shipowners. Other shipowners, however, will always have scope for improvement. To ensure that the existence of this range of compliance levels scenarios is recognized, it is suggested that consideration be given to inserting the words

“where necessary” before “that there is continuous improvement” in paragraph 10(b) of Standard A5.1.3.

- (h) The Standard ends by setting out the circumstances in which a certificate ceases to be valid (*paragraphs 14 and 15*) and by providing that the certificate is to be withdrawn if there is evidence of non-compliance by the ship with the requirements of the Convention which remains uncorrected (*paragraphs 16 and 17*). The provisions regarding withdrawal of certificates were not resolved at the PTMC. As a result of tripartite consensus at the Intersessional Meeting, paragraphs 16 and 17 were included in the Standard. These two paragraphs were provided to constituents for comment following the Intersessional Meeting. The following comments were received.

*Argentina:* The flexible wording comprehensively covers the situations in which a certificate should be withdrawn, including a single serious case of non-compliance and a repetition of less serious cases. Paragraphs 16 and 17 appropriately establish the conditions, namely evidence of non-compliance and absence of corrective measures, and the criteria for judging the seriousness and frequency of deficiencies.

*Australia:* Given the implications of the withdrawal and noting that recognized organizations may be under an obligation to withdraw a certificate, those organizations should be clearly defined in Article II and their duties and powers should be defined in a similar manner to that employed in regulation I/6 of the SOLAS Convention.

*New Zealand:* The proposed text which links withdrawal to a failure to take corrective action will reinforce the principle that remediation of deficiencies is the preferred outcome of compliance measures.

*Panama:* It should be made clear that withdrawal of the certificate should be done by the recognized organization that issued it.

*South Africa:* Withdrawal of a maritime labour certificate is extremely costly for a detained vessel. The wording in the proposed text of paragraph 16 should be slightly amended as follows: after “evidence” insert the words “by the competent authority or duly recognized organization”. This is proposed so that a vessel is not unduly detained on the basis of a malicious complaint.

9. *Regulation 5.1.4* requires flag States to have an effective and coordinated system of regular inspections. It should be noted that inspections are required by the Convention also in specified circumstances not related to the validity of a certificate. In particular, Standard A3.1 on accommodation requires inspections under Regulation 5.1.4 to be carried out when a ship is registered or re-registered or the seafarer accommodation on a ship has been substantially altered.

10. In addition, *paragraph 5 of Standard A5.1.4* requires an investigation in the case of a complaint or evidence of a deficiency in the implementation of the measures set out in the declaration of maritime labour compliance or other non-conformity with the requirements of the Convention.

11. *Paragraph 7 of the Standard* specifies the powers that inspectors (including those of “recognized organizations”) must have: in particular, under *subparagraph (c)* they must be able “to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of this Convention (including seafarers’ rights), or represent a significant danger to seafarers’ safety, health or security, to prohibit a ship from leaving port until necessary actions are

taken". The standard set in this provision for these actions is important as it provides the parameters for the complementary inspection and detention provisions in connection with the control measures in foreign ports under Regulation 5.2 and the associated Standard. In its comments (Part II, General discussion, paragraph 12), the United Nations has noted that, pursuant to paragraph 2 of article 217 of UNCLOS, a flag State is required to prohibit its vessels from sailing unless they comply with the requirements of applicable international rules and standards, including requirements in respect of manning of vessels.

12. *Paragraphs 15 and 16* of the Standard, stating the need to avoid a ship being unreasonably detained or delayed, as well as the right to compensation in the case of the wrongful exercise of inspectors' powers, are based on Article 6 of Convention No. 178, in connection with flag state inspections, and their substance is also to be found in IMO conventions (STCW and MARPOL).

13. *Paragraph 17* requires Members to provide for adequate penalties and other corrective measures, *inter alia*, for breaches of "the requirements of this Convention (including seafarers' rights)". It is based on Article 7, paragraph 1, of Convention No. 178, which requires penalties for violations of "the legal provisions enforceable by inspectors".

14. *Regulation 5.1.5* represents a new and important element in the provisions of the Convention designed to assure ongoing compliance. It introduces a requirement that ships have on-board complaint procedures and that complaints and the responses to them are documented. The approach is generally based on a joint submission made by the Shipowner and Seafarer representatives to the third meeting of the HLTWG. The objective is to establish effective procedures for the resolution of complaints at the level of the ship or the shipowner. The Regulation and its associated Code provisions were not resolved at the PTMC. At the Intersessional Meeting, the subject was discussed together with onshore complaint procedures (Note 36, paragraph 3). The current texts of the proposed consolidated maritime labour Convention for the Regulation, Standard and Guideline regarding on-board complaint procedures received tripartite support for inclusion. These texts are based, to a large extent, on the relevant provisions of the recommended draft consolidated maritime labour Convention that had been submitted to the PTMC. The wording was provided to constituents for comment following the Intersessional Meeting. The following comments were received.

*Argentina:* The proposed provisions seem to be satisfactory.

*Brazil:* In countries where the seafarers' representative bodies are strong, this type of on-board complaint procedure might be effective. In fact, it is onshore complaints, in most cases by way of the representatives of national and international seafarers' unions, and monitored by the inspectors with a genuine knowledge of labour legislation and more particularly of the details of this ILO Convention, which ultimately produce solutions for the causes of such complaints, particularly in the case of ships flying flags of convenience. This comment is without prejudice to adoption of the Intersessional Meeting proposed solution. It is noted that Brazilian law requires the establishment of a group for the safety and health of work on merchant vessels for national flag vessels of at least 500 gross tonnage, one of the purposes of which is to contribute to improving conditions of work and well-being on board. Although health and safety are the prime considerations, the handling of seafarers' complaints would certainly play a part in improving conditions.

*Egypt* (General Trade Union of Maritime Workers): In its comments transmitted by the Government, the union expressed support for the provision, mentioning the need to

protect seafarers from pressure as a result of a complaint and the right to complain directly to the master.

*Germany:* The on-board procedures appear to be complicated and bureaucratic, particularly with reference to the required contact information for the competent authority in the seafarers' country of residence and the recommendation in the Guideline for the recording of complaints and decisions with a copy being provided to the seafarer concerned.

*Panama:* The procedure should also include cases where the master is subjected to intimidation or threats from the crew.

15. *Regulation 5.1.6* is taken from Convention No. 147 (Article 2(g)). It addresses each Member's responsibility to inquire into serious marine casualties involving injury or loss of life on ships that fly its flag and to make public the results of any such inquiry.

*Note 36 (Regulation 5.2)*

1. *Regulation 5.2* provides a system for the inspection of ships in a foreign port (port state control) and the related onshore procedures for handling seafarers' complaints. The provisions in Regulation 5.2 originate in part from Article 4 of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), the "port state control" provision, and from practices in the implementation of other maritime Conventions. The term "authorized officers" is used to reflect the fact that labour standard inspections may be carried out by a variety of personnel depending on the practice of each Member. A question has been raised as to whether this term requires a more specific definition in the Regulations to clarify that it means a person that has been authorized by the relevant "competent authority" (Article II, paragraph 1(a)) to carry out these inspections.

2. *Regulation 5.2.1* deals with inspections in a foreign port. It embodies the following features:

- (a) It is not obligatory for a Member to inspect the ships of another State when they are in its ports (port state control). This is reflected in both Article V, paragraph 4, of the Convention and in the use of the word "may" ("... may be the subject of inspection") in *paragraph 1* of this Regulation.
- (b) Where the Member carries out an inspection of a foreign ship under the consolidated maritime labour Convention, it is required to accept a valid maritime labour certificate and a declaration of maritime labour compliance as "prima facie evidence" of compliance by the ship with the "requirements of the Convention (including seafarers' rights)" (*paragraph 2*). The term "prima facie evidence", also used in paragraph 4 of Regulation 5.1.1 (Note 35, paragraph 4), is a legal term that has been defined as "evidence which is sufficient to establish a fact in the absence of any evidence to the contrary, but is not conclusive". Essentially, this captures the legal nature of the initial port state control action under other maritime Conventions and is a central feature in the balance struck in the certification system between differing interests, including the primacy of flag state jurisdiction over matters on ships that fly its flag. The consequence, as paragraph 2 goes on to explain, is that the initial inspection must be limited to a review of the maritime labour certificate and the declaration of maritime labour compliance, "except in the circumstances specified in the Code" (Note 36, paragraph 2(e)).
- (c) The inspection is to be carried out in accordance with the provisions of the Code "and other applicable international arrangements governing port state control inspections"; this latter phrase would, in particular, cover any applicable regional

Memorandum of Understanding (*paragraph 3*, first sentence). The object of inspections is to ascertain conformity with the provisions of the Convention, other than Part B of the Code (*paragraph 3*, second sentence – see the questions and answers quoted in Note 6, *paragraph 2*). Account must be taken of any substantial equivalents, which will be identified by ratifying Members in the declaration of maritime labour compliance (Note 35, *paragraph 8(f)*).

- (d) Members that choose to carry out port state inspections would be required to have an effective inspection and monitoring system (*paragraph 4*); however, as is the case at present under Convention No. 147, they would not be under any obligation to inspect any particular ship.
- (e) As indicated in *paragraph 2(b)* of Note 36, the inspection carried out will usually involve only a review of the relevant documentation, except in the four circumstances set out in *paragraph 1* of *Standard A5.2.1*.
- (f) The first circumstance (*subparagraph 1(a)*) is where the “required documents” are not produced or are not in order; this circumstance would not, of course, apply where the documents are not required – namely, in the case of a ship under 500 gross tonnage (Note 35, *paragraph 7*). This is why the words “where applicable” were added to the PTMC draft Convention in the introductory part of *paragraph 1*. However, if a ship that is not required to carry a certificate produces the documents and they are in order, they would be accepted as *prima facie* evidence of compliance. In accordance with the principle of “no more favourable treatment”, reflected in *paragraph 7* of Article V (Note 5, *paragraph 6*), the provisions in Regulation 5.2 would apply to the ships flying the flag of States that have not ratified the maritime labour Convention. Such ships would not usually be able to produce the certification and documentation required by the Convention and would be subject to a more extensive inspection. This is the situation that currently applies with respect to other Conventions in this sector and, under the regional port state arrangements, such as the Paris Memorandum of Understanding, to Convention No. 147.
- (g) The second circumstance (*subparagraph (b)*) is where, despite the existence of valid documentation, there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention. Such grounds may, for example, be apparent to the authorized officer from the documentation produced or from his or her professional observations when boarding the ship, or they may be brought to light when the inspector is considering a complaint (Note 36, *paragraph 2(l)*).
- (h) The third circumstance (*subparagraph (c)*) is where there are reasonable grounds for believing that the ship has changed flag to avoid compliance with the Convention.
- (i) Finally, a more detailed inspection may be carried out in the case of a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of the Convention (*subparagraph (d)*), as in the case of port state inspections referred to in Convention No. 147 (Article 4, *paragraph 1*).
- (j) The second part of *paragraph 1*, following the enumeration of the circumstances referred to above, states that a more detailed inspection “may” be carried out in any of these circumstances. However, it goes on to make such an inspection obligatory: “Such inspection shall in any case be carried out where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the

safety, health or security of seafarers or where the authorized officer has grounds to believe that any deficiencies constitute a serious breach of the requirements of this Convention (including seafarers' rights)." These conditions making a more detailed inspection obligatory were not resolved at the PTMC. The provision now set out in the proposed consolidated maritime labour Convention was completed as a result of tripartite consensus at the Intersessional Meeting. The new wording reflects that used in paragraph 7(c) of Standard A5.1.4 relating to the justification for a flag State to prohibit a ship from leaving port (Note 35, paragraph 11). It reflects the view that the port state regime should, as much as possible, complement and mirror, but not go beyond, the measures available to flag States. It was provided to constituents for comment following the Intersessional Meeting. The following comments were received.

*Argentina:* In the light of the discussions at the Intersessional Meeting and given that the violation of seafarers' rights is clearly stated as a ground for a more detailed inspection, the proposed wording is appropriate, covering all possible situations.

*Australia:* No comment on the proposed text, but clarification as to how the Convention would be applied to a ship flying the flag of a country that has not ratified the Convention would be helpful.

*Germany:* A mandatory inspection should only apply where there are "clear" grounds. The word "clear" should be added to this paragraph, e.g. "... where the authorized officer has *clear* grounds to believe that ...".

*Japan:* It is suggested that the term "non-compliance" (used in a previous wording of the second part of paragraph 1) be replaced by "non-conformity" as this would be consistent with term "the deficiency", used earlier in the paragraph, and would convey the idea that the concern relates to a specific non-conformity with a Standard in the Convention.

*New Zealand:* Supports the grounds for action.

*Panama:* It is important to extend the scope of maritime labour inspections to the rules for port state inspections. The Convention should indicate in regard to Appendices A5-I and A5-III which deficiencies are serious and which are minor to avoid leaving this to port inspector discretion. The reports of the inspectors should all be channelled through and evaluated by recognized organizations to ensure direct communication between the technical company and the competent authority. The inspection policy should incorporate regional agreements and should not be left to the discretion of member States. The wording of paragraph 2 of Guideline B5.2.1 is fairly confusing when it comes to interpreting the type of deficiency found during inspection.

- (k) The detailed inspection under paragraph 1(a)-(c) will "in principle" cover the areas listed in Appendix A5-III (*paragraph 2 of the Standard*).
- (l) *Paragraph 3* of the Standard sets the scope of the inspection when carried out as a result of a complaint under paragraph 1(d) (and also contains a definition of "complaint" in this context, based upon that found in Article 4(3) of Convention No. 147). While the inspection is not limited to the areas listed in Appendix A5-III, it "shall generally be limited to matters within the scope of the complaint, although a complaint, or its investigation, may provide clear grounds for a detailed inspection in accordance with paragraph 1(b) of this Standard"; in other words, it is recognized that the clear grounds of non-compliance required by paragraph 1(b)

could be brought to light as the result of a complaint. In such a case, paragraph 1 of the Standard would apply and an inspection covering the new elements coming to light could be carried out; an inspection would have to be carried out in the case of a clear hazard or serious breach referred to in the second part of paragraph 1 (Note 36, paragraph 2(j)). The wording quoted was not set out in the PTMC draft Convention as the matter was unresolved. It was the subject of tripartite consensus at the Intersessional Meeting and was provided to constituents for comment following the Meeting. The provision was not the subject of detailed comment.

- (m) Under Article 4(1) of Convention No. 147, if deficiencies are found with respect to conformity with the Convention, the port State may report the matter to the government of the flag State, with a copy of the notification being sent to the Director-General of the ILO. This procedure is expanded in the Convention (*paragraphs 4 and 5 of the Standard*): *paragraph 4(a)* sets out a procedure for reporting to the flag State, giving the latter a proper opportunity to express its position and to take any necessary action and *paragraph 4(b)* a procedure for providing information to the next port of call and to the appropriate seafarers' and shipowners' organizations. In the PTMC, agreement was not reached on paragraph 4(b) of the Standard with respect to an invitation to the flag State to attend the inspection. As a result of tripartite consensus at the Intersessional Meeting, the reference to an invitation to a flag state representative is not found in the proposed consolidated maritime labour Convention as it was decided that this was not appropriate at this stage of the proceedings: the presence of a representative would be necessary only in the case of the detention of the ship (Note 36, paragraph 2(o)). This solution was communicated to constituents for comment following the Intersessional Meeting. The provision was not the subject of detailed comment.
- (n) In *paragraph 5*, an indication is given of the action that the ILO Director-General would be expected to take if the flag State's response to the problem was inadequate: namely, action "to ensure that a record is kept of such information and that it is brought to the attention of parties which might be interested in availing themselves of relevant recourse procedures" (such as representations or complaints under article 24 or 26 of the ILO Constitution). Concern has been expressed with regard to the burden for port States if they had to go through such procedures every time a deficiency was found. In this connection, it would seem to be in the interests of all ratifying Members that a record be kept of ships in serious or persistent violation. This approach is consistent with the development of the international information base referred to in paragraph 17 of Part I, Introduction.
- (o) *Paragraph 6* of the Standard, relating to the circumstances in which a ship might have to be detained, was not resolved at the PTMC. The solution currently set out in the proposed consolidated maritime labour Convention is the result of tripartite consensus at the Intersessional Meeting. It places an obligation on the port State if, during an inspection (voluntarily carried out) (Note 36, paragraph 2(a)) certain specified deficiencies come to the authorized officer's attention, steps "shall" be taken to ensure that the ship does not proceed to sea until the serious non-conformities are remedied "or until the authorized officer has accepted a plan of action to rectify such non-conformities and is satisfied that the plan will be implemented in an expeditious manner". The first specified deficiency is already provided for in Article 4 of Convention No. 147, under which the port State "may" detain a ship to the extent necessary to rectify any conditions on board which are "clearly hazardous to safety or health". This is specified in *subparagraph (a)* of

paragraph 6, with the addition of “security”. The other specified deficiency (*subparagraph (b)*) is a “serious or repeated breach of the requirements of the Convention (including seafarers’ rights)”. This wording, which is consistent with the wording in paragraph 7(c) of Standard A5.1.4 and paragraph 1 of Standard A5.2.1, reflects the approach to the relationship between port state actions relative to flag state actions that is discussed in paragraph 2(j) of Note 36. Paragraph 6 then goes on to specify the same kind of follow-up action as that referred to in paragraph 2(m) of Note 36, with the addition of an invitation for a representative of the flag State to be present. In its comments (Part II, General discussion, paragraph 12), the United Nations also noted a relevant UNCLOS provision in the context of the detention of ships and seafarers, namely article 292, on the prompt release of ships and crews. The wording of paragraph 6 was provided to constituents for comment following the Intersessional Meeting. The following comments were received.

*Argentina:* The provision is generally appropriate and comprehensive. The parties to be notified in the case of detention should, however, include the competent maritime authority where it is not the same as the inspecting authority. In Guideline B5.2.1, the clarification of the concept of “serious breach” appears appropriate, but it would be useful to continue the guidance on the other concepts that were dealt with in the previous version of the Guideline, especially on the concept of repetition. The representative of the merchant fleet considers that the various general definitions concerning a serious breach should be in the mandatory part of the Convention.

*Australia:* No comment on the proposed text, but clarification as to how the Convention would be applied to a ship flying the flag of a country that has not ratified the Convention would be helpful.

*Japan:* The word “forthwith” is used twice in the main paragraph. The first usage makes sense given that it relates to prompt actions between the port and flag States. However, the second time it is used is in a situation which does not seem to require prompt action and, in fact, waiting until a response is received from the flag State may be more useful. Also, this may add an undue burden to the work of inspectors. The word “forthwith” in the last sentence should be deleted.

*New Zealand:* The proposed text for paragraph 6 of Standard 5.2.1 appears to provide clear, appropriate tests for detention.

*Panama:* The proposed wording is supported and the phrase “serious breach” is appropriate as it reflects the term currently used.

- (p) *Paragraph 7 of the Standard contains an important requirement that a Member’s authorized officers must be given guidance, of the kind indicated in Part B of the Code, as to the kinds of circumstances justifying detention of a ship. The wording was not resolved in the PTMC. The principle that officers should be trained was not controversial, but was related to some unresolved subparagraphs in paragraph 2 of Guideline B5.2.1. As a result of tripartite consensus at the Intersessional Meeting, paragraph 7 has been included in Standard A5.2. Paragraph 2 of Guideline B5.2.1 was also revised to take into account the tripartite consensus on the text of paragraph 6 of the Standard (Note 36, paragraph 2(o)), and to take account of an amendment that obtained tripartite support regarding the example of a “serious breach” being constituted by the presence of a seafarer under age, rather than “more than six months under age” (as in previous wording). Paragraph 7 and the conclusions of the Intersessional Meeting with respect to changes to the text of*

paragraph 2 of Guideline B5.2.1 were provided to constituents for comment following the Meeting. The following comments were received.

*New Zealand:* It will be important for the guidance material to be consistent from one jurisdiction to the next. To this end, it would be preferable for the Organization to produce the guidance in consultation with the tripartite partners.

*Panama:* Training for officers authorized to carry out port state inspections is essential to avoid unjustified detentions.

- (q) *Paragraph 3 of Guideline B5.2.1 envisages the adoption of internationally agreed guidelines on inspection policies, especially those relating to the circumstances warranting the detention of a ship. The importance and urgency of these guidelines is indicated in paragraphs 18 and 19 of Part I, Introduction.*

3. *Regulation 5.2.2 deals with onshore handling procedures for complaints by seafarers in foreign ports. Like the provisions covering on-board complaint procedures (Note 35, paragraph 13(a)), the present provisions are an element in the new Convention for assuring ongoing compliance; they place the concept of a complaint, in Article 4 of Convention No. 147, in a wider context. The Regulation and its associated Code provisions were not finalized at the PTMC. At the Intersessional Meeting, their subject was discussed together with the provisions concerning on-board complaint procedures. The provisions concerned had given rise to strong differences of opinion over a number of years during the preparatory work. The following approach resulted in tripartite consensus at the Intersessional Meeting: the provisions avoid any explicit or implicit reference to the legal right of the seafarer to pursue a complaint in a court of law and to similar questions which had given rise to problems for certain countries under national or international law. They take account of the need to ensure a practical means of redress for the seafarer, while also clearly recognizing the inherent limitations of port state control: the port state authorized officer should have no obligation to resolve all complaints, only to investigate and to resolve if possible. The provisions also clarify, in paragraph 2 of Standard A5.2.2, the relationship between this procedure and the inspection and detention procedures under Regulation 5.2.1. Paragraph 6 of Standard A5.2.2 provides for the reporting of unresolved complaints to the flag State, the Director-General of the ILO, and appropriate shipowners' and seafarers' organizations, and for provision of statistics regarding resolved complaints to the Director-General of the ILO. This approach is consistent with the development of the international information base referred to in paragraph 17 of Part I, Introduction. The wording of the Regulation, Standard and Guidelines, on which there was tripartite consensus, was provided to constituents for comment following the Intersessional Meeting. The following comments were received.*

*Argentina:* The Intersessional Meeting solution is a considerable improvement over those previously discussed. However, where a complaint is not resolved, the State of the ship's next port of call should also be notified so that it can continue the investigation.

*Brazil:* The text is supported. It is intended to meet the need of ensuring that the seafarer has the means to deal with situations involving an infringement of rights, recognizing the inherent limitations of the oversight system as carried out by port States, for foreign vessels. The official responsible (who will handle complaints relating to non-compliance with the provisions of the Convention by the port State) is not required to resolve all complaints, but only to investigate them and institute a solution where possible. It is important that this consideration be reflected in the provisions of the Convention in that, particularly where foreign vessels are involved, the inspector must use all possible means of persuasion, and even then it is not always possible to resolve the situation of

non-compliance; as there are no immediate penalties the problem must then be forwarded to the flag state authorities or to the ILO. Because the seafarer may expect that the complaint will be promptly resolved as a result of such action, it is suggested that the clarification proposed above regarding limitations of immediate action by inspectors really is necessary.

*Germany:* It is important that the inherent limitations of port state control be recognized. The authorized officer should have no obligation to resolve all complaints, only to investigate and to resolve them if possible. The port State cannot substitute for the responsibility for the flag State for seafarers who allege a breach of requirements of the Convention.

*Japan:* The requirement in paragraph 6 for the regular submission of statistics and information on resolved complaints by the port State to the Director-General should not be included: it was not the subject of tripartite consensus at the Intersessional Meeting as opinion was divided.

*New Zealand:* The proposed text appears to provide adequate means for port States to act on seafarer complaints.

*Panama:* The wording of the Guideline appears to be clearer and provides more flexibility than the Standard: it should be considered as the appropriate text for the Standard.

*Note 37 (Regulation 5.3)*

1. *Regulation 5.3* deals with what are described as the “labour-supplying responsibilities” of a State and complements the obligation found with respect to, for example, recruitment and placement services.
2. In the discussions leading up to this Convention, emphasis has been given to the important role of labour-supplying countries in the area of enforcement for matters such as recruitment and placement agencies and employment agreements and social security protection. While it is easy to identify the major countries that supply seafarers, that term could not be defined for the purposes of a legal text. Indeed, just as most if not all countries are called upon to act in the capacity of both flag and port States (if they are not landlocked), they may also act as suppliers of seafarers, albeit on a small scale, in the sense that their citizens may serve on ships registered outside their territory. The related responsibilities should, therefore, also apply to them. To avoid the misconception of a limited category of “labour-supplying States”, the Convention simply refers to “labour-supplying responsibilities”. It should be noted that the Seafarers have expressed some concern about the concept of States other than flag States having recognized responsibilities for seafarers’ conditions of work. In their view, this may be contrary, rather than complementary, to article 94 of UNCLOS (Note 1). However, the opening words of the Regulation (“Without prejudice to …”) address this concern by recognizing the primacy of flag state responsibility.
3. *Paragraph 3* of Regulation 5.3, like paragraph 5 of Regulation 5.1.1 (Note 35, paragraph 5), provides a link between the national system of enforcement and the international supervisory system; it requires Members to establish an effective inspection and monitoring system for enforcing their labour-supplying responsibilities under the Convention and information about this system would be reported to the International Labour Office in accordance with article 22 of the Constitution.
4. The previous “recommended draft” of the Convention contained a provision under which clauses of a seafarers’ employment agreement that were inconsistent with the

Convention would have to be considered as null and void, and any requirements under the Convention that were missing from such an agreement would be deemed to be included. However, there was no support at the Intersessional Meeting for including such a provision. It has, therefore, been omitted from the present proposed Convention. In their comments on the new wording adopted on previously unresolved issues, two governments (Brazil and Panama) confirmed their agreement with the deletion of the former provision. The Government of Argentina stated that the deleted provision could have been very helpful to increase the security of seafarers and proposed that such a provision be included in the non-mandatory part of the Convention.

*Note 38 (Appendices)*

1. The appendices to the Convention all relate to the certification system under Title 5. These were not reviewed and their content was not included in the PTMC draft Convention, mainly on account of insufficient discussion rather than disagreement. Tripartite consensus was reached on their content and format in the Intersessional Meeting.
2. *Appendices A5-I* and *A5-III* contain the list of areas to be inspected. *Appendix A5-I* covers matters that must be inspected by flag States before a certificate can be issued and is referred to in paragraph 1 of Standard A5.1.3. *Appendix A5-III* covers the general areas that are subject to a detailed inspection, when such an inspection of a foreign ship is carried out by a Member (port state control), in accordance with the provisions of Standard A5.2.1. The lists of the items in the two appendices are, in fact, identical. While tripartite consensus was reached at the Intersessional Meeting on the substance of both lists, it was suggested that further thought be given to their wording. One suggestion was that the wording in each area of the list should be consistent with the terms used for the same issue in the heading of the corresponding Regulation in the body of the Convention text. However, with respect to some areas, such an approach might make the scope of the required inspection wider than intended. For example, the title of Regulation 1.3, “Training and qualifications”, is wider than the listed area of “Qualifications of seafarers”.
3. At the Intersessional Meeting, there was some discussion concerning the inclusion in the lists of the item worded “Use of a licensed private recruitment and placement service”. It was proposed that words used in the list should be more closely aligned with the wording adopted by the PTMC in paragraph 2 of Standard A1.4 to describe the nature of the obligation, that is “licensed or certified or regulated” (the text considered, but not resolved, at the PTMC had used only the word “licensed”). It is understood, consistent with the provisions in Regulation 1.4 and the associated Standards, that the inclusion of this item on the list does not mean that a shipowner must use private services, but rather that, if a private service is used, it must be licensed or certified or regulated in accordance with the Convention (Note 18). Members in which there are private recruitment and placement services operating have important duties of regulation and supervision set out under Regulation 1.4. A question was asked at the Meeting about the scope of inspection to be carried out by the flag State with respect to the use, by its shipowners, of foreign private recruitment and placement services. The answer provided to the Meeting by its Secretary-General is reproduced in Appendix F to this Report.
4. The following comments were received with respect to the content of the two lists after the Intersessional Meeting.

*Brazil:* The lists provide for the possibility of using authorized private seafarer recruitment and placement services, which do not exist in Brazil (where the seafarer must be hired directly and no outsourcing of seafarer recruitment is accepted). During

the Meeting, it was stated that the language used in the relevant listings should be reviewed during the Maritime Session of the International Labour Conference, in February 2006. We consider it important that the text of the new Convention should state, whenever such seafarer recruitment and placement services are mentioned, that this refers only to countries where they exist and that reference to them should not be understood as an encouragement to establish such services.

*Egypt* (General Trade Union of Maritime Workers): In its comments transmitted by the Government, the union expressed agreement with the suggestion that the wording of the lists could be better aligned with the headings used in the proposed Convention.

*New Zealand*: No comment (other than, perhaps, that we understand the lists to be minimum requirements and other matters are not necessarily excluded from inspection and approval).

*Panama*: The terminology in the appendices and the headings in the Titles should, as much as possible, be consistent. Both lists should include a reference to social security or other mechanisms or coverage used by the shipowner to meet this obligation.

5. In accordance with paragraph 9 of Standard A5.1.3, the documents required under the Convention are to be drawn up in the form corresponding to the models in *Appendix A5-II*. These documents are:

- (a) the maritime labour certificate;
- (b) the declaration of maritime labour compliance, attached to the maritime labour certificate; and
- (c) an interim maritime labour certificate.

6. The models were prepared by a working party of the Government group at the PTMC, and take into account a suggestion made at the Intersessional Meeting. The IMO noted that the inclusion of a reference to the IMO Unique Company and Registered Owner Identification Number, as well as to the ship's IMO number on the Maritime Labour Certificate, may be useful in assisting in the identification of the person responsible under this Convention for the ship's operations and for the working and living conditions of seafarers on board the ship. However, the IMO noted that, if it is included, any reference should take into account the parameters of the IMO scheme, which is an amendment to the SOLAS regime applicable to ships required to carry documentation under the ISM and ISPS Codes, and the fact that this is not expected to become a mandatory requirement until 2009.

7. Particular care has been taken to make the model declaration of maritime labour compliance fully understandable, in view of its novelty. In the first place, it would need to be read in conjunction with the relevant provisions in the body of the Convention, namely of paragraph 10 of Standard A5.1.3 and Guideline B5.1.3 (Note 35, paragraph 8(f)). In addition, *Appendix B5-I*, referred to in paragraph 5 of Guideline B5.1.3, provides an example of the kind of information that might be contained in a declaration of maritime labour compliance. As this is simply an example, designed to assist the completion of the declaration, and not a model to be followed, only the first two areas to be covered by the declaration have been included in this appendix.

8. The following comments regarding Appendices A5-II and B5-I were received after the Intersessional Meeting.

*Germany:* The lists must be supplemented by advice as to the extent of the inspection to be carried out. This should be developed in consultation with the Paris Memorandum of Understanding.

*New Zealand:* The content of the document needs to be consistent with the description above in connection with paragraph 10(b) of Standard A5.1.3.

*Panama:* Both formats seem acceptable.

## **Appendix A**

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### **Report on the work of the PTMC Drafting Group**

1. The Preparatory Technical Maritime Conference (PTMC) on the draft consolidated maritime labour Convention, which took place in September 2004, appointed a tripartite drafting group to review *in extenso* the wording of the draft instrument adopted by the PTMC, as well as the agreement between the English and French versions of the text, along the lines of the terms of reference of drafting committees appointed under the Standing Orders of the General Conference.<sup>1</sup> This drafting group would meet in the interval between the PTMC and the Maritime Session of the International Labour Conference at which the proposed instrument would be considered.
2. The Drafting Group was attended by Mr. A. Moussat, Mr. P. Sadler, Mr. D. Roussel (Government representatives); Mr. D. Lindemann, Mr. G. Suplice, Ms. N. Wiseman (Shipowner representatives); Mr. P. McEwen, Mr. C. Narelli, Mr. J. Whitlow (Seafarer representatives). It held a first meeting from 22 to 26 February 2005 and completed its work at a meeting from 28 to 30 April 2005, immediately following the Tripartite Intersessional Meeting on the Follow-up of the Preparatory Technical Maritime Conference. Its members were subsequently consulted by correspondence on a few points arising from the previous meeting.
3. The main results of the Drafting Group's work are set out below. Unless otherwise noted, the French text reflects the same results. For the sake of convenience, references to the proposed Convention relate to the proposed consolidated maritime labour Convention submitted by the Office in Report I(1B).

#### **General**

4. The phrase “Each Member which ratifies this Convention” is first used in Article I. In accordance with ILO practice, subsequent references to a ratifying Member, wherever possible, simply use the term “each Member” or otherwise refer to “Member” in the singular. When reference is made to Members of the Organization in general, the wording will make this clear and normally the plural “Members” will be used.
5. Cross references have been made more specific by identifying the particular part of the Convention in which the cross reference appears.
6. Where a Regulation does not have a corresponding Standard or Guideline (as is the case, for example, with Regulation 1.1), the Drafting Group considered that the relevant heading should be followed by the words “No provisions”, as is the practice with IMO Conventions, unless it is clearly intended that the particular Regulation should not be followed by any Standard or Guideline (as is the case with Regulation 1.3). The reasons were to avoid the impression that text might have been omitted by mistake and to take

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<sup>1</sup> ILO: *Record of Proceedings* No. 10, Preparatory Technical Maritime Conference, Geneva, 13-24 September 2004, p. 20.

account of the fact that provisions might be added later through the tacit amendment procedure.

## Preamble

7. In the fourth paragraph from the end of the Preamble, the final phrase “effective enforcement” has been replaced by “effective implementation and enforcement” for consistency with Articles I and V.

## Article II

8. In subparagraph (d), “maritime labour certificate” has been defined as “a valid document corresponding to the maritime labour certificate referred to in [Title 5]”, whereas, in subparagraph (b), the “declaration of maritime labour compliance” is simply defined as “the declaration referred to in [Title 5]”. The Drafting Group queried this inconsistency, which has been in the proposed Convention ever since the definitions were first included. In general, the words “a valid document corresponding to” appear redundant as certificates under the Convention must necessarily be valid in order to be considered as certificates.
9. Paragraph 4 of Article II began with the words, “This Convention applies to all ships”, followed by a number of qualifications and exceptions. In order to avoid a possible inconsistency between the application to all ships and some provisions on accommodation in Title 3, the Drafting Group inserted the words “Except as expressly provided otherwise,” at the start of this paragraph.
10. In paragraph 6 of Article II, the word “determinations” was inserted in the place of “exemptions and exclusions” as paragraphs 3 and 5 of that Article did not, strictly speaking, relate to exemptions or exclusions.

## Article IV

11. The Drafting Group aligned the wording of the right referred to in paragraph 4 of Article IV with the current wording for Title 4, “Health protection, medical care, welfare and social protection”.

## Article V

12. In paragraphs 2 and 5 of Article V, the references in the English text to a Member exercising “effective jurisdiction” have been changed to “effectively exercise its jurisdiction” so as to align the text more closely with the wording in Article 94 of the United Nations Convention on the Law of the Sea (UNCLOS), 1982.

## Articles XIV and XV

13. The Drafting Group’s changes to Articles XIV and XV (relating respectively to amendments under the express ratification and the tacit acceptance procedures) were mainly directed to improving clarity.
14. In Article XV, in line with paragraph 7, which refers to “formal expressions of disagreement” with an amendment, wording has been added to paragraphs 6, 8 and 11 to make clear the formal character of the term “disagreement” used in those paragraphs.
15. A number of questions were prompted by paragraph 12 of Article XV, which provides that “After entry into force of an amendment, the Convention may only be ratified in its amended form”. There is no equivalent provision in Article XIV. In the tacit acceptance

procedure (under Article XV), there would be a period of about 33 months between the International Labour Conference's approval of an amendment to the Code and the possible entry into force of the amendment. The position as to whether Members ratifying the Convention during that period would be bound by the amendment was not clear. The Drafting Group had the two following queries:

- (a) Is it the intention that each Member ratifying the Convention after the adoption of an amendment to the Code under Article XV, but before the amendment's entry into force, should be able to decide whether its ratification will or will not cover the amendment?
- (b) Is the inconsistency between paragraph 9 of Article XIV and paragraph 12 of Article XV, as regards this question, intentional? The date from which the Convention could only be ratified in its amended form is set by Article XIV as the date of the Conference's adoption of the amendment and, by Article XV, as the date of entry into force of the amendment (it was also noted that Article XIV (paragraph 9), unlike Article XV, allows exceptions to the rule).

In addition, since the amendment procedures are partly based on Article VIII of the International Convention for the Safety of Life at Sea (SOLAS), 1974, the Drafting Group wondered whether it was intentional to depart from the SOLAS solution in this respect. SOLAS (Article X(c) on entry into force) provides that the relevant date for ratifications of the Convention subsequent to an amendment – in both the express and the tacit procedures – is the date of deemed acceptance of the amendment (which, in the case of the consolidated Convention, would be 12 months (Article XIV) or six months (Article XV) prior to entry into force of the amendment).

16. Paragraph 13 of Article XV relates to the application of the principle of “no more favourable treatment” to the tacit amendment procedure. It is based on the corresponding SOLAS provision. The paragraph has been replaced by a provision which:
  - (a) clearly specifies (in paragraph 13(a)) what is meant by “a Member which is not bound by the amendment” under the previous wording; and
  - (b) like Article VIII(d)(ii) of the SOLAS Convention, states in a positive way (paragraph 13(b)) that Members are to extend the benefit of the Convention in respect of the ships of States that have exercised the right of temporary exemption under paragraph 8(b) of Article XV (rather than using a (less clear) double negative as in the previous wording).

### **Standard A1.1 – Minimum age**

17. In paragraph 1 of Standard A1.1, for consistency with paragraph 1 of Regulation 1.1, the words “or work” were added after the opening words, which mentioned only “employment or engagement”.
18. Similarly, the words “engagement or work” were added after “employment” in paragraph 4. Also in that paragraph, the reference to “hazardous” in the context of what constitutes “hazardous” work was removed, as this question is irrelevant: the relevant provisions refer to “work which is likely to jeopardize ... health or safety” – not to “hazardous” work.

### **Standard A1.2 – Medical certificate**

19. Paragraph 3 of Standard A1.2 contains the first reference to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended. Appropriate changes were made to the wording on the assumption that it was the intention to refer to the STCW Convention in its most recent version (including future amendments) wherever the STCW Convention was mentioned in the consolidated Convention. The Drafting Group suggested that consideration should be given to whether

the references in the Convention to other international instruments should also cover future amendments.

### Standard A1.4 – Recruitment and placement

20. The Drafting Group queried whether paragraph 7 of Standard A1.4 was in the right place. This paragraph relates to the advice to be given to a Member's nationals on the possible problems of signing on a ship of a State that has not ratified the Convention. The paragraph is taken from Convention No. 147, Article 3, where the "possible problems" envisaged are much wider in scope than simply those related to recruitment and placement. The Drafting Group considered that its insertion in Standard A1.4 restricted the scope of the Convention No. 147 standard; it wondered whether this paragraph would not be better placed in Standard A5.3 relating to labour-supplying responsibilities.
21. The Drafting Group queried the meaning of "seafarers' identity documents" appearing in paragraph 2(a) of Guideline B1.4.1 as one of the items to be addressed by the operational practices of seafarer recruitment and placement services. The Drafting Group wondered whether it was the intention to refer in this context specifically to the seafarers' identity documents covered by Conventions Nos. 108 and 185, bearing in mind that it had been decided not to have provisions dealing with this subject matter in the consolidated Convention. The Drafting Group noted that the French version of the proposed Convention used the term "documents", which was wider in scope than the term "*pièces*" used in Conventions Nos. 108 and 185.

### Standard A2.2 – Wages

22. Paragraph 4(f) of Guideline B2.2.2 recommends that wages should be paid directly to seafarers' designated bank accounts unless seafarers request otherwise in writing. The present standard in Recommendation No. 187 refers to payment "to the seafarer or to the seafarer's designated bank account" (Paragraph 6(f)). The reference to the seafarer was omitted in the 2003 first draft of the consolidated Convention. The Drafting Group assumes that this restriction to payment into the bank account unless the seafarer requests otherwise, which corresponds to modern conditions, was intentional.
23. The Drafting Group considered that it might be useful to harmonize the various references existing in the current text to wages, salary, pay and remuneration.

### Standard A2.3 – Hours of work and hours of rest

24. The Drafting Group made a number of changes to Standard A2.3 to bring the wording into line with that of Convention No. 180, in accordance with a concern expressed throughout the drafting of the various versions of this Standard. It also changed two references in order to make them more precise. In this connection, based on the text of Convention No. 180, it assumed that the words "these standards", in the first sentence of paragraph 12 of Standard A2.3, were intended to refer to paragraphs 5-11 of this Standard, and that the words "Nothing in this Standard", at the beginning of paragraph 13, were intended to refer to paragraphs 5 and 6 of this Standard.
25. Guideline B2.3.1 contains special provisions for young seafarers. Paragraph 4 indicates that young seafarers are not, however, exempt from the general obligation on all seafarers to work during emergencies as provided for in paragraph 14 of Standard A2.3 (in the Drafting Group's version). The Drafting Group suggested that consideration be given to reflecting that paragraph in the Standard, in view of its importance.

## Standard A2.4 – Entitlement to leave

26. The Drafting Group queried what precisely was meant in paragraph 1 of Guideline B2.4.1 by service “off-articles”, which should be counted as part of the period of service. Clarification was necessary as the consolidated Convention would no longer refer to “articles of agreement”, which were now covered by the term “seafarers’ employment agreement” (see Article II, paragraph 1(g)).
27. In paragraph 2 of Guideline B2.4.1, the words “for such reasons *beyond the control of the seafarer concerned* as illness, injury or maternity”, the words in italics have been removed as they are unnecessary in the case of illness or injury and incorrect in the case of maternity.
28. Guideline B2.4.4 refers to the repatriation in certain circumstances of young seafarers “to the place of original engagement in their country of residence”. It was noted that they were not being given the choice concerning the place of repatriation, as recommended in the case of seafarers in general in paragraphs 6 and 7 of Guideline 2.5.1. The Drafting Group assumed that this restriction of choice was intentional, bearing in mind the age of the seafarers concerned.

## Standard A2.5 – Repatriation

29. Paragraph 4 of Standard A2.5 refers to the shipowners’ right to recover the cost of repatriation under “other contractual arrangements”. The word “other” has been replaced by “third-party”, in order to avoid any possible interpretation that reference is being made to “other contractual arrangements” with the seafarer.
30. With respect to Guideline B2.5.2, queries were raised as to which seafarers were the beneficiaries of its provisions, relating to seafarers “stranded in foreign ports” or “put ashore in a foreign port”. The Drafting Group noted that Recommendation No. 107, on which paragraph 2 of that Guideline was based, referred to the seafarers within the territory of the Member concerned. It wondered, therefore, whether the provision should not clarify that the responsibilities concerned should be to each Member’s nationals and residents. The Drafting Group also queried whether the term “port” – especially in the context of returning seafarers to a particular port – should not be changed to “place” in view of the modern-day use of air transport in this context.

## Standard A.2.6 – Seafarer compensation for the ship’s loss or foundering

31. The Drafting Group wondered whether the term “foundering”, taken from the Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8), should be updated to also cover similar situations, such as a ship’s running aground.

## Standard A3.1 – Accommodation and recreational facilities

32. It was noted that the references to “gross tons” in Title 3 should be altered to “gross tonnage”.
33. At the beginning of paragraph 2 of Standard A3.1, the Drafting Group changed the reference to “these standards” to “this Standard” on the assumption that it was the intention of the drafters to refer to the provisions of Standard A3.1 itself.
34. In line with the PTMC’s decision, references to “water closet” in Standard A3.1 and Guidelines B3.1.7 and B3.1.8 have been changed to “toilet”.

35. The lengthy juxtaposition of provisions in subparagraphs (a)-(gg) of paragraph 5 of Standard A3.1 in the PTMC Draft Convention has been rearranged in the present paragraphs 6-16, with the former paragraphs 6-9 being renumbered. The following table shows precisely where each of the subparagraphs of paragraph 5 of the PTMC draft Convention is now to be found:
- |                                                                                              |                                                   |
|----------------------------------------------------------------------------------------------|---------------------------------------------------|
| Paragraph 5(a) is now paragraph 6(a).                                                        | Paragraph 5(r) is now paragraph 13.               |
| Paragraph 5(b) is now paragraph 6(e).                                                        | Paragraph 5(s) is now paragraph 15.               |
| Paragraph 5(c) now forms paragraph 6(b), (f) and (g). Paragraph 5(t) is now paragraph 6(h).  |                                                   |
| Paragraph 5(d) is now paragraph 8.                                                           | Paragraph 5(u) is now paragraph 11(c).            |
| Paragraph 5(e) now forms paragraph 7(a), (d) and (b). Paragraph 5(v) is now paragraph 11(d). |                                                   |
| Paragraph 5(f) is now paragraph 16.                                                          | Paragraph 5(w) is now paragraph 11(e).            |
| Paragraph 5(g) is now paragraph 9(c).                                                        | Paragraph 5(x) is now paragraph 11(f).            |
| Paragraph 5(h) is now paragraph 9(a).                                                        | Paragraph 5(y) is now paragraph 7(c).             |
| Paragraph 5(i) is now paragraph 9(d).                                                        | Paragraph 5(z) now forms paragraph 9(f) and (g).  |
| Paragraph 5(j) is now paragraph 9(e).                                                        | Paragraph 5(aa) is now paragraph 9(h).            |
| Paragraph 5(k) is now paragraph 6(c).                                                        | Paragraph 5(bb) now forms paragraph 9(i) and (j). |
| Paragraph 5(l) is now paragraph 6(d).                                                        | Paragraph 5(cc) is now paragraph 9(k).            |
| Paragraph 5(m) is now paragraph 11(a).                                                       | Paragraph 5(dd) is now paragraph 9(l).            |
| Paragraph 5(n) is now paragraph 11(b).                                                       | Paragraph 5(ee) is now paragraph 9(m).            |
| Paragraph 5(o) is now paragraph 10(a).                                                       | Paragraph 5(ff) is now paragraph 9(n).            |
| Paragraph 5(p) is now paragraph 10(b).                                                       | Paragraph 5(gg) is now paragraph 9(o).            |
| Paragraph 5(q) is now paragraph 14.                                                          |                                                   |
36. A query was raised as to whether the heading of Guideline B3.1.1, “Design and construction”, should be aligned with wording used in paragraph 6 of Standard A3.1 (which refers to “general requirements for living accommodation”), especially as the term “construction” could possibly have implications with regard to the scope of paragraph 2 of Regulation 3.1.
37. The phrase “where necessary” was deleted from former paragraph 5(i) and (m) (now paragraphs 9(d) and 11(a)) of Standard A3.1. These provisions address the issue of separate facilities for men and women. The Drafting Group was of the view that the phrase was unnecessary in this context since, at the time of construction of a ship to meet these standards, the gender of the seafarers working on the ship would not be known and would not be fixed.
38. With respect to Guideline B3.1.2 on ventilation, it was assumed that the purpose of cleaning and disinfection referred to in paragraph 2(b) was “to prevent or control the spread of disease”. The words “prevent or” were therefore added in the English text; the word “control” was added in the French text.

## Standard A3.2 – Food and catering

39. For the reasons indicated in paragraphs 17 and 18 of this appendix, the words “be engaged” in paragraph 7 of Standard A3.2 relating to the minimum age for engagement as a ship’s cook, were changed to cover employment and work in addition to engagement.
40. At the beginning of Guideline B3.2.1, there is a reference to shipowners’ and seafarers’ organizations “where such exist”. These words have been removed on the assumption that the intention is that the consolidated Convention’s approach in this respect should also be followed here.

## Standard A4.1 – Medical care on board ship and ashore

41. In paragraph 2 of Guideline B4.1.1, an inconsistency was noted in that a number of guides were mentioned, but the organization that published them was mentioned in the case of only one of them. In order to remove this inconsistency and assuming that the titles of the publications concerned were sufficient to identify them, the Drafting Group removed the words “published by the International Maritime Organization” in paragraph 2, as well as similar wording in paragraphs 5 and 6 of the Guideline and paragraph 1(a) of Guideline B4.1.4.
42. Paragraph 1(b) of Guideline B4.1.4 recommends, in the context of medical assistance, that optimum use be made of “fishing ships carrying a doctor”. On the assumption that the Convention should take account that there are today many other kinds of ships that often carry a doctor, the words “fishing ships” were changed to “all ships”.

## Standard A4.3 – Health and safety protection and accident prevention

43. In paragraph 3 of Regulation 4.3, reference was made to a Member adopting “national” laws and regulations; the word “national” was removed as it was redundant.
44. Noting the references to “occupational accidents, injuries and diseases” in Standard A4.3 and in many provisions of a general nature in the corresponding Guidelines, the Drafting Group assumed that the Guidelines were intended to refer to all three eventualities, and not simply to accidents unless the context otherwise required. Therefore, it made changes to the following Guidelines on the assumption that it was intended to refer to “injuries and diseases” and not only “accidents”: paragraphs 1 and 2 of Guideline B4.3.5; paragraphs 1 and 2(b) of Guideline B4.3.6 and paragraph 1 of Guideline B4.3.7. In addition, with respect to paragraph 3 of Guideline B4.3.7, the Drafting Group wondered whether the guidance, which refers to activity at company level, relating to occupational safety and health protection and prevention of accidents, injuries and diseases, is sufficiently clear.
45. In what is now paragraph 2(c) of Guideline B4.3.2, the phrase “sleeping rooms, mess rooms, recreational facilities, catering facilities and other seafarer accommodation” was replaced by the concise, but equally comprehensive, phrase “all accommodation and recreational and catering facilities” used elsewhere in the Convention text. The same change was made in paragraph 2(c) of Guideline B4.3.3.
46. In Guideline B4.3.11, paragraph 2 referred (at the end) to the “standards of international organizations for standardization”. The Drafting Group deleted the words “for standardization” on the assumption that it was not intended to limit the provision to a certain type of international organization.

## Standard A4.4 – Access to shore-based welfare facilities

47. Following the logic reflected in paragraphs 17 and 18 of this appendix, the words “or engaged or work” were added after “employed” at the end of paragraph 1 of Standard A4.4.
48. In paragraph 2 of Guideline B4.4.1 and paragraph 2(b) of Guideline B4.4.2, the words “where such exist” have been omitted on the same assumption as that explained in paragraph 40 of this appendix.
49. In paragraph 7 of Guideline B4.4.2, the various forms of discrimination have been updated so as also to cover discrimination on grounds of sex, political opinion and social origin.

50. With respect to paragraph 2 of Guideline B4.4.4, the Drafting Group questioned whether it was appropriate to refer to “welfare taxes” in the phrase, “welfare taxes, levies and special dues”, bearing in mind that paragraph 1(b) of the Guideline only refers to “levies or other special dues from shipping sources”.
51. With respect to paragraphs 3 and 4 of Guideline B4.4.5, the Drafting Group wondered whether it was intentional to refer to the “competent authorities” in the plural, given the single “competent authority” defined in paragraph 1(a) of Article II.
52. In paragraphs 4 and 5 of Guideline B4.4.6, relating to seafarers stranded in a foreign port, have been removed, as the same provisions, based on the same international labour Recommendation, appear as paragraph 1 of Guideline B2.5.2.

### **Standard A4.5 – Social security**

53. In paragraph 7 of Guideline B4.5 on social security, the words “social protection” have been changed to “social security protection”, in keeping with the subject of the Guideline, and reference in the English text was made to a Member “effectively exercising its jurisdiction” (see paragraph 12 of this appendix).

### **Standard A5.1.3 – Maritime labour certificate and declaration of maritime labour compliance**

54. In paragraphs 1 and 2(c) of Guideline B5.1.2, reference is now made to “service of satisfactory quality” rather than to “service of quality” as in the previous text.
55. In paragraph 13 of Standard A5.1.3, the reference to ships “engaged only in domestic trade” has been changed to a ship “not engaged in an international voyage”, for the sake of consistency of terminology, especially in view of the addition of a definition of “international voyage” in paragraph 1 of Regulation 5.1.3.

### **Standard 5.1.4 – Inspection and enforcement**

56. In paragraph 17 of Standard A5.1.4 and paragraph 3 of Guideline B5.1.4, the words “(including seafarers’ rights)” have been added after the words “requirements of this Convention” in a similar manner to the wording agreed for paragraph 7(c) of Standard A5.1.4.
57. In paragraph 8(b) and (h) of Guideline B5.1.4, the word “national” in the context of laws and regulations adopted by a Member was removed for the reason given in paragraph 43 of this appendix. Similar changes have been made in paragraph 5 of Standard A2.1 and paragraph 2 of Standard A5.1.5,. Also in paragraph 8 of Guideline B5.1.4, a reference to laws “and” regulations was changed to laws “or” regulations in subparagraph (g), and vice versa in subparagraph (h).

### **Standard A5.1.5 – On-board complaint procedures**

58. In paragraph 1 of Standard A5.1.5, the words “(including seafarers’ rights)” have been added after the words “requirements of this Convention” (see paragraph 56 of this appendix).

### Standard A5.2.1 – Inspections in port

59. In paragraphs 1, 2 and 4 of Regulation 5.2.1 and paragraph 1 of Guideline B5.2.1, the words “(including seafarers’ rights)” have been added after the words “requirements of this Convention” (see paragraph 56 of this appendix).

## **Appendix B**

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### **Lists of ratifications of maritime labour Conventions**

<b>Conventions</b>	<b>Number of ratifications</b> (as at 30 September 2005)
Minimum Age (Sea) Convention, 1920 (No. 7)	53
Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)	59
Placing of Seamen Convention, 1920 (No. 9)	40
Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	81
Seamen's Articles of Agreement Convention, 1926 (No. 22)	58
Repatriation of Seamen Convention, 1926 (No. 23)	46
Officers' Competency Certificates Convention, 1936 (No. 53)	36
Holidays with Pay (Sea) Convention, 1936 (No. 54)	6
Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)	18
Sickness Insurance (Sea) Convention, 1936 (No. 56)	19
Hours of Work and Manning (Sea) Convention, 1936 (No. 57)	4
Minimum Age (Sea) Convention (Revised), 1936 (No. 58)	51
Food and Catering (Ships' Crews) Convention, 1946 (No. 68)	25
Certification of Ships' Cooks Convention, 1946 (No. 69)	37
Social Security (Seafarers) Convention, 1946 (No. 70)	7
Seafarers' Pensions Convention, 1946 (No. 71)	13
Paid Vacations (Seafarers) Convention, 1946 (No. 72)	5
Medical Examination (Seafarers) Convention, 1946 (No. 73)	44
Certification of Able Seamen Convention, 1946 (No. 74)	28
Accommodation of Crews Convention, 1946 (No. 75)	5
Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)	1
Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91)	24
Accommodation of Crews Convention (Revised), 1949 (No. 92)	45
Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93)	6
Seafarers' Identity Documents Convention, 1958 (No. 108)	64

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Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)	16
Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)	29
Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)	29
Continuity of Employment (Seafarers) Convention, 1976 (No. 145)	17
Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)	15
Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)	51
Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976	17
Seafarers' Welfare Convention, 1987 (No. 163)	15
Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)	14
Social Security (Seafarers) Convention (Revised), 1987 (No. 165)	3
Repatriation of Seafarers Convention (Revised), 1987 (No. 166)	12
Labour Inspection (Seafarers) Convention, 1996 (No. 178)	11
Recruitment and Placement of Seafarers Convention, 1996 (No. 179)	9
Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)	17
Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)	4

### Chart of ratifications of maritime labour Conventions (as at 30 September 2005)

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Member States (178)	Total	Ratifications of maritime labour Conventions ( ) = denounced
Albania	3	16, (58), 178
Algeria	12	56, (58), 68, 69, 70, 71, (72), 73, 74, 91, 92, 108
Angola	8	(7), 68, 69, 73, 74, 91, 92, 108
Antigua and Barbuda	1	108
Argentina	11	(7), 8, 9, 16, 22, 23, 53, 58, 68, 71, 73
Australia	15	7, 8, (9), 16, 22, 57, 58, 69, 73, 76, 92, 93, 109, 133, 166
Azerbaijan	9	16, 23, 69, 73, 92, 108, 133, 134, 147
Bahamas	3	(7), 22, 147
Bangladesh	2	16, 22
Barbados	5	(7), 22, 74, 108, 147
Belarus	3	16, (58), 108
Belgium	21	(7), 8, 9, 16, 22, 23, 53, (54), 55, 56, (57), (58), 68, 69, 73, 74, 91, 92, 147, P147, 180
Belize	13	(7), 8, 16, 22, 23, 55, 58, 92, 108, 133, 134, 147, P147
Bosnia and Herzegovina	13	8, 9, 16, 22, 23, 53, 56, 69, 73, 74, 91, 92, 109
Brazil	18	(7), 16, 22, 53, (58), (91), 92, 93, 108, 109, 133, 134, 145, 146, 147, 163, 164, 166

<b>Member States (178)</b>	<b>Total</b>	<b>Ratifications of maritime labour Conventions ( ) = denounced</b>
Bulgaria	28	(7), 8, (9), 16, 22, 23, 53, 54, 55, 56, (57), (58), 68, 69, 71, 72, 73, 75, 108, 146, 147, P147, 163, 164, 166, 178, 179, 180
Cameroon	4	9, 16, 108, 146
Canada	11	7, 8, 16, 22, 58, 68, 69, 73, 74, 108, 147
Chile	5	(7), 8, 9, 16, 22
China	4	(7), 16, 22, 23
Colombia	6	(7), 8, 9, 16, 22, 23
Costa Rica	6	8, 16, 92, 134, 145, 147
Côte d'Ivoire	1	133
Croatia	14	8, 9, 16, 22, 23, 53, 56, 69, 73, 74, 91, 92, 109, 147
Cuba	14	(7), 8, 9, 16, 22, 23, 53, (58), (72), 91, 92, 93, 108, 145
Cyprus	5	16, 23, (58), 92, 147
Czech Republic	3	108, 163, 164
Denmark	15	(7), 8, 9, 16, 53, (58), 73, 92, 108, 133, 134, 147, P147, 163, 180
Djibouti	13	9, 16, 22, 23, 53, 55, 56, (58), 69, 71, 73, 91, 108
Dominica	5	8, 16, 22, 108, 147
Dominican Republic	1	(7)
Egypt	16	9, 22, 23, 53, 55, 56, 68, 69, 71, 73, 74, 92, 134, 145, 147, 166
Equatorial Guinea	2	68, 92
Estonia	10	7, 8, 9, 16, 22, 23, 53, 108, 147, P147
Fiji	3	8, (58), 108
Finland	23	(7), 8, (9), 16, 22, 53, (72), 73, (75), (91), 92, 108, 133, 134, 145, 146, 147, P147, 163, 164, 178, 179, 180
France	35	8, (9), 16, 22, 23, 53, (54), 55, 56, (58), 68, 69, 70, 71, (72), 73, 74, (75), (91), 92, (108), (109), 133, 134, 145, 146, 147, P147, 163, 164, 166, 178, 179, 180, 185
Georgia	1	163
Germany	14	(7), 8, 9, 16, 22, 23, 53, 56, 73, 92, 133, 134, 147, 164
Ghana	10	8, 16, 22, 23, 58, 69, 74, 92, 108, 147
Greece	18	(7), 8, 9, 16, 23, 55, (58), 68, 69, 71, 73, 92, 108, 133, 134, 147, P147, 180
Grenada	5	(7), 8, 16, (58), 108
Guatemala	4	16, 58, 108, 109
Guinea	3	16, 133, 134
Guinea-Bissau	8	7, 108, 166
Guyana	3	(7), 68, 69, 73, 74, 91, 92, 108
Honduras	1	108

<b>Member States (178)</b>	<b>Total</b>	<b>Ratifications of maritime labour Conventions ( ) = denounced</b>
Hungary	10	(7), 16, 145, 147, P147, 163, 164, 165, 166, 185
Iceland	4	(58), 91, 108, 147
India	4	16, 22, 108, 147
Indonesia	1	69
Iran, Islamic Republic of	1	108
Iraq	12	8, 16, 22, 23, (58), 92, 93, 108, 109, 145, 146, 147
Ireland	17	(7), 8, 16, 22, 23, 53, 68, 69, 73, 74, 92, 108, 147, P147, 178, 179, 180
Israel	7	9, 53, 91, 92, 133, 134, 147
Italy	24	(7), 8, 9, 16, 22, 23, 53, 55, (58), 68, 69, 71, 73, 74, (91), 92, 108, 109, 133, 134, 145, 146, 147, 164
Jamaica	4	(7), 8, 16, (58)
Japan	10	(7), 8, 9, 16, 22, (58), 69, 73, 134, 147
Jordan	2	147, 185
Kenya	4	16, (58), 134, 146
Korea, Republic of	2	53, 73
Kyrgyzstan	9	16, 23, 69, 73, 92, 108, 133, 134, 147
Latvia	7	7, 8, 9, 16, 108, 147, P147
Lebanon	9	8, 9, 58, 71, 73, 74, 109, 133, 147
Liberia	9	22, 23, 53, 55, 58, 92, 108, 133, 147
Libyan Arab Jamahiriya	1	53
Lithuania	2	73, 108
Luxembourg	17	(7), 8, 9, 16, 22, 23, 53, 55, 56, 68, 69, 73, 74, 92, 108, 147, 166
Malaysia – Sabah	1	16
Malaysia – Sarawak	2	(7), 16
Malta	11	(7), 8, 16, 22, 53, 73, 74, 108, 147, P147, 180
Mauritania	5	22, 23, 53, 58, 91
Mauritius	6	(7), 8, 16, (58), 74, 108
Mexico	17	(7), 8, 9, 16, 22, (23), 53, 54, 55, 56, 58, 108, 109, 134, 163, 164, 166
Moldova, Republic of	1	108
Morocco	9	22, 55, 108, 145, 146, 147, 178, 179, 180
Myanmar	2	16, 22
Netherlands	21	(7), 8, 9, 16, 22, 23, (58), 68, 69, 70, 71, 73, 74, (91), 92, 133, 145, 146, 147, P147, 180
New Zealand	14	8, 9, 16, 22, 23, 53, 58, 68, 69, 74, 92, 133, 134, 145
Nicaragua	7	(7), 8, 9, 16, 22, 23, 146
Nigeria	9	8, (9), 16, (58), 133, 134, 178, 179, 185

<b>Member States (178)</b>	<b>Total</b>	<b>Ratifications of maritime labour Conventions ( ) = denounced</b>
Norway	26	(7), 8, (9), 16, 22, 53, 56, (58), 68, 69, 71, 73, (75), 91, 92, 108, (109), 133, 134, 145, 147, 163, 164, 178, 179, 180
Pakistan	2	16, 22
Panama	16	8, 9, 16, 22, 23, 53, 55, 56, (58), 68, 69, 71, 73, 74, 92, 108
Papua New Guinea	3	(7), 8, 22
Peru	14	8, (9), 22, 23, 53, 55, 56, 58, 68, 69, 70, 71, 73, 147
Philippines	5	23, 53, 93, 165, 179
Poland	19	(7), 8, 9, 16, 22, 23, 68, 69, 70, 73, 74, 91, 92, 108, 133, 134, 145, 147, 178
Portugal	15	(7), 8, 22, 23, 68, 69, 73, 74, (91), 92, 108, 109, 145, 146, 147
Romania	15	(7), 8, (9), 16, 22, 68, 92, 108, 133, 134, 147, P147, 163, 166, 180
Russian Federation	11	16, 23, (58), 69, 73, 92, 108, 133, 134, 147, 179
Saint Lucia	4	7, 8, 16, 108
Saint Vincent and the Grenadines	4	7, 16, 108, 180
Serbia and Montenegro	13	8, 9, 16, 22, 23, 53, 56, 69, 73, 74, 91, 92, 109
Seychelles	5	(7), 8, 16, (58), 108
Sierra Leone	5	7, 8, 16, 22, 58
Singapore	4	7, 8, 16, 22
Slovakia	2	163, 164
Slovenia	17	8, 9, 16, 22, 23, 53, 56, 69, 73, 74, 91, 92, 108, (109), 147, P147, 180
Solomon Islands	3	8, 16, 108
Somalia	3	16, 22, 23
Spain	28	(7), 8, 9, 16, 22, 23, 53, 55, (56), (58), 68, 69, (70), 73, 74, (91), 92, 108, (109), 134, 145, 146, 147, 163, 164, 165, 166, 180
Sri Lanka	5	(7), 8, 16, 58, 108
Sweden	19	(7), 8, 9, 16, (58), 73, (75), 92, 108, 133, 134, 145, 146, 147, P147, 163, 164, 178, 180
Switzerland	5	8, 16, 23, (58), 163
Syrian Arab Republic	1	53
Tajikistan	9	16, 23, 69, 73, 92, 108, 133, 134, 147
Tanzania, United Republic of	2	16, 134
Tanzania, Tanganyika	1	108
Tanzania, Zanzibar	2	(7), 58
The former Yugoslav Republic of Macedonia	13	8, 9, 16, 22, 23, 53, 56, 69, 73, 74, 91, 92, 109
Trinidad and Tobago	2	16, 147
Tunisia	9	8, 16, 22, 23, 55, (58), 73, 91, 108

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<b>Member States (178)</b>	<b>Total</b>	<b>Ratifications of maritime labour Conventions</b> ( ) = denounced
Turkey	13	53, 55, (58), 68, 69, 73, 92, 108, 133, 134, 146, 164, 166
Ukraine	9	16, 23, (58), 69, 73, 92, 108, 133, 147
United Kingdom	17	(7), 8, 16, 22, 23, 56, 68, 69, 70, 74, 92, 108, 133, 147, P147, 178, 180
United States	7	53, 54, 55, 57, 58, 74, 147
Uruguay	13	(7), 8, 9, 16, 22, 23, 54, (58), 73, 93, 108, 133, 134
Venezuela, Bolivarian Republic of	2	(7), 22
Yemen	2	16, 58

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## Appendix C

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### **Merchant fleets of the world by country of registration, 2004<sup>1</sup>**

Registration <sup>2</sup>	Gross tonnage	World percentage <sup>3</sup>
Algeria	862 333	0.14
Antigua and Barbuda	6 914 568	<b>1.09</b>
Argentina	436 738	0.07
Australia	1 971 876	0.31
Azerbaijan	663 777	0.10
Bahamas	35 388 244	<b>5.59</b>
Bahrain	293 565	0.05
Bangladesh	456 029	0.07
Barbados	580 262	0.09
Belgium	3 973 267	0.63
Belize	1 687 460	0.27
Bolivia	302 971	0.05
Brazil	2 628 338	0.42
<i>Brunei</i>	479 477	<i>0.08</i>
Bulgaria	789 540	0.12
Cambodia	1 821 464	0.29
Canada	2 663 566	0.42
Chile	947 063	0.15

*Notes:*

<sup>1</sup> Based on information contained in Lloyd's Register-Fairplay: *World Fleet Statistics, 2004*.

<sup>2</sup> This table includes registers whose share in the gross tonnage of the world's merchant ships was 0.04 per cent or more. The designations employed in this table, which are in conformity with United Nations practice, and the presentation of the material in it, do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers. Countries indicated in italics are not ILO Members.

<sup>3</sup> Figures of 1 per cent or more are shown in bold.

<b>Registration <sup>2</sup></b>	<b>Gross tonnage</b>	<b>World percentage <sup>3</sup></b>
China	20 369 157	<b>3.22</b>
Hong Kong, China	26 085 134	<b>4.12</b>
Taiwan, China	3 556 310	0.56
Comoros	388 519	0.06
Croatia	1 016 058	0.16
Cyprus	21 283 373	<b>3.36</b>
Denmark	238 185	0.04
Denmark (DIS)	7 284 769	<b>1.15</b>
Dominica	303 866	0.05
Ecuador	264 648	0.04
Egypt	1 143 201	0.18
Estonia	334 920	0.05
Finland	1 428 880	0.23
France	1 375 270	0.22
French Antarctic Territory	3 524 865	0.56
Georgia	974 325	0.15
Germany	8 246 428	<b>1.30</b>
Greece	32 040 682	<b>5.06</b>
Honduras	784 125	0.12
India	7 517 583	<b>1.19</b>
Indonesia	4 072 144	0.64
Iran, Islamic Republic of	5 324 254	0.84
Ireland	496 775	0.08
Israel	739 965	0.12
Italy	10 955 957	<b>1.73</b>
Japan	13 180 189	<b>2.08</b>
Korea, Democratic Republic of	1 122 756	0.18
Korea, Republic of	7 826 141	<b>1.24</b>
Kuwait	2 377 628	0.38
Latvia	294 295	0.05
Liberia	53 898 761	<b>8.51</b>
Lithuania	453 410	0.07
Luxembourg	689 658	0.11
Malaysia	6 056 561	0.96
Malta	22 352 570	<b>3.53</b>

<b>Registration <sup>2</sup></b>	<b>Gross tonnage</b>	<b>World percentage <sup>3</sup></b>
Marshall Islands	22 294 505	<b>3.55</b>
Mexico	1 007 998	0.16
Mongolia	359 901	0.06
Morocco	522 630	0.08
Myanmar	444 330	0.07
Netherlands	5 622 902	0.89
Netherlands Antilles	1 661 631	0.26
Nigeria	429 029	0.07
Norway	3 519 717	0.56
Norway (NIS)	15 416 521	<b>2.43</b>
Pakistan	300 688	0.05
Panama	131 451 672	<b>20.76</b>
Peru	226 750	0.04
Philippines	5 137 022	0.81
Portugal	193 174	0.03
Portugal (MAR)	1 143 306	0.18
Qatar	575 300	0.09
Romania	426 713	0.07
Russian Federation	8 638 887	<b>1.36</b>
Saint Vincent and the Grenadines	6 324 289	<b>1.00</b>
Saudi Arabia	1 678 474	0.27
Singapore	26 282 777	<b>4.15</b>
Spain	1 045 804	0.17
Spain (CSR)	1 823 323	0.29
Sweden	3 666 905	0.58
Switzerland	487 462	0.08
Syrian Arab Republic	446 708	0.07
Thailand	2 889 877	0.46
Turkey	4 678 885	0.74
Ukraine	1 144 777	0.18
United Arab Emirates	799 243	0.13

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<b>Registration <sup>2</sup></b>	<b>Gross tonnage</b>	<b>World percentage <sup>3</sup></b>
United Kingdom	11 122 871	<b>1.76</b>
Bermuda	6 166 162	0.97
Cayman Islands	2 608 796	0.41
Gibraltar	1 142 448	0.18
Isle of Man	7 168 533	<b>1.13</b>
United States	10 744 126	<b>1.70</b>
Vanuatu	1 756 498	0.28
Venezuela, Bolivarian Republic of	1 010 860	0.16
Viet Nam	1 427 538	0.23
Not included		<b>1.34</b>
<b>Total</b>	<b>633 321 120</b>	<b>100.00</b>

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## **Appendix D**

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### **Legal Adviser's opinion on the relationship between Parts A and B of the Code**

#### **Coexistence of mandatory and non-mandatory provisions in a Convention**

Questions were addressed to the Legal Adviser by the Government representatives of the Netherlands and Denmark, as well as those of Cyprus and Norway, as to the various consequences flowing from the coexistence in the draft consolidated Convention of binding and non-binding provisions for ratifying Members.

The High-level Tripartite Working Group on Maritime Labour Standards is, in accordance with its mandate, working on a consolidated Convention as a new type of instrument compared with those adopted up to now. The consolidation of maritime instruments in force is aimed at placing all substantive elements in a single instrument in an approach radically different to that employed up to now, where Conventions contain detailed technical provisions, often accompanied by Recommendations. From this perspective, conclusions cannot be drawn from the traditional formal arrangement based on the distinction between a Convention – where the provisions are binding – and a Recommendation – where they are not.

The future instrument is a Convention open to ratification by States Members providing explicitly for the coexistence of binding and non-binding provisions (proposed Article VI, paragraph 1). The provisions of Part A of the Code would be binding; those of Part B would not. Some international labour Conventions set out, alongside binding provisions, others that are of a different nature.<sup>1</sup> The novelty introduced in the future instrument essentially resides in the great number of non-binding provisions in the instrument. It should equally be noted that other organizations, such as the IMO, have adopted conventions containing the two types of provisions without any apparent legal problems in their application.

Members ratifying the Convention would have to conform to the obligations set out in the Articles, the Regulations and Part A of the Code. Their only obligation under Part B of the Code would be to examine in good faith to what extent they would give effect to such provisions in order to implement the Articles, the Regulations and Part A of the Code. Members would be free to adopt measures different from those in Part B of the Code so long as the obligations set out elsewhere in the instrument were respected. Any State Member which decided to implement the measures and procedures set out in Part B of the Code would be presumed to have properly implemented the corresponding provisions of the binding parts of the instrument. A Member which chose to employ other measures and procedures would, if necessary, and particularly where the Member's application of the Convention was questioned in the supervisory machinery, have to provide justification that the measures taken by it did indeed enable it to properly implement the binding provisions concerned.

2 July 2003.

Loic Picard.

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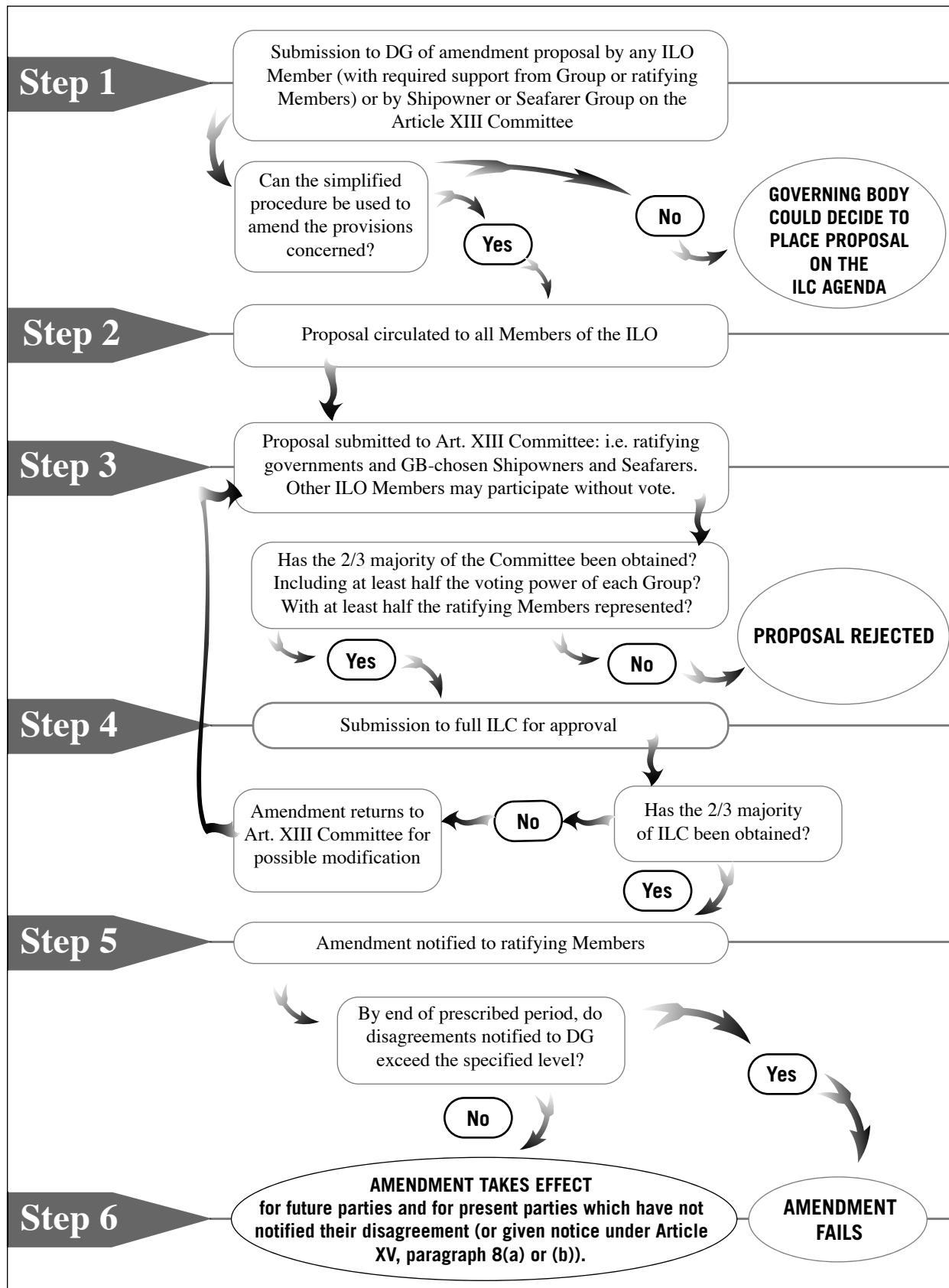
<sup>1</sup> See, for example, the Occupational Health Services Convention, 1985 (No. 161), Article 9, paragraph 1: "... occupational health services should be multidisciplinary."

## **Appendix E**

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### **Simplified amendment procedure under Article XV**

(Please see following page.)



## **Appendix F**

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### **Inclusion of the area of recruitment and placement in Appendices A5-I and A5-III (Note 38, paragraph 3)**

1. A question has been raised by the Government representative of Japan concerning the inclusion, in the lists of areas to be inspected, of a reference to the use of recruitment and placement services. Is it appropriate to include this area for flag state inspection, bearing in mind in particular that in the relevant Regulation (1.4), the obligations expressly placed on flag States are limited to regulating their shipowners in connection with recruitment services based in non-ratifying countries (Regulation 1.4, paragraph 3)? And, if the area is included, what should be the scope of the responsibility of a Member with respect to ships that fly its flag?
2. It should be noted that the Regulations in the proposed Convention are normally expressed as rights that are generally applicable to all seafarers. With respect to minimum age, for example, the flag state inspectors must ensure that the requirements of the Convention under Regulation 1.1 are observed in the case of all seafarers on ships that fly their country's flag.
3. However, the basic obligations concerning recruitment and placement services have been worded to take account of their special nature. While the obligation under paragraph 1 of Regulation 1.4 is general in nature, the obligations under paragraphs 2 and 3 are linked to the place where the recruitment and placement services concerned are based. In this connection, there are three possible situations to be considered:
  - A. shipowners using private recruitment and placement services based in the Member's own territory;
  - B. shipowners using recruitment and placement services on the territory of Members ratifying the Convention;
  - C. shipowners using recruitment and placement services based in countries that have not ratified the Convention.
4. The situation in A is covered by paragraph 2 of Regulation 1.4: "Seafarer recruitment and placement services operating in a Member's territory shall conform to the standards set out in the Code." This is an obligation on each Member as such, irrespective of the capacity in which it is acting. If, therefore, recruitment and placement services were included in the list of areas to be inspected the obligation would be relevant in the context of the flag state inspections of the Member, which could, of course, rely on the supervision of the recruitment and placement services that have already been carried out by the Member.
5. The situation in C is covered by paragraph 3 of Regulation 1.4: "Each Member shall require, in respect of seafarers who work on ships that fly its flag, that shipowners who use seafarer recruitment and placement services that are based in countries or territories in which this Convention does not apply, ensure that those services conform to the requirements set out in the Code." The Member's obligations as a flag State would essentially relate to ensuring that its shipowners have a proper system for verifying that the recruitment and placement services conform to the requirements in the Code. This is clarified in paragraph 8 of Standard A1.4.

6. The situation in B is covered implicitly by the fact that the obligation in paragraph 3 is limited to countries that have not ratified the Convention. The flag State would, therefore, not be expected to carry out any further inspection in this situation beyond ascertaining that the recruitment and placement services that the shipowner has used are based in a Member which has ratified the Convention. Of course, if they had received a clear indication that the basic rights in paragraph 1 of the Regulation were not being observed with respect to seafarers on a ship that flies their flag, then they may need to investigate the situation further.