INTERNATIONAL LABOUR ORGANIZATION

International Labour Standards Department
Sectoral Activities Programme

Preparatory Tripartite MLC, 2006, Committee

Background paper

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I. Introduction

A. Purpose of the Preparatory Tripartite MLC, 2006, Committee

1. The Governing Body of the ILO, at its 306th Session, noting that the Maritime Labour Convention, 2006 (MLC, 2006) is expected to come into force during 2011, decided to establish a Preparatory Tripartite MLC, 2006, Committee ("the Preparatory Committee"), modelled on the future "Special Tripartite Committee" to be established under Article XIII of the MLC, 2006, when it comes into force. [1] Since the MLC, 2006, is not yet in force, the Preparatory Committee comprises representatives of the governments of any interested member States and ten representatives nominated respectively by the International Shipping Federation (ISF) and the International Transport Workers' Federation (ITF).

2. The mandate of the Preparatory Committee is to "keep under review the preparations by Members for implementing the MLC, 2006, identify any common issues and prepare the work for the future Special Tripartite Committee on any questions that might need to be dealt with as a matter of urgency after entry into force of the Convention, including the rules of procedure of the Committee". [2]

3. The Governing Body, in establishing the Preparatory Committee, envisaged that, subject to budgetary considerations, the Committee would "meet at least once during 2010 and once during the 12-month period following deposit of the 30th ratification".

4. The purpose of this meeting of the Preparatory Committee is to:

(a) *exchange information* regarding steps that Members have taken to implement the MLC, 2006 if they have ratified or are moving towards ratification;

(b) *identify any common issues* (particularly any difficulties regarding interpretation and application to particular sectors encountered during preparations for ratification and implementation of the MLC, 2006), and *exchange views* and *provide advice* on possible solutions, in order to assist Members in moving forward with the ratification and implementation process to bring the MLC, 2006 into force in 2011 or early 2012;

(c) *identify matters that will require urgent action by the Special Tripartite Committee*, once it has been established, and *provide advice* on any preparatory work or others steps to be taken to enable it to begin functioning, including consideration of possible standing orders for the Committee, taking into account its various roles under the MLC, 2006.

5. The three items above are dealt with in sections II, III and IV of this document, respectively. For participants who may not have been involved in the development and adoption of the MLC, 2006, the remainder of this section provides some background information on the Convention.

[1] ILO: Reports of the Committee on Legal Issues and International Labour Standards, second report, Governing Body, 306th Session, Geneva, Nov. 2009, GB.306/10/2(Rev.).

[2] ibid., para. 83(a)(i).

B. Background to the Maritime Labour Convention, 2006

6. The MLC, 2006, was adopted by the 94th (Maritime) Session of the International Labour Conference (ILC) on 23 February 2006. It was adopted by the 106 member States that attended the Conference with no dissenting votes. [3]

7. The text of the MLC, 2006, is the result of an extensive international tripartite consultation process that began in 2001, in response to a proposal, sometimes called the "Geneva Accord", made by the Shipowner and Seafarer representatives on the Joint Maritime Commission (JMC). [4] The text was developed by a High-level Tripartite Working Group and Subgroup on Maritime Labour Standards, established by the ILO Governing Body, and further developed during the Preparatory Technical Maritime Conference (PTMC) in 2004 and the Tripartite Intersessional Meeting in 2005, before being finalized and adopted by the 94th (Maritime) Session of the ILC, held from 7 to 23 February 2006.

8. The MLC, 2006, is seen as a "Bill of Rights" which will help to ensure decent work for seafarers, no matter where ships sail and irrespective of the flag they fly. It is also seen as an important new tool to help ensure a level playing field for quality shipowners who may have to compete with ships that have substandard conditions. The MLC, 2006 is also important because it brings together the substance of most [5] of the existing ILO maritime labour instruments (Conventions and Recommendations) adopted since 1920 in one comprehensive, modern document that covers almost every aspect of decent work for this sector.

9. Although the MLC, 2006 essentially consolidates existing standards without significantly altering them, it protects working and living conditions in all areas covered by those standards and includes a much broader range of workers on a larger number of ships than the predecessor ILO Conventions. It thus covers workers on ships who might not previously have been classed under national laws as "seafarers", mainly for reasons such as the type of work performed or the nature of the voyage or size of the ship concerned or the exclusion of particular categories of ships under a predecessor Convention. This could give rise to difficulties for some countries with respect to the application of the Convention's requirements to some categories of ships and seafarers (see section III below).

10. The MLC, 2006, covers a significant number of areas in which there is flexibility with respect to implementation at the national level. The ways in which national flexibility may be exercised was designed to encourage social dialogue at the national level. In many

[3] It was adopted by a record vote of 314 in favour, none against, involving 106 ILO Members and shipowners and seafarers from these countries. (The Government delegates of the two countries which abstained explained that the reasons for their votes were not related to the substance of the Convention.)

[4] The records of the HLTWG meetings, the PTMC, the Intersessional meeting, and the 94th (Maritime) Session of the ILC, the text of the MLC, 2006, and other key documents are available at www.ilo.org/global/What_we_do/InternationalLabourStandards/MaritimeLabourConvention/lang--en/index.htm.

[5] The substance of most instruments adopted since 1920 have been updated and are now included – "consolidated" – in the MLC, 2006. The ILO Conventions on seafarers' identity documents (Nos 108 and 185), and on seafarers' pensions (No. 71) and one already shelved Convention (No. 15), are not included in the new Convention. The 37 maritime labour Conventions that are now consolidated (revised) will be gradually phased out as Members that are now party to those Conventions ratify the MLC, 2006.

countries, active social dialogue in the shipping industry will facilitate ratification. In other countries, the ratification process may well provide an opportunity to improve social dialogue at the national level, as governments will need to hold consultations with the social partners in order to properly implement the Convention. As will be seen in section IV below, the Special Tripartite Committee has also been given a consultative role, under Article VII of the MLC, 2006, where representative organizations of shipowners or seafarers do not yet exist in a ratifying country.

11. The MLC, 2006, contains a strong enforcement component. Its approach at the shipboard level, and the increased responsibilities given to flag and port States, is reinforced at the international level by existing ILO mechanisms. The ILO's greatest strength, in terms of the implementation of international labour Conventions at the national level, is undoubtedly its supervisory system, which provides the necessary institutional guarantees and authority, with both an independent mechanism and an important tripartite component (see paragraph 25 and Appendix II). The successful supervision of the implementation of the MLC, 2006 is based on the concept of a continuity of "compliance awareness" at every stage, from the national systems of protection up to the international system. The process begins with individual seafarers who, under the Convention, must be properly informed of their rights and of the remedies available in the event of alleged non-compliance with the requirements of the Convention, and whose right to lodge complaints, both on board ship and ashore, is recognized under the MLC, 2006. The process then continues with the shipowners, who are required to draw up and implement plans to ensure effective compliance with the applicable national laws and regulations or other measures to implement the Convention. The masters of the ships concerned are then responsible for implementing the plans drawn up by the shipowners, and for keeping proper records to evidence implementation of the requirements of the Convention. As part of its updated ship inspection responsibilities, the flag State is required to review shipowners' plans and to verify and certify that they are actually in place and are being implemented. They are also required to carry out periodic quality assessments of the effectiveness of their national systems and provide information on these matters in their reports under article 22 of the ILO Constitution (part of the ILO's supervisory system).

12. This general inspection system in the flag State is 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 also be reporting under article 22 of the ILO Constitution. The flag State inspection system is reinforced by voluntary measures for inspections in foreign ports (port State control). Although not called for in the Convention, at the time it was adopted the development of an accessible, international MLC, 2006, information database was also envisaged, perhaps in cooperation with existing systems in the maritime sector. Such a database, if developed, would benefit from 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 MLC, 2006.

13. When adopting the MLC, 2006 the 94th (Maritime) Session of the Conference also adopted 17 resolutions, many of which relate to complementary and follow-up activities to assist in ensuring rapid and widespread ratification combined with effective implementation at the country level. [6]

[6] ILO: *Reports of the Selection Committee*, second report, *Provisional Record* No. 3-1(Rev.), ILC, 94th (Maritime) Session, Geneva, 2006.

II. Progress on ratification and implementation of the MLC, 2006

14. The MLC, 2006 was specifically 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 International Maritime Organization (IMO), which are: the International Convention for the Safety of Life at Sea, 1974 (SOLAS); the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, (STCW); and the International Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL).

15. At the time the MLC, 2006 was adopted it was envisaged that these ambitious objectives would be achieved through the early ratification of the Convention by a sufficient majority of countries active in the maritime sector to make it a truly global instrument. This level and pace of ratification was expected for a number of reasons, including the intensive five-year tripartite consultation process leading to the adoption of the Convention in 2006. In addition, the strengthened compliance and enforcement system established by the MLC, 2006, which included a certification system for labour standards, a strengthened inspection in foreign ports (port State control (PSC)) and a "no more favourable treatment" clause that would apply also to ships flying the flag of non-ratifying countries, was viewed as an important incentive for countries to ratify. As most of the provisions of the MLC, 2006, simply consolidate existing ILO Conventions, many governments would need to make very few legislative changes in order to ratify the Convention.

16. Widespread ratification by countries with a maritime interest, particularly flag and port States, is essential to achieve the objectives of the MLC, 2006. For this reason, the Convention has an unusually demanding ratification formula compared to other ILO Conventions (it will enter into force 12 months after the formula is achieved). At the time of adoption, it was anticipated that the required ratification level would be achieved in approximately five years. [7]

17. Acting on the advice of an informal tripartite advisory group of interested countries and organizations, in September 2006 the International Labour Office adopted a strategic five-year (2006−11) *Action Plan to achieve rapid and widespread ratification and effective implementation of the Maritime Labour Convention, 2006* ("*Action Plan*"). This *Action Plan* focused first on global and regional events to promote ratification of the Convention and to foster international and regional cooperation with regard to its implementation. Two major activities under the *Action Plan* relate to strengthening national capacities in the area of inspection and enforcement. In September 2008, international tripartite expert meetings were held to review and adopt the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*, and the *Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006*. [8] The International Labour Office, in partnership with the ILO's International Training Centre in Turin, Italy, and in cooperation with interested constituents, has prepared a package of materials and conducts two-week "Training of Trainers" courses on maritime labour inspection and certification under the MLC, 2006.

[7] ILO: *Report of the Committee of the Whole*, *Provisional Record* No. 7(Rev.), ILC, 94th (Maritime) Session, Geneva, 2006 (see Part 1, para. 239, showing that the intention was to keep the figures for the entry into force of the Convention high enough to give legitimacy to the instrument, yet low enough to allow the Convention to enter into force within the following five years.

[8] Available at: www.oit.org/wcmsp5/groups/public/ed_norm/normes/documents/publication/wcms_101788.pdf and www.oit.org/wcmsp5/groups/public/ed_norm/normes/documents/publication/wcms_101787.pdf.

18. These activities, which are of a general nature, have been complemented by parallel initiatives, such as targeted high-level tripartite missions to countries identified as important in the sector, but which may not have participated in the 94th ILC or may be experiencing special difficulties in moving towards ratification. In addition, the strategy supported concurrent efforts to develop a wide range of knowledge tools (materials, informational CDs and other resources) and rapid, informal responses to questions concerning the Convention.

19. While financial or other contributions to the *Action Plan* have been provided by several countries and organizations, financial support has not been at the level that had been hoped for. Despite the relatively low level of funding, the strategic approach adopted in the *Action Plan*, including specific ratification levels and other targets, has been substantially achieved and, in some cases, exceeded.

20. Under the entry into force requirements set out in Article VIII of the MLC, 2006, ratifications are required from at least 30 countries with a total share in the world gross tonnage of ships of at least 33 per cent. This tonnage requirement was exceeded in February 2009, with ratifications by Panama and Norway, in addition to earlier ratifications by Liberia, the Bahamas and the Marshall Islands. In the first six months of 2010, five more ratifications were registered: Bosnia and Herzegovina, Spain, Croatia, Bulgaria and Canada, bringing the total ratifications to ten. Spain was the first of the European Union (EU) countries to implement the European Council Decision inviting EU Members to ratify the MLC, 2006 before the end of December 2010. [9] Information from EU Member States and other States indicates that all the regions are at different stages of the ratification process. However, it is understood that the complexity of the MLC, 2006 and its scope of coverage, and the requirement for tripartite consultation, has resulted in certain difficulties for some countries (see sections III and IV below).

21. It is expected that a sufficient number of ratifications will be achieved by the end of 2010 or early 2011, ideally by the fifth anniversary of adoption of the MLC, 2006, to allow for entry into force in early 2012. However, it is a significant concern if ratification does not occur in all the regions of the world.

III. Exchange of views on common issues

A. General

22. Through its various activities related to the implementation of the *Action Plan* mentioned above, as well as other contacts with its constituents, the International Labour Office has been made aware of several common issues or difficulties faced by countries preparing for ratification and implementation of the MLC, 2006. This section will outline several issues

[9] The Council adopted a Decision on 7 July 2007 authorizing member States to ratify the ILO's MLC, 2006 in the interests of the European Community, preferably before 31 December 2010 (see EU *Official Journal:* L 161/63, 22 June 2007). On 19 May 2008, the EU social partners representing management and labour in the maritime transport sector (European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF)) entered into the Agreement on the MLC, 2006, and requested the European Commission to propose a Council Directive giving effect to their Agreement and its Annex A under EU law, in accordance with article 139 of the Treaty. A Directive was adopted in February 2009. See: Council Directive 2009/13/EC of 16 February 2009 implementing the *Agreement concluded by the European Community Shipowners Association (ECSA), the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 and amending Directive 1999/63/EC*. It will enter into force at the same time as the MLC, 2006.

have arisen which appear to be "common issues", as well as matters of specific concern. ***It is hoped that the participants at this meeting of the Preparatory Committee will be in a position to exchange information on these and other issues.***

23. As indicated earlier, although the specific requirements found in the predecessor ILC Conventions have not changed significantly, the MLC, 2006 presents challenges for some governments, as it is a comprehensive Convention covering a broad range of topics (the general exclusion of subject matter is not possible), more ships than previous Conventions (there is no general tonnage limit) and a wider range of workers on those ships. At the same time, the MLC, 2006 provides considerable flexibility with respect to smaller ships (less than 200 gross tonnage (gt)) and for all ships with the application of the concept of substantial equivalence to the requirements in Part A of the MLC, 2006 Code (under Article VI, paragraphs 3 and 4), as well as flexibility arising from the inclusion of many formerly mandatory requirements in the non-mandatory Guidelines in Part B of the MLC, 2006, Code, which nevertheless must be given due consideration in accordance with Article VI, paragraph 2. There is also flexibility with regard to the means of implementation. In many cases, a Member may rely on collective bargaining agreements as a means of fulfilling its obligations under the Convention (Article IV, paragraph 5). In addition, the construction and equipment requirements in Standard A3.1 do not apply to existing ships that were not previously covered by similar requirements in their flag State.

24. It may be useful to note two opposing tendencies with respect to the flexibility contained in the MLC, 2006. On the one hand, there may be a tendency in certain cases to believe that the flexibility permits significant departures from the requirements of the Convention. This is not normally the case. Apart from a determination under Article II, paragraph 6 (which is broadly worded to allow the subject matter of a Code provision to be "dealt with differently" – see below), the flexibility clauses are subject to carefully worded limits set out in the Convention. The opposite tendency that has been noted, is one which would, in the interest of the uniform application of the Convention, discourage countries from making use of the flexibility provisions. While uniformity is desirable as far as possible, it is essential that use should be made, wherever necessary, of the available flexibility in order to facilitate ratification by the country concerned and thus meet the overriding objective of universal application of the Convention. Of course, if Members use the flexibility provisions in the MLC, 2006, in the same way, this will serve the interests of both uniformity and flexibility. This is, therefore, one of the advantages of holding a discussion on common issues in the present Preparatory Committee.

25. Since, in certain cases, exercising flexibility may give rise to questions of interpretation, Members should be familiar with the various procedures used by the ILO's supervisory bodies, including the Committee of Experts on the Application of Conventions and Recommendations, to verify the implementation of international labour Conventions. These procedures are summarized in Appendix II to this background paper. The International Labour Office may also provide informal opinions at the request of constituents, on the understanding that only the International Court of Justice is competent to provide authoritative interpretations of international labour Conventions, and that the Office's opinions do not prejudice any position that might be adopted by the supervisory bodies.

Possible areas of flexibility

26. Before setting out some issues with a view to possible solutions, it is useful to consider the following points regarding the application of the MLC, 2006, to ships and seafarers and areas where flexibility may be exercised.

27. The question "who is a seafarer?" was extensively debated at the meeting leading up to the adoption of the MLC, 2006. A clear tripartite decision was taken to cover almost all workers on board ships covered by the Convention (see: Article II, paragraph 1(f) and paragraph 2).

28. Under Article II, paragraph 3 there is some flexibility "in the event of doubt" as to whether any categories of persons are regarded as seafarers for the purpose of the Convention. This matter is determined in consultation with the shipowners' and seafarers' organizations concerned. In fact, the 94th (Maritime) Session of the ILC adopted a very helpful *Resolution concerning information on occupational groups*, which was specifically intended to provide guidance to governments regarding issues that should be considered when making this determination.

29. The question of the exclusion of ships (and therefore the workers on board) on the basis of a tonnage limitation was extensively debated and a clear tripartite decision was taken to make the Convention broadly applicable to ships, with very few exclusions.

30. Under the definition of a "ship" in Article II, paragraph 1(i), the MLC, 2006 does *not apply* to ships that navigate exclusively in inland waters, or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply. The Convention does not define the terms "sheltered waters" or "closely adjacent to"; these are matters for countries to assess in good faith.

31. Under Article II, paragraph 4, the Convention *applies* to "all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks". It does *not apply* "to warships or naval auxiliaries". The question of the circumstances in which a ship should be considered as "ordinarily engaged in commercial activities" may well arise in the future for consideration by the ILO supervisory system. However, this is also essentially a question of good faith assessment on the part of a Member. It could be a complex matter under national law and practice as it may involve other considerations relating to, for example, the licensing of a ship to operate as a commercial entity, taxation or safety regulations, or other similar matters pertaining to the national ship registry.

32. *In the event of doubt* as to whether the Convention applies to a ship or a particular category of ships, this is also a matter for the competent authority of a Member to determine under Article II, paragraph 5, "after consultation with the shipowners' and seafarers' organizations concerned".

33. Assuming that a ship is covered by the Convention, the question of flexibility concerning the application of specific requirements arises in a number of cases, as set out below in paragraphs 34 to 36.

34. *In connection with ships of less than 200 gt that do not engage in international voyages*, a competent authority may (under Article II, paragraph 6) make a determination that it is not reasonable or practicable at the present time to apply "certain details of the Code" to a ship or particular categories of ships. Although the general principles set out in the Regulations of the MLC, 2006, would still apply if such a determination were to be made, the Code provisions would not apply to the extent that the subject matter is dealt with differently by national laws or regulations, collective bargaining agreements, or other measures. This determination may only be made in consultation with the shipowners' and seafarers' organizations concerned.

35. *In connection with seafarers' accommodation and recreational facilities* (Regulation 3.1):

(i) The requirements in the Code (Standard A3.1 and Guideline B3.1) relating to ship construction and equipment *do not apply* to "existing ships" *ships constructed on or after the date when the MLC, 2006, comes into force for the country concerned, i.e. 12 months after ratification, once the MLC, 2006, is in force*). Under Regulation 3.1, paragraph 2, a ship is deemed to be constructed on the date when its keel is laid or when it is at a similar stage of construction. If a country has ratified or applies (through Convention No. 147 or its Protocol, or under the country's national law) earlier ILO Conventions (No. 92 or No. 133), the obligations set out in these Conventions relating to construction and equipment will continue to apply.

(ii) Existing ships would still have to comply with other requirements laid down under the MLC, 2006, and a ship's construction and equipment must still meet the basic requirement that it be "decent accommodation … consistent with promoting the seafarers' health and well-being".

(iii) In the case of *future ships* and the construction or equipment minimum standards, under Standard A3.1, paragraph 20, *ship*s *of less than 200 gt* may be exempted from certain specific floor area requirements laid down in paragraph 9 and other specified requirements, subject to the concerns articulated in paragraph 21.

(iv) Standard A3.1, paragraph 9 specifically provides for a certain degree of flexibility with regard to minimum floor areas, particularly if the reduction is to provide seafarers with single berth rooms, for *ships of less than 3,000 gt, passenger ships and special purpose ships*; this flexibility provision is intended to address particular concerns and physical constraints for those categories of ships.

36. Flexibility is also provided under Standard A3.1, paragraph 19, to allow the competent authority to take account, without discrimination, of the interests of seafarers having differing and distinctive religious and social practices, and permit fairly applied variations in respect of the Standard, on the condition that those variations do not result in overall facilities less favourable than those which would result from the application of the Standard.

37. In connection with flag State inspection and certification under Regulation 5.1, although this is not specifically a matter that relates to flexibility, all ships must be inspected by the flag State; however *only ships of 500 gt* and above that are engaged in international voyages or voyages between ports in another country *must* be certified (unless the shipowner requests certification).

B. Application of the MLC, 2006 to cruise ships

38. In general, the application of the MLC, 2006 to ships of 500 gt and above engaged in international voyages does not appear to pose significant difficulties, possibly because these ships were also clearly covered by previous ILO Conventions. One exception where difficulties appear to have arisen is in connection with the cruise ship sector, primarily because the MLC, 2006 clearly covers many workers on board these ships who may not previously have been protected as "seafarers". To date, where issues have been articulated,

the International Labour Office has been able to assist with information and explanations regarding the requirements of the MLC, 2006. [10]

39. It is understood, however, that some cruise ship owners may still have significant concerns regarding the impact on their operations of certain MLC, 2006 provisions, particularly those in Titles 2 and 4. In general, these concerns have taken the form of requests for advice concerning possible national determinations, under Article II, paragraph 3 of the Convention, that certain categories of workers do not come within the definition of seafarers. In some of the countries concerned, there are no shipowners' or seafarers' organizations to consult with regard to such determinations. This situation is referred to in section C below.

C. Application to larger yachts

40. A concern has been raised by a government and by associations involved with the larger pleasure/commercial yacht sector. The concern raised in relation to this sector differs from those in the cruise ship sector, in that it relates specifically to the application of the provisions in Standard A3.1 relating to construction, but not to the other requirements of the MLC, 2006. It appears that these ships are regulated by a Code developed by the United Kingdom and increasingly used by other countries. The specific concern raised by this sector includes their view that the structural design features of these ships were not taken into consideration during the development of the MLC, 2006. In their view, the sector is analogous to the case of fishing vessels [11] and requires special consideration as the mandatory minimum floor areas are not viable. The specific concern relates to the floor areas for two-berth sleeping rooms, officers' sleeping rooms and mess rooms.

41. There appear to be three approaches to a possible solution, in cases where the ships concerned are covered by the definition in Article II, paragraph 1(i), and are either of 200 gt and above or for some other reason are not covered by the possible flexibility under Article II, paragraph 6, or Standard A3.1, paragraph 20. The first of these approaches may be less desirable, given that the sector has not indicated any concern regarding the application of other requirements of the MLC, 2006.

42. One approach might be to consider whether the chartering operations of these ships result in the ships being considered to be "ordinarily engaged in commercial activities". It is understood that many of these ships spend extensive periods in port, with very short-term commercial charters involving 12 or less passengers. It may be that this Preparatory Committee or the Special Tripartite Committee (under Article XIII) could provide guidance on this matter, to supplement the information provided in the *Resolution concerning information on occupational groups* (see the earlier discussion at paragraph 28 above) adopted by the 94th (Maritime) Session of the ILC, in order to assist governments in making determinations under Article II, paragraph 3, as to whether a category of persons are to be regarded as seafarers. This might include guidance on what is meant by "ordinarily" or "commercial". The difficulty involved in this approach is that such action would then exclude the seafarers on these ships from the entire Convention.

[10] For example, the application of Standard A2.3 regarding minimum hours of rest for seafarers who have duties related to meal service for passengers on cruise ships, or questions regarding who should sign a seafarers' employment agreement when the seafarer is also employed by another entity, such as a retail outlet, operating on board the ship.

[11] At the international level, the ILO's Work in Fishing Convention, 2007 (No. 188), establishes standards, including accommodation standards, specifically for this sector.

43. Another approach could involve the formulation of *international tripartite guidance* regarding substantial equivalence for ships in this or similar categories, with respect to the application of the construction and equipment requirements under Standard A3.1 to future ships. It might be possible for a solution to be developed on a tripartite basis, along the lines of that already established under Article 1, paragraph 5, of the Accommodation of Crews Convention (Revised), 1949 (No. 92), [12] and Article 1, paragraph 6, of the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133). [13]

44. The third approach would be to develop a proposal for consideration by the Special Tripartite Committee, once it has been established, regarding potential amendments to Standard A3.1, perhaps in connection with the specific requirements in the Standard, or in connection with the tonnage limit for exemptions under paragraph 20 of the Standard or in connection with the provision of additional flexibility, in line with Conventions Nos 92 and 133, as noted above.

D. Application to mobile offshore drilling units

45. Some general questions have been asked regarding the application of the MLC, 2006 to the offshore exploration and exploitation sector (especially mobile offshore drilling units (MODUs). The structures in question present particular difficulties, as their "maritime" status means that they are not always regarded as ships, and not necessarily regulated by their flag States when not engaged in navigation. They are excluded from the major existing ILO maritime Convention, No. 147, "when not engaged in navigation" [14] or, in another Convention, are covered on the basis of consultation. [15] At the PTMC, the issue, including the possible exclusion of these ships, was discussed extensively and a working group was unable to reach an agreement on the matter. As a result, the Convention does not exclude MODUs, which are, in principle, covered when they are regarded as ships for the purposes of the Convention.

[12] Provided also that any of the requirements contained in Part III [Crew Accommodation Requirements] of this Convention may be varied in the case of any ship if the competent authority is satisfied, after consultation with the organizations of shipowners and/or the shipowners and with the bona fide trade unions of seafarers, that the variations to be made provide corresponding advantages as a result of which the overall conditions are not less favourable than those which would result from the full application of the provisions of the Convention; particulars of all such variations shall be communicated by the Member to the Director-General of the International Labour Office, who shall notify the Members of the International Labour Organization.

[13] Provided also that any of the requirements applicable by virtue of Article 3 of this Convention may be varied in the case of any ship if the competent authority is satisfied, after consultation with the organizations of shipowners and/or the shipowners and with the bona fide trade unions of seafarers, that the variations to be made provide corresponding advantages as a result of which the overall conditions are not less favourable than those which would result from the full application of the provisions of the Convention; particulars of all such variations shall be communicated by the Member concerned to the Director-General of the International Labour Office.

[14] Convention No. 147, Art.1, para. 4.

[15] Convention No. 179, Art. 1, para. 2.

E. Application to ships 200 gt and above that are not engaged in international voyages

46. Difficulties have arisen in some cases with respect to ships that are 200 gt and above that are not engaged in international voyages. The issue has arisen, in particular, in connection with island countries with significant inter-island fleets that do not operate "within, or closely adjacent to, sheltered waters". The Office has encouraged the governments concerned to provide information as to the specific provisions in the Convention that give rise to difficulties, in order to ascertain whether these matters can be addressed. However, it may be that there will be a need for some consideration of whether specific arrangements should exist to allow countries with particular difficulties to phase in compliance as conditions on these fleets are modernized.

F. Other difficulties encountered during national implementation

47. There are some other areas where governments have had internal institutional difficulties because of the range of topics covered by the MLC, 2006 and the measures under the MLC, 2006 to bring maritime labour standards within the larger international maritime regulatory system. This has resulted in questions and debate in some countries as to which agencies of government should have the MLC, 2006 responsibilities. In some cases there have also been difficulties with respect to understanding what might be needed for the social security and the occupational safety and health requirements in Title 4. However, the Office is working to develop information packages and other materials to assist constituents in these matters.

IV. Preparing for the future Special Tripartite Committee

A. Keeping the working of the Convention under continuous review

48. One of the tasks of the Special Tripartite Committee, to be established by the Governing Body under Article XIII of the MLC, 2006 will be to consider questions of the kind discussed in the preceding section of this background paper. It is through this Committee that the ILO Governing Body is to "keep the working of this Convention under continuous review". [16] For matters dealt with under the Convention [17] the Committee is to consist of two representatives nominated by the Government of each Member which has ratified the Convention, and the representatives of Shipowners and Seafarers appointed by the Governing Body after consultation with the ILO's JMC.

[16] Paragraph 1 of Article XIII provides that: "The Governing Body of the International Labour Office shall keep the working of this Convention under continuous review through a committee established by it with special competence in the area of maritime labour standards."

[17] The Special Tripartite Committee could be given additional functions by the ILO Governing Body.

B. Amendments to the Code of the MLC, 2006

49. If defects are identified in the working of the Convention, or if the Convention needs to be updated, the Special Tripartite Committee will, in accordance with Article XV of the Convention, be able to adopt amendments to the Code of the Convention (Part A, Standards; Part B, Guidelines). If these amendments are approved by the ILC, the countries that have ratified the Convention will be informed and the amendments will enter into force unless, within a prescribed period, more than 40 per cent of ratifying Members, representing not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified the Convention, have formally expressed their disagreement. [18]

50. Work has, in fact, already been carried out on an important set of provisions that may be embodied in amendments adopted by the future Special Tripartite Committee, in accordance with Article XV of the MLC, 2006. The elements or principles to be included were agreed 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 (Joint Working Group) in March 2009. These elements had been proposed, at the recommendation of the 94th (Maritime) Session of the ILC, [19] in order to develop "a standard accompanied by guidelines, which could be included in the MLC, 2006, or another existing instrument, at a later date". The Joint Working Group recommended that:

(a) the principles embodied in the draft texts, contained in Appendices I and II to the Joint IMO–ILO Working Group report, [20] should be considered as a basis for finalizing a mandatory instrument or instruments;

(b) an amendment to the MLC, 2006 was the best way to create such a mandatory instrument or instruments;

(c) the IMO Legal Committee should remain seized of the issue and keep it under consideration in the event that amendment to the MLC, 2006 proved not to be feasible or timely.

51. For the information only of the Preparatory Committee, the agreed principles for these future provisions to be submitted for the consideration of the Special Tripartite Committee are contained in Appendix III to the present background paper.

[18] Instead of the several years or even decades normally required under ILO amendment procedures, this simplified amendment procedure makes it possible for amendments approved by the ILC (unless a formal notice of disagreement is received from a significant number of ratifying Members) to come into force for all ratifying States which have not notified their disagreement, normally within a period of 30 months from the date on which they were submitted to the ratifying countries.

[19] Contained in its *Resolution concerning the Joint IMO–ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers*, International Labour Conference, *Provisional Record* No. 3-1(Rev.), 94th (Maritime) Session, Geneva, 2006, p. 3-1/16.

[20] ILO–IMO–WGPS/9/2009/10, Final report, Joint IMO–ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, Ninth Session.

C. Consultation with shipowners' and seafarers' organizations

52. Another function of the future Special Tripartite Committee is set out in Article VII of the MLC, 2006. Governments of ratifying countries where representative organizations of shipowners or seafarers do not yet exist are required to consult this Committee. Consultation is required if the Government in question envisages "any derogation, exemption or other flexible application of this Convention for which the Convention requires consultation with shipowners' and seafarers' organizations".

53. The text of Articles VII, XIII and XV referred to above is reproduced in Appendix I to this background paper.

D. Potentially urgent work of the Special Tripartite Committee

54. As noted earlier, the third function of the Preparatory Committee is to consider potential work that may need to be undertaken by the Special Tripartite Committee as a matter of urgency, and to identify any preparatory work or steps that may need to be taken. The Preparatory Committee might also offer some preliminary guidance, which could serve to inform the work of the Special Tripartite Committee as it so chooses, on matters that may be considered in the future.

55. Once the Special Tripartite Committee has been established, one urgent action will involve the review and consideration of the principles agreed at the Ninth Session of the Joint IMO–ILO Working Group, mentioned above in paragraphs 50 and 51, with a view to assessing, first, whether or not these principles could take the form of amendments to the Code of the MLC, 2006 and, if so, proposing a draft text for amendments, in accordance with Article XV of the MLC, 2006. Since the first question (concerning what is included in the Code) is likely to depend on a substantive discussion of the principles themselves, and since they have been thoroughly discussed at the preparatory level, it would seem appropriate to leave this to the Special Tripartite Committee without any need for further preparatory work.

56. On the other hand, an exchange of views on common issues, which is the subject of section III above, might lead to the identification of other matters that should be taken up by the Special Tripartite Committee as a matter of urgency.

57. Furthermore, consideration would need to be given to the implications of the operation of the information database referred to in paragraph 12 above may need to be examined. While it is not clear that such a database would necessarily be considered by the Special Tripartite Committee, the matter may benefit from the views of this Preparatory Committee.

58. In addition, it would be desirable for the Governing Body, at some point in time, to establish standing orders for the Special Tripartite Committee. There does not seem to be an immediate need for standing orders with regard to the two main functions of the Special Tripartite Committee (see paragraphs 48 and 49), since important procedural provisions are contained in the Convention itself, especially with respect to the amendment of the Code (Article XV of the Convention).

59. However, the other function of the Special Tripartite Committee – one that relates to Article VII of the Convention (see paragraph 52) – may require standing orders as a matter of urgency. It would be expensive and time consuming for the Special Tripartite

Committee to convene a plenary meeting every time the government of a country in which shipowners' or seafarers' organizations did not exist needed to consult the Committee, in the circumstances referred to in Article VII. However, a delay in consultation on such matters could give rise to a period of uncertainty as regards the conditions of the seafarers concerned, on such questions as whether or not a certain category of persons, a ship, or a category of ships should be considered covered by the Convention. Some more convenient procedure, such as the delegation of the consultation to the Officers of the Committee (as was customary in the context of the preparation of the MLC, 2006) and/or a correspondence procedure, would seem to be desirable and perhaps necessary.

60. Given that some form of standing orders would be needed to cover that situation, the Preparatory Committee might wish to recommend that the International Labour Office prepare a draft of more comprehensive standing orders for the Special Tripartite Committee. Such preparations could be carried out in consultation with the Officers of the Preparatory Committee.

Appendix I

Key MLC, 2006, provisions concerning the Article XIII Committee

CONSULTATION WITH SHIPOWNERS' AND SEAFARERS' ORGANIZATIONS

Article VII

Any derogation, exemption or other flexible application of this Convention for which the Convention requires consultation with shipowners' and seafarers' organizations may, in cases where representative organizations of shipowners or of seafarers do not exist within a Member, only be decided by that Member through consultation with the Committee referred to in Article XIII.

SPECIAL TRIPARTITE COMMITTEE

Article XIII

1. The Governing Body of the International Labour Office shall keep the working of this Convention under continuous review through a committee established by it with special competence in the area of maritime labour standards.

2. For matters dealt with in accordance with this Convention, the Committee shall consist of two representatives nominated by the Government of each Member which has ratified this Convention, and the representatives of Shipowners and Seafarers appointed by the Governing Body after consultation with the Joint Maritime Commission.

3. The Government representatives of Members which have not yet ratified this Convention may participate in the Committee but shall have no right to vote on any matter dealt with in accordance with this Convention. The Governing Body may invite other organizations or entities to be represented on the Committee by observers.

4. The votes of each Shipowner and Seafarer representative in the Committee shall be weighted so as to ensure that the Shipowners' group and the Seafarers' group each have half the voting power of the total number of governments which are represented at the meeting concerned and entitled to vote.

AMENDMENTS TO THE CODE

Article XV

1. The Code may be amended either by the procedure set out in Article XIV or, unless expressly provided otherwise, in accordance with the procedure set out in the present Article.

2. An amendment to the Code may be proposed to the Director-General of the International Labour Office by the government of any Member of the Organization or by the group of Shipowner representatives or the group of Seafarer representatives who have been appointed to the Committee referred to in Article XIII. An amendment proposed by a government must have been proposed by, or be supported by, at least five governments of Members that have ratified the Convention or by the group of Shipowner or Seafarer representatives referred to in this paragraph.

3. Having verified that the proposal for amendment meets the requirements of paragraph 2 of this Article, the Director-General shall promptly communicate the proposal, accompanied by any comments or suggestions deemed appropriate, to all Members of the Organization, with an invitation to them to transmit their observations or suggestions concerning the proposal within a

period of six months or such other period (which shall not be less than three months nor more than nine months) prescribed by the Governing Body.

4. At the end of the period referred to in paragraph 3 of this Article, the proposal, accompanied by a summary of any observations or suggestions made under that paragraph, shall be transmitted to the Committee for consideration at a meeting. An amendment shall be considered adopted by the Committee if:

(a) at least half the governments of Members that have ratified this Convention are represented in the meeting at which the proposal is considered; and

(b) a majority of at least two-thirds of the Committee members vote in favour of the amendment; and

(c) this majority comprises the votes in favour of at least half the government voting power, half the Shipowner voting power and half the Seafarer voting power of the Committee members registered at the meeting when the proposal is put to the vote.

5. Amendments adopted in accordance with paragraph 4 of this Article shall be submitted to the next session of the Conference for approval. Such approval shall require a majority of two-thirds of the votes cast by the delegates present. If such majority is not obtained, the proposed amendment shall be referred back to the Committee for reconsideration should the Committee so wish.

6. Amendments approved by the Conference shall be notified by the Director-General to each of the Members whose ratifications of this Convention were registered before the date of such approval by the Conference. These Members are referred to below as "the ratifying Members". The notification shall contain a reference to the present Article and shall prescribe the period for the communication of any formal disagreement. This period shall be two years from the date of the notification unless, at the time of approval, the Conference has set a different period, which shall be a period of at least one year. A copy of the notification shall be communicated to the other Members of the Organization for their information.

7. An amendment approved by the 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 from more than 40 per cent of the Members which have ratified the Convention and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified the Convention.

8. An amendment deemed to have been accepted shall come into force six months after the end of the prescribed period for all the ratifying Members except those which had formally expressed their disagreement in accordance with paragraph 7 of this Article and have not withdrawn such disagreement in accordance with paragraph 11. However:

(a) before the end of the prescribed period, any ratifying Member may give notice to the Director-General that it shall be bound by the amendment only after a subsequent express notification of its acceptance; and

(b) before the date of entry into force of the amendment, any ratifying Member may give notice to the Director-General that it will not give effect to that amendment for a specified period.

9. An amendment which is the subject of a notice referred to in paragraph 8(a) of this Article shall enter into force for the Member giving such notice six months after the Member has notified the Director-General of its acceptance of the amendment or on the date on which the amendment first comes into force, whichever date is later.

10. The period referred to in paragraph 8(b) of this Article shall not go beyond one year from the date of entry into force of the amendment or beyond any longer period determined by the Conference at the time of approval of the amendment.

11. A Member that has formally expressed disagreement with an amendment may withdraw its disagreement at any time. If notice of such withdrawal is received by the Director-General after the amendment has entered into force, the amendment shall enter into force for the Member six months after the date on which the notice was registered.

12. After entry into force of an amendment, the Convention may only be ratified in its amended form.

13. To the extent that a maritime labour certificate relates to matters covered by an amendment to the Convention which has entered into force:

(a) a Member that has accepted that amendment shall not be obliged to extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member which:

(i) pursuant to paragraph 7 of this Article, has formally expressed disagreement to the amendment and has not withdrawn such disagreement; or

(ii) pursuant to paragraph 8(a) of this Article, has given notice that its acceptance is subject to its subsequent express notification and has not accepted the amendment; and

(b) a Member that has accepted the amendment shall extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member that has given notice, pursuant to paragraph 8(b) of this Article, that it will not give effect to that amendment for the period specified in accordance with paragraph 10 of this Article.

Appendix II

A note on the ILO's supervisory system

For more information see: www.ilo.org/normes.

1. International labour standards (Conventions and Recommendations) are backed up by a supervisory system which is unique at the international level and, in particular, helps to ensure that ILO Members properly implement the Conventions they ratify. The ILO regularly examines the application of standards in member States and points out areas where improvements could be made. If there are any problems in the application of standards, the ILO seeks to assist countries through social dialogue and technical assistance. It has developed various means of monitoring the application of Conventions and Recommendations in law and practice following their adoption by the International Labour Conference and, in the case of Conventions, their ratification by States.

2. There are two kinds of supervisory mechanisms:

(a) *The regular system of supervision*, involving the examination of periodic reports submitted by member States on the measures they have taken to implement the provisions of ratified Conventions; and

(b) *Special procedures*, comprising a representations procedure and a complaints procedure of general application, together with a special procedure for freedom of association.

The regular system for supervising the application of standards

3. The regular system of supervision is based on the examination by two ILO bodies of reports on the application in law and practice sent by member States to the ILO Director-General in accordance with article 22 of the Constitution. This examination may take account of observations from the representative organizations of employers and workers to which the Member concerned is required (under article 23, paragraph 2, of the Constitution) to communicate a copy of the information and report sent to the Director-General. These two bodies are:

(1) the Committee of Experts on the Application of Conventions and Recommendations; and

(2) the tripartite Committee on the Application of Standards, a standing committee of the ILC.

Special procedures

4. Unlike the regular system of supervision, the three procedures listed below are based on the submission of a representation [1] or a complaint: [2]

(1) procedure for representations on the application of ratified Conventions;

(2) procedure for complaints concerning the application of ratified Conventions;

(3) special procedure for complaints regarding freedom of association (Committee on Freedom of Association).

[1] The representation procedure is governed by articles 24 and 25 of the ILO Constitution. It grants an industrial association of employers or of workers the right to present to the ILO Governing Body a representation against any member State which, in its view, "has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party".

[2] The complaint procedure under the ILO Constitution is governed by articles 26–34. Under these provisions, a complaint may be filed against a member State for not complying with a ratified Convention by another member State which ratified the same Convention, a delegate to the ILC or the Governing Body in its own capacity. Upon receipt of a complaint, the Governing Body may form a commission of inquiry to carry out a full investigation of the complaint. A commission of inquiry is the ILO's highest level investigative procedure; it is generally set up when a member State is accused of committing persistent and serious violations and has repeatedly refused to address them. When a country refuses to fulfil the recommendations of a commission of inquiry, the Governing Body can take "such action as it may deem wise and expedient to secure compliance therewith" (article 33 of the ILO Constitution). In addition, in 1951, the ILO set up a Committee on Freedom of Association for the purpose of examining complaints about violations of freedom of association, whether or not the country concerned had ratified the relevant Conventions.

Appendix III

Recommendations of the Joint IMO–ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers

APPENDIX I

Proposal for the text of an amendment to the Maritime Labour Convention, 2006, [*] *to be presented to the future Special Tripartite Committee with a view to adoption in accordance with Article XV of the Maritime Labour Convention, 2006*

Standard – Provision of financial security in case of abandonment of seafarers

1. This Standard establishes requirements to ensure the provision of a rapid and effective financial security system to assist seafarers in the event of abandonment.

2. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.

4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer who was employed or engaged or working in any capacity on a ship flying the flag of the Member.

5. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers' employment agreement, the shipowner:

(a) fails to cover the cost of the seafarer's repatriation; or

(b) has left the seafarer without the necessary maintenance and support; or

(c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

6. For the purposes of this Standard, necessary maintenance and support of seafarers shall include: adequate food, clothing, accommodation, necessary medical care and other reasonable costs or charges arising from the abandonment.

7. [Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, provide documentary evidence of financial security issued by the financial security provider. The documentary evidence shall be posted in a prominent position in the

[*] The amendments would primarily consist of a new Standard and a new Guideline under Regulation 2.5 and following the present Standard and Guideline A2.5 and B2.5. The precise numbering and placement of the proposed text for Standards and Guidelines, and similar changes to transform the proposed instrument into an amendment of the MLC, 2006, would be addressed at a later stage.

seafarers' accommodation. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.]

8. [The documentary evidence of financial security shall contain the information required in Appendix XX. It shall be in English or accompanied by an English translation.]

9. Assistance provided by the financial security system shall be granted promptly upon request made by or on behalf of the seafarer concerned and supported by the necessary justification of entitlement in accordance with paragraph 3 above.

10. Assistance provided by the financial security system shall be sufficient to cover the following:

(a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;

(b) all expenses reasonably incurred by the seafarer, including the cost of repatriation in accordance with paragraph 11; and

(c) the cost of necessary maintenance and support from the act or omission constituting abandonment until the seafarer's arrival at home.

11. For the purposes of this Standard, the repatriation of the seafarers shall be provided by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarers from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.

13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.

Guideline – Provision of financial security in case of abandonment of seafarers

1. In implementation of paragraph 9 of the Standard, if time is needed to check the validity of certain aspects of the seafarer's request, this should not prevent the seafarer or a representative from immediately receiving such part of the assistance requested as is recognized as justified.

APPENDIX XX

[The documentary evidence of financial security under Standard A2.5bis shall include the following information:

(1) name of the ship;

(2) port of registry of the ship;

(3) call sign of the ship;

(4) IMO number of the ship;

(5) name and address of the provider of the financial security;

(6) contact details of the persons or entity responsible for handling seafarers' requests for relief;

(7) name of the shipowner;

(8) period of validity of the financial security; and

(9) an attestation that the financial security meets the requirements of the Standard.]

APPENDIX II

Proposal for the text of an amendment to the Maritime Labour Convention, 2006, to be presented to the future Special Tripartite Committee with a view to adoption in accordance with Article XV of the Maritime Labour Convention, 2006

Standard A4.2.2 – Treatment of contractual claims; financial security (new)

1. For the purposes of this Standard, the term "contractual claim" means any claim which relates to sickness, injury or death occurring while the seafarer is serving under a seafarers' employment agreement or arising from their employment under such an agreement.

2. Each Member's laws and regulations shall ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1 through rapid and fair procedures.

3. National laws and regulations shall provide that the financial security to assure compensation as provided by Standard A4.2.1, paragraph 1(b), for contractual claims meet the following minimum requirements:

(a) the contractual compensation, where set out in the seafarer's employment agreement and without prejudice to (c) below, shall be paid in full and without delay;

(b) there shall be no pressure to accept a payment less than the contractual amount;

(c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;

(d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident.

4. [Any contractual claim for compensation required to be covered by the financial security system referred to in Standard A4.2.1(b) may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.]

5. Each Member's laws and regulations shall ensure that seafarers receive prior notification if a shipowner's financial security is to be cancelled and be notified immediately if it is not to be renewed.

6. Each Member's laws and regulations shall ensure that the flag State is notified by the provider of the insurance if a shipowner's financial security is to be cancelled, upon cancellation and upon non-renewal.

7. Each Member shall require that ships that fly its flag provide documentary evidence of financial security issued by the financial security provider. The documentary evidence shall be posted in a prominent position in the seafarers' accommodation. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

8. The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.

9. The documentary evidence of financial security shall contain the information required in Appendix 4-I. It shall be in English or accompanied by an English translation.

Guideline B4.2

10. The parties to the payment of a contractual claim may use the Model Receipt and Release Form (attached as an appendix to Assembly Resolution A.931(22) on claims for personal injury to or death of seafarers adopted on 29 November 2001).

APPENDIX 4-I

The documentary evidence of financial security required under Standard A4.2.2, paragraph 7, shall include the following information:

(a) name of the ship;

(b) port of registry of the ship;

(c) call sign of the ship;

(d) IMO number of the ship;

(e) name and address of the provider of the financial security;

(f) contact details of the persons or entity responsible for handling seafarers' requests for relief;

(g) name of the shipowner;

(h) period of validity of the financial security.