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**Tripartite Intersessional Meeting on the
Follow-up of the Preparatory Technical
Maritime Conference**

**Unresolved issues for the draft consolidated
maritime labour Convention, 2006**

Geneva, 2005

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Introduction

1. A Preparatory Technical Maritime Conference (PTMC) met from 13 to 24 September 2004 to consider a Recommended Draft for a consolidated maritime labour Convention (referred to below as “the Recommended Draft”). This Convention is to be submitted to the International Labour Conference for adoption in early 2006. The Recommended Draft had been developed under the guidance of a High-level Tripartite Working Group on Maritime Labour Standards (HLTWG) and its Subgroup, over several meetings since 2001. The PTMC reviewed nearly all of the more than 100 pages of text of the Recommended Draft, and agreed upon most of the text of a Draft Maritime Labour Convention (referred to below as “the Draft Convention”). This is considered an important achievement signalling the very high level of consensus that has been developed with respect to the principles, structure and content of the proposed instrument. Despite best efforts, however, several parts of the text remained unresolved at the end of the meeting. The PTMC decided that all such text should be removed from the Draft Convention to be proposed by it and that the provisions concerned be reconsidered in a procedure in which all constituents would be given an opportunity to take an active part.
2. The Draft Convention proposed by the PTMC now contains gaps (blank areas) instead of the provisions that remained unresolved in the Recommended Draft. The text concerned is referred to as “bracketed text” as it relates to text that had been placed inside brackets, in the Recommended Draft: square brackets [] for controversial text and soft brackets { } for text that had been insufficiently discussed in the HLTWG. A different procedure was adopted by the PTMC to deal with proposed amendments to the “unbracketed text”, as there was also insufficient time to discuss them.
3. The PTMC adopted a number of resolutions regarding the preparatory work to be carried out between the PTMC and the International Labour Conference. In the one concerning the unresolved issues,¹ 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.

¹ ILO: *Record of Proceedings*, Preparatory Technical Maritime Conference, Geneva, 13-24 September 2004, p. 10/21.

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4. The requests of the PTMC were approved by the Governing Body of the ILO at its 291st Session in November 2004.
 5. This paper comprises notes on each of the unresolved issues, for the meeting of constituents referred to under (a) of the resolution reproduced above. The meeting is scheduled for April 2005. The paper refers to the Draft Convention, reproduced in the Record of Proceedings of the Conference: PTMC04-RP7(Rev.). The text on which agreement was not reached is to be found in the Recommended Draft (document PTMC/04/01). A Commentary on that draft is contained in document PTMC/04/02.
 6. The notes provide the background information and explanations requested under paragraph (b) of the resolution. They also seek to provide a basis for the discussions at the April 2005 meeting on the unresolved issues, taking account of the background, including, in particular, previous discussions. The notes suggest possible text in the case of provisions which are not believed to be controversial and were left blank as a result of lack of time for discussion. Otherwise, the notes simply suggest approaches that might be considered with a view to achieving consensus on a text.

Notes on the issues to be resolved

Note 1: Article II, paragraph 4

Comment 3, point 6 of the Commentary
Report of PTMC Committee No. 1, PTMC04-RP4(Rev.),
paragraphs 8, 9 and 24-45; see also paragraphs 69-87

1. Article II sets out general definitions (paragraph 1(a) to (j)) of terms occurring in different parts of the Convention, as well as (paragraphs 2 to 6) the general scope of application of the Convention. It is the combination of these definitions and the scope-related provisions found in the Articles that sets the overall framework of who or what activities are generally intended to be affected by the Convention. In particular, the Draft Convention currently addresses the question of application using provisions relating to the definitions of seafarers and to ships. It would apply to all *seafarers*, as defined in paragraph 1(f), “except as expressly provided otherwise” (paragraph 2) in specific provisions found elsewhere in the Convention. Under paragraph 4 of Article II, the Convention would apply to all *ships*, subject to a number of qualifications or exceptions contained in different parts of Article II. The first narrowing of the broad application to “all ships” results from the definition of “ships” in Article II, paragraph 1(i), which does not include ships that navigate “exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply”.² Then the chapeau of paragraph 4 excludes (by implication) ships that are not “ordinarily engaged in commercial activities”. Two other exceptions are currently specified under subparagraphs (b) and (c). In the Recommended Draft, subparagraph (a) of Article II, paragraph 4, contained a possible exclusion of ships of less than a certain gross tonnage. Agreement was not reached at the PTMC on such exclusion. The subparagraph has therefore been left blank and is the question to be resolved.

² This definition is the same as that adopted in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW), to define the term “seagoing ships” (Article II(g)).

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2. Participants in the PTMC who were in favour of such an exclusion referred to ships of less than 500 gross tons. The Shipowner representatives were in favour as well as a number of Government representatives, who stated that their countries would have problems in applying the requirements of the Convention to small ships. There was also a concern that the Convention should be consistent with other international maritime conventions such as the International Convention for the Safety of Life at Sea (SOLAS), 1974, particularly in light of the certification and port state inspection system provisions.³ The Seafarer representatives and a number of Government representatives took the view that that it was fundamentally important for seafarers to be protected regardless of the size of the ship on which they were serving. It was pointed out that a number of the provisions in the Recommended Draft, such as the hours of work and rest or minimum age requirements, were not tonnage related. There should therefore be no exclusion a priori in Article II, paragraph 4, although specific exclusions could be provided for under the various Titles of the Convention. Some of those Government representatives indicated that there would need to be size limits in Titles 3 and 5 of the Convention in view of the ship design and accommodation requirements and also the potentially heavy administrative burden of inspections. However, in the context of Title 5 (compliance and enforcement), the Shipowner representatives pointed out that, if small ships were to be covered by the Convention and to be subject to port state inspections, they should not be excluded from the benefit of flag state inspection and certification constituting prima facie evidence of compliance. The Government group presented a proposal to introduce flexibility through a clause that provides a phasing-in period for governments that would be unable to ratify the Convention if the tonnage limit of 500 gross tonnage were not included. The Seafarer representatives took the view that if such an approach was adopted specific examples of problem areas should be indicated rather than adopting a general limit of 500 gross tonnage and that a connection needed to be made to the question of coverage of ships not on international voyages (see Note 2 below) and the period of time involved in such a phase-in.

 3. It is important when considering these questions relating to application to recall that the maritime labour Convention will be a consolidating convention and bring together more than 60 existing ILO Conventions and Recommendations, some of which define their application by focusing on particular groups of ships (defined perhaps by size or by activity); while others are directed to seafarers in general or to a particular group of seafarers, usually linked with a particular category of ship and activity. The general provisions regarding application are often combined with a clause allowing determination of the actual application within the general framework to be made at the national level, a fact which inherently reduces uniformity in application of the standards, when considered at a global rather than a national level.⁴ In principle, and under the ILO Constitution, as

³ For example, SOLAS applies to ships on international voyages (Regulation 1(a)) and does not apply, unless expressly provided otherwise, to “Cargo ships of less than 500 gross tonnage” (Regulation 3(a)(ii)). The ISM and ISPS requirements under SOLAS apply to a wide range of ships over 500 gross tonnage. MARPOL 73/78 applies to “all ships” (Annex I, Regulation 2(1)); however the survey and inspection requirements have a tonnage limit. The STCW applies generally to “seafarers serving on board seagoing ships”; however, many of the minimum standards for competency certification address requirements in terms of working on ships of 500 gross tonnage and more (e.g. Regulation II/I and related Code, Table A-II/1), with exceptions for ships of less than 500 gross tonnage on near-coastal voyages (Regulation II/3).

⁴ For example, Convention No. 147 applies to “every sea-going ship, whether publicly or privately owned, which is engaged in the transport of cargo or passengers for the purpose of trade or is employed for any other commercial purpose (Art. 1, para. 1). However, “national laws or regulations shall determine when ships are to be regarded as sea-going ships for the purpose of this

stated in the Preamble to the Draft Convention, the consolidation process should not operate so as to reduce the coverage currently provided under the existing ILO Conventions. Also, on a number of occasions, the importance has been stressed of ensuring harmonization with the international systems that have been developed for other aspects of the maritime industry – such as the system for ship safety management and seafarers' competency standards, both being areas that are related to standards for seafarers' employment on ships. This is perhaps most relevant in connection with the much expanded compliance and enforcement system introduced in Title 5 of the Draft Convention, which seeks to better integrate labour standards with the international ship certification and inspection systems that currently operate under IMO conventions and the port state memoranda of understanding.

4. The references in the PTMC discussion regarding the need for or the possibility of size limitations to be included in connection with specific requirements of the Convention may show the way towards a consensus as it would avoid any wholesale withdrawal of the protection of the Convention from seafarers working on certain ships. With respect to the accommodation requirements in Title 3, in particular, the PTMC agreed on several provisions under which certain requirements would not apply, or different requirements would apply, or exemptions would be possible, in the case of ships below 3000 gross tons (as well as in the case of certain types of ships, such as passenger or “special purpose” ships). Thus the Convention currently includes some specific scope-related provisions in a Title that are related to the size of a ship or its activity, irrespective of an overall tonnage limit. In addition, a provision regarding the application of the Title 3 ship construction and equipment requirements to existing ships was also adopted at the PTMC (Regulation 3.1, paragraph 2).
5. It is assumed that all constituents taking part in the present consolidation exercise accept that all seafarers, regardless of the size of their ship, should be covered by the new Convention in so far as practicable. It is also assumed that most, if not all, constituents accept that many of the provisions of the Convention, including, for example, the main standards in Titles 1 and 2, should be the subject of national legislation and of reasonable measures to ensure compliance. If these assumptions are correct, the solution would be to deal with the problems in connection with the specific provisions for which the inclusion of particular ships could give rise to problems, as has already been done to a certain extent in Title 3 (as indicated above). In this case, paragraph 4 of Article II could be left as it is (with renumbering of (b) and (c)), subject to the addition of the following words in bold type to permit the specific exclusions elsewhere in the Convention:
 4. **Except as expressly provided otherwise**, this Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities other than:
 - (a) ships engaged in fishing or in similar pursuits; and
 - (b) ships of traditional build such as dhows and junks.
6. With respect to the administrative burden, indicated by some Government representatives, in having to extend the inspections to small ships, it might be useful to ascertain whether governments in general consider that such inspections could cause serious difficulties for them. It may be useful to also consider whether the difficulties are related to the potential costs to government or to shipowners if all ships must comply with the certification system as opposed to the more general question of flag state responsibility to adopt and implement legislation. If the Title 5 provisions are the problem, then an appropriate solution might be to introduce provisions in Title 5 which would exclude ships below 500 gross tons from

Convention” (Art. 1, para. 2). This is followed in paras. 3 and 4 by specific inclusions and exclusions, including “small vessels”.

the certification system but require that they be subject to ad hoc inspections whenever there were reasons to believe that a ship was in serious non-compliance with the standards of the Convention or where a complaint of non-compliance was received from the seafarers concerned or representative organizations. If a 500 gross tonnage limitation is adopted for relevant parts of Title 5, then a new paragraph might be added to Regulation 3.1 (accommodation and recreational facilities) along the following lines: “The requirements in the Code implementing this Regulation do not apply to ships of less than 500 gross tons.” With this wording, only the general principle in paragraph 1 of the Regulation would apply in the case of such ships.

7. If, however, certain Governments still considered that the coverage of ships of less than 500 gross tons would give rise to a problem of a general nature which could not be solved by exclusions relating to specific provisions, it would be useful if they could provide information on the precise nature of the problem. If it is generally considered that the countries concerned would need time to overcome the problem, a paragraph could perhaps be included in Article II, along the lines of the flexibility clause referred to in the following Note, allowing such countries to exclude such ships for a certain period and subject to appropriate conditions.

Note 2: Article II, paragraph 6

Comment 3, points 9-11 of the Commentary
Report of PTMC Committee No. 1, PTMC04-RP4(Rev.),
paragraphs 69-87

1. The issue in paragraph 6 of Article II of the Recommended Draft is closely linked to the issue of small ships, considered above in Note 1, and the two issues may need to be discussed at the same time. This paragraph would permit Members to exclude from the scope of the Convention “ships that do not undertake international voyages”, subject to consultation with the shipowner and seafarer organizations concerned and provided that the basic rights of the seafarers were protected by national laws and regulations. The paragraph sought to reconcile concerns about the need to ensure that seafarers working on ships not involved in international voyages are still entitled to similar protection, with the practical problems that some Members may face if the Convention is to cover all ships currently on their registers.
2. In the PTMC, it was suggested that all existing ILO maritime Conventions excluded ships engaged only in domestic traffic. This may have been because of the references in ILO Conventions to “seagoing ships” (see footnote 4) or to ships engaged in “maritime navigation”. However, if a ship is “seagoing”, as defined in national law, it will be covered by the Conventions even where it is engaged exclusively in coastal or domestic trade. The representatives of the Shipowners and of most Governments considered that the inclusion in the Convention of a provision similar to paragraph 6 of the Recommended Draft was essential if the objective of widespread ratification was to be achieved. There was a suggestion that the term “international voyage” is already well understood and applied as it has been used for some time under the SOLAS Convention.⁵ The main concern of the representatives of the Seafarers was the inclusion of a provision in the Articles, which would put in place a framework which excluded a large group of seafarers from the scope of the Convention. They pointed to problems relating to what was meant by an

⁵ See footnote 3. It is noted also that the current draft of the proposed ILO Convention concerning work in the fishing sector uses the phrase “fishing vessels that undertake international voyages”: see ILO: *Work in the fishing sector*, Report V(1), International Labour Conference, 93rd Session, Geneva, 2005.

“international voyage” in some situations and also to questions such as how, if there were such an exclusion, the rights of the excluded seafarers would be protected by national laws and regulations. At the same time, the Seafarers recognized that the coverage of ships engaged only in domestic voyages could cause serious problems for certain countries, which it might take several years for them to overcome. It was agreed that an appropriate balance should be found between the need to protect the rights of all seafarers and the need for a flexible approach. One suggestion put forward by the Seafarer representatives, if a provision along the lines of paragraph 6 were included, might be to precisely define domestic trade and perhaps also limit such exclusion to ships below 500 gross tonnage solely engaged in this trade. A tripartite Working Party was set up in the PTMC; it discussed at some length the terms of a possible “flexibility clause” but was unable to reach a consensus on the specific criteria to invoke the flexibility clause.

3. The direction taken by the PTMC, towards comprehensiveness tempered with flexibility, is fully consistent with the context of the International Labour Organization and with the overall approach adopted to date in the draft Convention. International labour Conventions aim at comprehensive protection of workers anywhere within the jurisdiction of the Members ratifying them. At the same time, one of the objectives in the consolidation process is to try to encourage widespread ratification (without however reducing existing standards). Developing mechanisms that will serve to encourage Members to ratify with a view to improvement to meet standards in cases where it is not possible to do so immediately is an important feature of the ILO approach. In fact, flexibility is a constitutional requirement in certain circumstances: the ILO Constitution (article 19, paragraph 3) lays down that “In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organisation, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.” Flexibility clauses are to be found in several ILO Conventions: typically, the countries concerned are permitted, through a declaration made after consultation with the employers’ and workers’ organizations concerned, to “initially limit” the application to them of the provision causing difficulty. They are required to take measures to overcome the difficulties concerned and to report on those measures to the ILO, with a view to ensuring the full application of the provision concerned as soon as they are in a position to achieve this. Article 5 of the Minimum Age Convention, 1973 (No. 138) is an example of such a clause. A clause of this kind is also contained in Points 9 to 12 of the Proposed Conclusions for a Convention concerning work in the fishing sector.⁶
4. If it is decided to explore the possibility of a flexibility clause, the following possible ingredients are proposed for consideration:
 - (a) the provision would allow certain Members to make a declaration initially limiting their application of the Convention to “ships engaged on international voyages” (SOLAS, Chapter I, Part A, Regulation 1(a));
 - (b) an “international voyage” would be defined as “a voyage from a port or terminal in the territory of any Member to a port or terminal outside that territory, or conversely” (adapted from SOLAS, Chapter I, Part A, Regulation 2(d), mainly to avoid any

⁶ See ILO: *Provisional Record* No. 21, International Labour Conference, 92nd Session, Geneva, 2004. See also ILO: *Work in the fishing sector*, Report V(1), International Labour Conference, 93rd session, Geneva 2005, with the proposed Convention concerning work in the fishing sector, Articles 3 and 4.

interpretation that a voyage between Members belonging to the same regional unit could be considered as a domestic one);

- (c) the declaration might be made by any Member for which the full application of the Convention would be impracticable due to the insufficient development of their system of maritime inspection or to their special economic situation;
 - (d) the declaration could be made only at the time of ratification of the Convention and would have to state the particular problems making the full application of the Convention impracticable;
 - (e) the declaration could be made only *in* or *after* consultation with the shipowners' and seafarers' organizations concerned (a number of Governments have expressed their preference for "*after* consultation");
 - (f) the "organizations concerned" would be understood as referring to the organizations representing, respectively, the owners of ships that do not engage on international voyages and seafarers working on those ships;
 - (g) a Member making the declaration would have to ensure that the employment and social rights of the seafarers concerned, as set out in paragraphs 1 to 4 of Article IV, are protected:
 - (i) in accordance with the requirements of the Convention to the fullest extent practicable having regard to the particular problems making the declaration necessary, and
 - (ii) in a way that respects the fundamental rights set out under (a) to (d) of Article III;
 - (h) the Member would be required to review the situation at least annually and to take, after consultation with the shipowners' and seafarers' organizations concerned, new measures to extend the application of more of the Convention's requirements to more of the categories of ships concerned;
 - (i) the Member's reports under article 22 of the ILO Constitution would have to indicate the measures being taken, as well as the progress achieved, to overcome the problems necessitating the declaration and to extend the application of the requirements of the Convention to all seafarers concerned.
5. There are, however, other potentially acceptable and, perhaps, simpler approaches that might be considered first, in order to ascertain whether such a flexibility device is in fact necessary. If only specific areas of the Draft Convention are posing a problem, a provision within a Regulation or a Standard that would limit the scope to ships undertaking international voyages or exclude ships exclusively engaged in domestic voyages may be found to be sufficient. In fact, in some areas of the Draft Convention there are already specific provisions regarding application of the provisions in the case of ships engaged only in "domestic voyages" and "domestic trade".⁷ In addition, if most of the latter kind of ships would be considered as "small ships", the problem might be resolved if it were

⁷ Standard A2.1, para. 2: "Where the language of the seafarers' employment agreement and of any applicable collective bargaining agreement is not English, the following shall also be available in English (except for ships engaged only in domestic voyages)". Standard A5.1.3, para. 14: "The requirement for an English-language translation in paragraphs 12 and 13 does not apply in the case of ships engaged only in domestic trade."

decided to have tonnage limitations on the scope of the Convention, either in a provision of general application in the Articles or in provisions relating to specific Regulations or Standards.

Note 3: Article VIII, paragraph 3

Comment 8 of the Commentary
Report of PTMC Committee No. 1, PTMC04-RP4(Rev.),
paragraphs 133-144

1. The issue to be considered with respect to Article VIII relates to the number of ratifications required before the new Convention comes into force. As drafted at present, paragraph 3 would require ratifications from a minimum number of ILO Members, which together would have to make up a certain percentage of an overall tonnage of ships. Three questions have been left open: (a) what should be the required minimum number of ratifications? what should be the total percentage of tonnage required? and should this be a percentage of world tonnage or of the total tonnage of ships flying the flags of Members of the ILO? The proposal in the Recommended Draft was for either ten Members with a total share in the world's gross tonnage of ships of 25 per cent, as is the case with the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), or 25 Members with a total share in the world's gross tonnage of ships of 50 per cent, as is the case with the IMO's SOLAS Convention, 1974.
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 port state control, ships calling at the port of a ratifying Member would be affected by the Convention, even if the flag State had not ratified it. If this justification were endorsed, the reference should presumably be to "world" gross tonnage as the Convention would, through port state control, also cover the ships of non-ILO Members. It was also suggested that the weighting should in addition take into account the number of seafarers or of labour-supplying countries.
3. It may be useful for purposes of this discussion to consider an example using the table provided in Annex A to these Notes. The table, using data drawn from *World Fleet Statistics 2003*,⁸ contains a third column showing the percentage as of 31 December 2003 of the world shipping gross tonnage of each maritime country or territory. The fourth column shows the same percentages but discounting the gross tonnage of the ships of non-ILO Members or of unknown registration. 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. The solution might be to weight by reference to the number of countries with large shipping tonnages

⁸ Published by Lloyd's Register – Fairplay. This annual publication "shows the composition of the current self-propelled, sea-going merchant fleet of 100 GT or above, as at 31 December 2003".

rather than by the gross tonnages themselves, along the lines of ILO Convention No. 180, which provides for entry into force upon ratification by five Members, three of which each have a least one million gross tonnage of shipping. It might be more complicated to take account of the suggestion to also include references to seafarers or countries supplying them due to the lack of reliable official statistics in this area at the world level. Article VIII could however refer to a list (which would be annexed to the Convention) of countries considered to be the most important with respect to the supply of seafarers. Taking account of the consideration related to the “no more favourable treatment” clause and the suggestion (consistent with that consideration) that the number of ratifying Members should be set at 30, paragraph 3 of Article VIII might be worded as follows:

3. It shall come into force 12 months after the date on which there have been registered ratifications by at least **30 Members, including at least half the number of Members with a share of at least [one] per cent of the world’s gross tonnage of ships.**

The following words could also, perhaps, be added at the end:

and at least half the number of Members supplying seafarers which are listed in Appendix ... to this Convention.

Note 4: Article XIV, paragraph 5

Comment 12 of the Commentary, point 2
Report of PTMC Committee No. 1, PTMC04-RP4(Rev.),
paragraphs 167-169

1. Article XIV sets out the procedure for the amendment of the Convention, through procedures, similar to those currently followed for the revision of international labour Conventions, which involve the express ratification of amendments adopted by the International Labour Conference. Paragraph 5 of that Article relates to the number of ratifications required for an amendment to be deemed to be accepted, and thus come into force 12 months later for the Members that had already ratified the amendment (see paragraph 6).
2. In the PTMC, a preference was expressed by the Shipowner and Seafarer representatives for ratification by 12 Members with a total share in world shipping tonnage of 12.5 per cent. It was agreed that a decision on this question depended on what would be agreed for Article VIII on entry into force of the Convention itself (see the preceding Note). The indication given by the Shipowners and Seafarers, and not contradicted by any Government representative, was that the figures would be roughly equivalent to half those required for entry into force of the Convention.

Note 5: Article XV, paragraph 2

Comment 13 of the Commentary, point 5
Report of PTMC Committee No. 1, PTMC04-RP4(Rev.),
paragraphs 170 and 171

1. Article XV sets out the procedure for simplified amendment, which may be used with respect to the provisions of the Code, unless provided otherwise. The procedure begins – under paragraph 2 – with a proposal for a particular amendment which could be made either by the Shipowners’ or the Seafarers’ group in the special tripartite committee concerned or by the Government of any Member of the ILO, provided that the amendment was made or supported by a minimum number of Governments that had ratified the new Convention (or was supported by one of the other groups). The issue left open in the Draft

Convention is how many Governments (either making or supporting the proposal) would be required. In the Recommended Draft, ten was suggested as a possible figure – i.e. 1+9 if the proposing Government had ratified the Convention or, otherwise, 1+10.

2. In the PTMC, the Shipowner and Seafarer representatives stated their agreement with the figure of ten. The Government representatives gave an indication that this number might be too high.
3. There are perhaps two main considerations: one is a need for proposals to have a certain weight before they are submitted in view of the time and expense that will be required for their initial examination, translation and circulation to all Members of the Organization, each of which will be given an opportunity to submit comments on them, and for the later discussion of the proposals in a committee consisting of the representatives of the ratifying Governments and of the Shipowners and Seafarers. The Committee might even have to be convened just to consider a proposal. The other consideration is the practical difficulty that some Governments may have in coordinating their ideas or positions and consequently obtaining the necessary support. Presumably, any Government intending to propose an amendment would in any event wish to consult other Governments, especially those with a say in the initial adoption of the amendment, i.e. the ratifying Governments, in order to ensure that there was sufficient support for it. Perhaps a question that Governments could ask themselves is what level of support they would need from ratifying Governments to make their proposal worth proceeding with. They could then assess whether the figure of ten is appropriate or whether a lower figure should be proposed for inclusion in paragraph 2 of Article XV.

Note 6: Article XV, paragraph 7

Comment 13 of the Commentary, point 9
Report of PTMC Committee No. 1, PTMC04-RP4(Rev.),
paragraphs 172-174

1. Paragraph 7 of Article XV relates to the number of Members expressing disagreement that would be required to prevent an amendment under the simplified procedure from coming into effect. In the Recommended Draft it had been proposed that an amendment would be defeated if notification of disagreement was received from more than one-third of the ratifying Members, representing not less than 50 per cent of the world's gross tonnage. In the PTMC, these figures appeared appropriate to the Shipowner and Seafarer representatives. However, as in the case of the express amendment procedure in Article XIV, the decision would have to await the decision on the number and weighting to be included in Article VIII on entry into force of the Convention itself.
2. A drafting error has however been noted in paragraph 7 in the Recommended Draft. By providing that an amendment will be considered as accepted unless it is opposed by one third of the ratifying Members and specifying that they must represent at least 50 per cent of world tonnage, this requirement would in practice make it nearly impossible to reject amendments in the early stages of the Convention, when the total tonnage of ratifying Members will only amount to 50 per cent of world tonnage, or less (depending upon the solution adopted for Article VIII – see Note 3 above). Paragraph 7 should have the word “either” and the word “or” to be consistent with the corresponding provisions of the IMO Conventions, on which Article XV is based (to the extent compatible with the ILO context). Under the IMO provisions,⁹ there are two separate cases when an amendment

⁹ See, for example, SOLAS, 1974, Article VIII(b)(vi)(2).

will not be deemed accepted: *either* objections from more than one third of the parties to the Convention *or* objections from any number of parties whose combined merchant fleets constitute not less than 50 per cent of world gross tonnage.

3. While, therefore, a decision concerning paragraph 7 of Article XV may depend upon the solution to be adopted for Article VIII, it is suggested that future discussion be based on the following wording:

7. An amendment adopted 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 **either** from more than [one-third] of the Members which have ratified the Convention **or from ratifying Members** with a total share in [world] shipping tonnage of not less than [50] per cent.

Note 7: Title 4, Standard A4.2, paragraph 1(a) and (b)

Comment 31 of the Commentary
Report of PTMC Committee No. 3, PTMC04-RP6(Rev.),
paragraphs 90-91, 100-117

1. Standard A4.2 deals with the responsibility of shipowners to provide what has been described as “shorter term” financial protection for seafarers that become ill or are injured. The provisions in Regulation 4.2 and the related Standard A4.2 and Guideline B4.2 are part of the overarching system of social protection and welfare provided under Title 4 and are described as “complementing”, in particular, the provisions in Regulation 4.1, on medical care, and Regulation 4.5 on social security (see Standard A4.5, paragraph 1). The provisions in Regulation 4.2 and Standard A4.2 would revise the Shipowner’s Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) and Articles 14 and 15 of the Social Security (Seafarers) Convention (Revised), 1987 (No. 165). Paragraph 1 of Standard A4.2 sets out, in its four subparagraphs, minimum standards to implement the shipowners’ responsibility for the health protection and medical care of all seafarers working on board their ships. Agreement was not, however, reached on subparagraphs (a) and (b), which set out the main details of this responsibility.
2. Essentially two issues are raised by subparagraph (a) of paragraph 1 in the Recommended Draft. One is how to describe the period to be covered by shipowners in the area of health protection and medical care; under the Recommended Draft, this period would begin on the date of commencing duty. Two possibilities were provided in square brackets for the end of such period: either the date upon which the seafarers are deemed duly repatriated and/or the date of termination of their engagement. The other issue related to the problem of illness or injuries that may manifest symptoms much later in time but could be attributed to the covered period; in this connection, the Recommended Draft referred to sickness and injury of seafarers “arising from their employment between those dates”.
3. To a certain extent, the wording of subparagraph (a) is determined by the corresponding Regulation, with which the provisions of the Standard must conform. This Regulation (4.2) was the subject of detailed discussion in the PTMC. The discussion of paragraph 1 of the Regulation was focused on the question of the scope of shipowners’ liability to provide protection to seafarers and covered the aspects of paragraph 1(a) of the Standard, referred to above. The diversity in employment situations between countries was considered, in particular. Some seafarers have long-term employment contracts extending over decades, while other seafarers are employed only for short periods of time by many different shipowners. The text that was finally agreed reads:

1. Members shall ensure that measures, in accordance with the Code, are in place on ships that fly their flag to provide seafarers employed on the ships with a right to material

assistance and support from the shipowner with respect to the financial consequences of sickness or injury or death occurring while they are serving under a seafarers' employment agreement or arising from their employment under such agreement.

4. Before the adoption of the final words of the above text, "or arising from their employment under such agreement", the advice of the Drafting Committee was sought in order to "ensure that the current wording reflected the views of the [Technical] Committee that the text should ensure that the financial consequences of sickness or injury or death of the seafarer should be restricted to consequences arising from or in connection with employment on board ship or while the seafarer is travelling to and from the ship" (paragraph 89, PTMC04-RP6(Rev.)). The Drafting Committee's advice is set out in paragraph 90 of the report. The Drafting Committee responded with a comment that paragraph 1 would be considered consistent with this view if the paragraph was also combined with a new provision placed before the existing paragraph 1 in the Standard defining the concept of "serving under a seafarers' employment agreement" for purposes of the Regulation. The Drafting Committee's advice also provides a possible new text for this new provision. The representatives of the Shipowners did not, however, agree with elements of the proposed definition and preferred to retain paragraph 1 of the Regulation.
5. The subsequent discussion relating to Standard A4.2, paragraph 1, was mainly concerned with the relationship between the work of the PTMC and the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers. The work of that Group, to develop "longer-term sustainable solutions to address the problems of financial security with regard to compensation in case of death and personal injury, leaving aside, for the time being, whether it should be mandatory or not", ¹⁰ remains ongoing and may not be completed in time for the Maritime Session of the International Labour Conference. However, the issues to be decided in connection with paragraph 1(a) and also paragraph 1(b), which covered shipowners' responsibility to obtain insurance coverage to provide compensation in the event of the death or long-term disability of seafarers, appeared to be related to the work of the Joint Working Group. The Group was understood to be considering both the provision of security and the applicable period of coverage for the purpose of providing financial security for the cases of death, injury and abandonment. The representatives of the Shipowners preferred to retain the existing subparagraphs (a) and (b), including retaining the brackets and the text in the brackets to await the developments in the Joint Working Group. The consensus in the PTMC technical committee was that the provisions concerned should be left in square brackets for the time being. However, as a result of the PTMC decision to delete all areas of the Draft Convention that remained in brackets at the end of the PTMC, the two subparagraphs were not retained and they are now considered unresolved text.
6. Under the relevant resolution adopted by the PTMC, the purpose of the meeting in April 2005 is to provide "the Office with advice concerning generally acceptable wording for the previously bracketed provisions on which agreement has not been reached". In this particular case, however, care must be taken to avoid making any proposals that could jeopardize developments or predetermine outcomes from the ongoing discussions of the Joint Working Group. Subject to that consideration, it is preferable that agreement be reached on appropriate wording before the International Labour Conference, bearing in mind that the ongoing work of the Joint Working Group may well still be incomplete at that time. In this connection, it is noted that the PTMC was able to reach agreement on the

¹⁰ IMO: *Provision of Financial Security: (i) Progress report on the work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers*, doc. LEG 89/6/1, 21 Sep. 2004, para. 3.

question of liability and to adopt text for Regulation 4.2, paragraph 1, which establishes the obligation on flag States to ensure that measures “in accordance with the Code” are in place on ships that fly their flags to provide seafarers with these rights. It also provides a general framework setting both the content and the temporal aspects of those rights in that they relate to events “occurring while serving under a seafarers’ employment agreement” or “arising from their employment under such an agreement”. Standard A4.2, paragraph 1, currently requires that national laws be adopted to provide minimum standards. Those standards are then to be defined in paragraph 1 and in the other paragraphs of Standard A4.2. In order to provide guidance to Members and to encourage greater uniformity regarding the nature of the measures “in accordance with the Code”, it is preferable that the Standard contain provisions addressing the two areas of unresolved text.

7. *With respect to paragraph 1(a)*, one possibility in this connection would be to adopt a minimalist approach, closely following wording in the Convention standard that now exists. With an approach of this kind, reliance might need to be placed on an early use of the simplified amendment procedure to adjust the Standard, if necessary, to reflect the conclusions that will in due course result from the work of the Joint Working Group. It will be recalled that, in the Recommended Draft, only two parts of *paragraph 1(a) of the Standard* were in brackets. These parts related to two questions. The first was whether to retain the formulation in the Shipowner’s Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), setting the start and end of the period for the coverage to be provided by the shipowner. Article 2, paragraph 1(a), of that Convention defines the period as “the date specified in the Articles of Agreement for reporting for duty and the termination of the engagement”. The other point at issue in paragraph 1(a) related to the coverage of sickness or injury “arising from their employment”. In view of the PTMC’s adoption of that wording in Regulation 4.2, this phrase can no longer be considered at issue as the substance of the Regulation on that point has to be reflected in the corresponding Standard.
8. Another possibility would be to consider whether agreement could be reached on alternative wording. In this connection, *with respect to paragraph 1(a)*, it is noted that the Recommended Draft had alternative wording which would set the end of the period of coverage at the date on which the seafarer is considered duly repatriated. Furthermore, the Shipowner representatives submitted a proposed amendment to paragraph 1(a) in the PTMC which was not receivable in the context of such proposals, but could be helpful in the present context. This proposal referred to the period of engagement on board “as defined by national laws and regulations or collective agreements”.¹¹ Any such definition would have to be consistent with the relevant part of Regulation 4.2. The Shipowner representatives also proposed an amendment to paragraph 1 of the Regulation itself. The proposal could be considered partially receivable as most of the text in that paragraph in the Recommended Draft had not been placed inside square brackets. Part of the wording proposed reflects the underlying understanding of the technical committee at the time (see paragraph 4 above). The proposal reads:

Members shall ensure that measures in accordance with the Code are in place on ships that fly their flag for shipowners to take financial responsibility for consequences of sickness, occupational injury and death occurring during the period the seafarer is serving on board including during their shore leave and from the period when travelling to and from the ship.

¹¹ See ILO: *Compendium of proposed amendments to the draft consolidated maritime labour Convention, 2006*, PTMC/2005/2, Geneva, 2005, Amendment 96 (C.3/D.36).

This should be provided for in all cases except where sickness and injury have resulted from wilful misconduct on the part of the seafarer.¹²

9. *With respect to paragraph 1(b) of Standard A4.2, in the Recommended Draft this paragraph was entirely in square brackets. It contained several issues. One related to the requirement that insurance be obtained to provide compensation for death or long-term disability; the second related to whether this – the compensation – is set by national law, regulations or collective agreements; a third element was the precise wording related to the insurance coverage in that it proposed linking it to occupational injury, illness or hazard; and, finally, the last element related to the question of describing the end date of the period of coverage, which was also an issue for paragraph 1(a). Given that the question of the obligatory nature of financial security for compensation for these events appears controversial and that this provision is particularly close to the subject of ongoing discussions in the Joint Working Group, a minimalist approach as suggested for paragraph 1(a) in paragraph 7 above may be the only realistic way towards consensus at this stage. Since Convention No. 55 does not address the question of insurance in this context, the subparagraph might simply specify that insurance must be one of the measures to be adopted to implement Regulation 4.2, especially with respect to coverage for death and long-term disability.*

Note 8: Guideline B4.5, paragraph 5

Comment 34 of the Commentary and Addendum
to the Commentary, point 7
Report of PTMC Committee No. 3, PTMC04-RP6(Rev.),
paragraphs 398-414

1. Guideline B4.5, paragraph 5, is in the area of the draft Convention addressing the provision of social security through national systems. It complements the protection provided by Regulations 4.1 and 4.2. Paragraph 5, as proposed in the Recommended Draft, was text which had been suggested by the Seafarers at an experts' meeting in April 2004 to resolve this part of the Convention (see the Addendum to the Commentary (PTMC/04/2) to the Recommended Draft, point 7). It provided guidance to Governments by indicating that "in principle" all seafarers on a ship should have access to the same branches of social protection as would be provided to seafarers that are residents of the flag State, as far as practicable and taking into account national circumstances. The idea is similar to that found in Articles 18 and 20 of the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), regarding equality of treatment with respect to benefits provided under national systems and by shipowners.
2. Paragraph 5 was considered by Technical Committee No. 3 and was the subject of extensive discussion as to its meaning. One Government representative felt it was unclear and proposed replacing it with a provision that would clarify that a flag State could choose to extend coverage for seafarers for occupational injuries. Other Government representatives felt that the paragraph should be deleted as it was either outdated or repetitive of obligations regarding flag state responsibility already specified in the Standard. The representatives of the Seafarers and two Government representatives proposed that it should be moved to the Standards to further strengthen the flag state responsibility for monitoring protection. The representatives of the Shipowners and several other Government representatives disagreed with the transfer as it would pose a barrier to ratification. The Committee referred it to the Steering Committee proposing that it remain

¹² See ILO: *Compendium of proposed amendments to the draft consolidated maritime labour Convention, 2006*, PTMC/2005/2, Geneva, 2005, Amendment 95 (C.3/D.33).

in square brackets. The Steering Committee referred it back to the Committee to reconsider the text and reach a decision (as to inclusion or deletion). The representatives of the Seafarers expressed the view that it was regarded as fundamental and wanted it moved to the Standards. The representatives of the Shipowners were of the view that it should be deleted. The technical committee concluded they could not make progress on the question and that it should remain in brackets. As a result of the PTMC decision regarding removal of all text in brackets the provision was removed from the draft Convention and is to be treated as unresolved text.

3. The discussion at the PTMC suggests that this paragraph posed a significant difficulty for many representatives, despite its wording, which could accommodate almost all circumstances. For some it was regarded as a matter of equality between workers on a ship and relates to the flag State's obligation to regulate the social conditions on board ship. For others it was problematic as it appeared to suggest an obligation to provide benefits to non-residents if their country of residence did not provide the same range of benefits as the flag State: it was therefore inconsistent with the Standard, which is based on residency as the basis of protection. Under Standard A4.5, paragraph 1, Members are required to have at least three of the nine possible branches of social security and it is foreseeable that Members may not choose the same three.
4. It is noted that constituents as a whole have recognized that the flag State has a significant role with respect to social security protection. In particular, paragraph 5 of Standard A4.5 currently emphasizes flag state responsibilities for ensuring social security protection on ships that fly its flag with respect to Regulations 4.1, 4.2 and under general international law (for example, Article 94 of the United Nations Convention on the Law of the Sea (UNCLOS)). Paragraph 6 of the Standard also appears to be addressing the issues faced by flag States with seafarers drawn from diverse economic and social protection systems. The principle in paragraph 5 of the Guideline could perhaps be understood in relation to the obligation under this paragraph. At the same time, the principle in paragraph 5 of Guideline B4.5, or at least the terminology proposed, albeit "according to its national circumstances and as far as practicable", at this point in time appears to present serious problems for some countries. As with many other aspects of the treatment of social security protection in the consolidated Convention, which aims at "achieving progressively comprehensive social security protection", the way towards consensus may lie in finding wording that would clearly establish the principle as an objective to be attained, rather than as a standard or guidance for immediate action.

Note 9: Title 5, paragraph 3

Comment 35 of the Commentary, points 6 and 7.

See also Comment 13 on the simplified amendment procedure
Report of PTMC Committee No. 1, PTMC04-RP4(Rev.),
paragraphs 177, 178, 181-185

1. Paragraph 3 of Title 5 in the Recommended Draft concerned the amendment of the provisions of the Code by the simplified amendment procedure. Article XV of the Convention allows the Code to be amended in this way "unless expressly provided otherwise". Paragraph 3 would limit this possibility in the case of Title 5, on enforcement and compliance. It would only be possible to use the simplified procedure under Article XV for Part B of the Code and the appendices to Part A in Title 5. The provisions in the body of Part A of the Code could be amended only in accordance with the express ratification procedure set out in Article XIV.
2. In the PTMC, several Government representatives supported the provision proposed: Governments needed to be able to clearly determine the resources and commitments

entailed by ratification of the Convention, with its emphasis on inspection and certification. For this reason, they considered that, in addition, it should not be possible to amend the appendices to Part A of the Code in Title 5. In view of the positions of many Governments and the need to achieve widespread ratification, the Shipowner representatives also supported the inclusion in the Convention of paragraph 3. The Seafarer representatives opposed the inclusion of the paragraph. They pointed out that the proposed Convention explored new areas when it came to labour inspection, that the enforcement mechanisms needed to stand the test of time, and that any necessary adjustments would take a long time to adopt if the simplified procedure were excluded. On the other hand, the voting structure provided for in Article XV would prevent hasty adjustments. They concluded, however, that the question was one to be decided by the Governments.

3. Since this is essentially a question for them, the following considerations are addressed to Governments:

- (a) Because of the innovative character of many of the provisions of Title 5, especially for the ILO, and the increasing level of detail now found in this part of the Code, it may well turn out that the system outlined in the Code will need to be adjusted, as indicated by the Seafarer representatives. Governments might often be the principal beneficiary of any such adjustments that may be needed, as the flexibility for implementing Part A of the Code through substantially equivalent provisions would not be available for Title 5 – as a result of the preceding paragraph 2 of Title 5.
- (b) The delay in entry into effect caused by an amendment having to go through the Article XIV procedures could be considerable. The simplified amendment procedure will be shorter as far as the submission to the International Labour Conference is concerned, as there will be no discussion of possible amendments to the proposal: the only decision to be taken by the Conference is whether or not to approve the texts proposed by a special tripartite committee. However, the main delay in the Article XIV procedure will come later while awaiting the number of ratifications for entry into force required by paragraph 5 of Article XIV (see Note 4 above). This could take several years more than the two-year maximum set for the simplified procedure (Article XV, paragraph 7), because of the difficulties that countries normally have in placing questions of this kind on the agenda of their national Parliaments.
- (c) An obviously relevant question is: What are the advantages of the Article XIV express ratification procedure over the Article XV simplified procedure? One possible assumption, that the Article XIV procedure would make it more difficult to adopt amendments, does not seem to be well founded: while amendments under Article XIV will be more costly and slower to materialize, the safeguards under Article XV against amendments that are not acceptable to all constituents would appear to be adequate: indeed, Governments could consider them excessive where the effect of a proposed amendment would, for example, reduce the costs of inspection or achieve greater coordination of inspections under the Convention with those required by IMO conventions. These safeguards begin in the special tripartite committee, where, in particular, they prevent any decision if more than half the ratifying Governments are absent or if at least half the Governments represented (i.e. 25 per cent of the total voting power) do not vote in favour (see paragraph 4(a) and (c) of Article XV). The next safeguard is the two-thirds majority required in the International Labour Conference for approval of the amendment (Article XV, paragraph 5). Then, even if at least half the Governments represented in the special tripartite committee voted in favour of an amendment, it will be considered rejected if more than a certain proportion of the ratifying Governments (one-third in the IMO conventions – see Note 6 above) express their disagreement within the deadline prescribed (Article XV, paragraph 7). Finally, any amendment that enters into effect

will not bind any Government that expressed its disagreement within the prescribed deadline (Article XV, paragraph 8).

- (d) Similarly, any assumption that amendments under Article XV are given less than full consideration would not appear well founded. Proposals are first examined by the Office and then circulated to all Members of the Organization for observations or suggestions, for which they are normally given six months (Article XV, paragraph 3). The proposals, observations and suggestions are then considered by the special tripartite committee, and the merits of any amendment adopted are discussed in the International Labour Conference. The normal period for consideration of approved amendments by ratifying Members is two years (Article XV, paragraph 6).
 - (e) It is suggested that the Article XIV procedure can have two main advantages (apart from protecting Governments against any possible lack of diligence on their part in considering amendments). One is the submission of the amendments to national Parliaments, which is normally part of the national constitutional processes prior to express ratification of a convention. Article XV does in fact permit (paragraph 8(a)) a Government to make its acceptance of an amendment subject to its express notification. However, if several Governments consider, for example, that an amendment of details in Part A of the Code is sufficiently important as to require or justify submission to their Parliaments, the Article XIV procedure appears preferable to unilateral actions under paragraph 8(a) of Article XV.
 - (f) The other advantage could materialize where an amendment is of particular interest to Governments considering ratification of the new Convention – such as an amendment which would make it possible or easier for them to ratify. In the Article XIV procedure, non-ratifying Governments would have the same rights of participation as ratifying Governments. Under Article XV, they would be able to propose amendments, to comment on amendments proposed by others and to take a full part in the decision of the International Labour Conference whether or not to approve an amendment. However, since amendments under Article XV relate to details as to how the ratifying Members are to perform their obligations under the Convention, only the latter would vote on the adoption of an amendment in the special tripartite committee and approved amendments would only be submitted to ratifying Governments for tacit acceptance.
4. There could thus be cases, such as those indicated under (e) and (f) above, in which the Code, at least in Title 5, might more suitably be amended in accordance with the Article XIV procedure. At the same time, it may be considered advisable for the Convention to retain the necessary flexibility for the speedy entry into effect of amendments that are generally considered to be useful. It is, therefore, suggested that three options be considered: (a) to adopt the proposed paragraph 3 of Title 5 and totally exclude the simplified amendment procedure for Part A of the Code and possibly also for the appendices to Part A; or (b) to delete the proposed paragraph 3 and allow the Code in that Title to be amended in the same way as for the other Titles, that is either the Article XV procedure or the Article XIV; or (c) to adopt an intermediate solution.
5. Such an intermediate solution might be to leave the matter in the hands of the special tripartite committee. This would be in keeping with the basic function of the committee, which is to be the means by which the Governing Body is to keep the working of the Convention under continuous review (paragraph 1 of Article XIII). Paragraph 3 could, for example, provide that amendments proposed to Part A of the Code in Title 5 (or to the Appendices to Part A) shall be referred by the special tripartite committee to the Governing Body with a view to inclusion on the Conference's agenda for consideration in accordance with Article XIV, unless the committee decides otherwise by a simple majority, including the votes in favour of a majority of the ratifying Governments. In

reaching this decision, the committee would take account of any observations made on the subject in the course of the amendment's prior circulation to all ILO Members.

6. The *Explanatory note to the Regulations and Code of the maritime labour Convention*, following the Articles, will need adjustment if the proposed paragraph 3 of Title 5 is adopted in some form. It will be necessary to insert a reference to it in the blank space in paragraph 4 of the Explanatory note, such as: "subject to one exception (see paragraph 3 of Title 5 of the Convention)".

Note 10: Standard A5.1.3, paragraphs 9, 10, and 11 and Guideline B5.1.3

Comment 36 of the Commentary, point 7(c)
Report of PTMC Committee No. 1, PTMC04 –RP4 (Rev.),
paragraphs 264-267, 384-389

1. In Standard A5.1.3 of the Draft Convention there is a blank space between paragraphs 8 and 12. This is because the content of the intervening paragraphs 9 to 11 in the Recommended Draft was not discussed in the PTMC. In the Recommended Draft most of the text in these provisions was considered soft bracketed text {} in that it needed more discussion but was not considered controversial. It is clear both from the text of the Draft Convention adopted by the PTMC and the discussion with respect to other related provisions¹³ that the participants at the PTMC endorsed the idea of having a certificate and a declaration issued under the auspices of the flag State that would provide prima facie evidence of compliance with national law implementing the Convention. The issue with respect to the paragraphs now considered unresolved relates primarily to questions of form of the maritime labour certificate and the declaration of maritime labour compliance. There are related questions of content, regarding the list of matters to be inspected, but these are raised more directly in connection with Appendices A5-I and A5-III, discussed below (in Note 20). As to form, paragraph 9 in the Recommended Draft simply implemented Regulation 5.1.3, paragraph 3, which requires the maritime labour certificate and the declaration of maritime labour compliance to conform "to the model prescribed by the Code". The model certificate and declaration would be contained in Appendix A5-II (see Note 21 below). Paragraphs 10 and 11 in the Recommended Draft established the content of the declaration of maritime labour compliance. A small Working Party of the Government group in the PTMC reviewed paragraphs 10 and 11, and proposed a new paragraph 10, to replace both of them, and to simplify the requirements for the declaration, which would have two parts, instead of three as in the Recommended Draft. The Chairperson of the Working Party reported to Committee No. 1 on the results of the Working Party's work.¹⁴
2. The paragraphs and proposed structure of the two documents do not appear to be controversial, but simply to be in need of tripartite review, their text is set out below – paragraph 9 as it appears in the Recommended Draft; paragraph 10 as proposed by the Working Party of the Government group (with one addition¹⁵ to align the provision with the wording of the model declaration of maritime labour compliance proposed by the Working Party – see Note 21 below):

¹³ See, for example, PTMC04-RP4(Rev.), paras. 228-263, 268-316.

¹⁴ See PTMC04-RP4(Rev.), para. 265.

¹⁵ The words "and be certified by the competent authority as meeting the purposes of the present provision" have been added in subparagraph (b).

9. The maritime labour certificate, the interim maritime labour certificate and the declaration of maritime labour compliance shall be drawn up in the form corresponding to the models given in Appendix A5-II.

10. The declaration of labour compliance shall be attached to the maritime labour certificate. It shall have two parts:

- (a) Part I shall be drawn up by the competent authority; it shall identify the national requirements embodying the relevant provisions of this Convention, by providing a reference to the relevant national legal provisions as well as, to the extent necessary, concise information on the main content of the national requirements. It shall also refer to ship-type specific requirements under national legislation. It shall record any substantially equivalent provisions adopted pursuant to paragraph 3 of Article VI of this Convention.
- (b) Part II shall be drawn up by the shipowner and be certified by the competent authority as meeting the purposes of the present provision. It shall identify the measures adopted to ensure compliance between inspections and the measures proposed to ensure that there is continuous improvement.

3. This simplified two-part structure for presenting the required information is reflected in the draft model documents presented in Annexes D, E and F to these Notes and discussed in Note 21.

4. The simplification of the declaration of maritime labour compliance in Standard A5.1.3, and the related model in the Appendices, would require some changes to the corresponding Guideline, B5.1.3. The text of Guideline B5.1.3 was approved at the PTMC and any proposed changes at this point would need to be regarded as consequential to the decisions made on the unresolved text in the Standard. The Working Party noted that references to “Part III” of the declaration would need to be changed to “Part II” and it recommended the following rewording of the first two paragraphs of Guideline B5.1.3, which provide guidance concerning the proposed paragraph relating to the Standard:

1. The statement of national requirements in Part I of the declaration of maritime labour compliance should include or be accompanied by references to the legislative provisions relating to seafarers’ working and living conditions in each of the general areas listed in Appendix A5-I. Where national legislation precisely follows from the requirements stated in the Convention, a reference may be all that is necessary. In all other cases, a concise explanation should be provided.

2. Where a provision of the Convention is implemented through substantial equivalencies as provided for under Article VI, paragraph 3, these should be identified either in relation to the provision concerned or in a separate section.

Note 11: Standard A5.1.3, paragraph 17

Comment 36 of the Commentary, point 7(g)
Report of PTMC Committee No. 1, PTMC04-RP4(Rev.),
paragraphs 298-306

1. In the Recommended Draft, Standard A5.1.3 contained a paragraph 17, relating to the withdrawal of a maritime labour certificate by the competent authority or recognized organization. The issue that was not resolved concerned the ground for withdrawal. The ground in the Draft was “if there is evidence that the ship concerned does not comply with the requirements of this Convention and any required corrective action has not been taken by the ship”. The provision in the Recommended Draft reflected the suggestions put forward by Government experts at the fourth High-level Tripartite Working Group on Maritime Labour Standards (HLTWG) meeting.

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2. In the PTMC, the Seafarer representatives supported the provision as worded in the Recommended Draft. The Government group had suggested that the word “comply” should be qualified by “substantially” and the Shipowner representatives preferred language indicating that withdrawal would occur only in the case of a serious violation of the Convention. The terms “substantially comply” and “substantial violation” were referred to the PTMC Drafting Committee for advice. The Drafting Committee indicated that neither term was sufficiently clear and might cause confusion with respect to other provisions in the Convention.
 3. It might be useful first to identify the reasons for having a provision on the withdrawal of a maritime labour certificate, bearing in mind that there is already a provision – paragraph 15 of the Standard – that sets out circumstances when a certificate would cease to be valid, as well as other provisions that sanction serious or “substantial” violations. In particular, paragraph 17 of Standard A5.1.4 requires “adequate penalties and other corrective measures for violation of the requirements of this Convention” to be provided for and effectively enforced. The need to prevent a ship from leaving port until a serious incident of non-compliance is rectified is also taken care of by the more focused measure envisaged in paragraph 7(c) of Standard A5.1.4, under which inspectors are to be empowered, “where they have grounds to believe that a case of non-compliance constitutes a serious breach of the requirements (including seafarers’ rights) provided for in this Convention, or represents a significant danger to seafarers’ health or safety or security, to prohibit a ship from leaving port until necessary actions are taken”.
 4. A privilege or right is typically withdrawn when the conditions for which it was granted no longer apply. In this connection, it should be noted that the provision in the Recommended Draft places emphasis, not on the failure to comply with the Convention’s requirements per se, but rather on the failure by the shipowner to take the required corrective action. This was the principle set out in paragraph 17. An important aspect of the system of certification to be provided for in the new Convention is the reliance on the shipowners themselves to have and implement adequate procedures to ensure that the standards of the Convention are properly maintained on an ongoing basis. It may be reasonable therefore to suggest that the certificate is granted on the assumption that the shipowners concerned are able and willing to fulfil this role. The withdrawal of the certificate would then be justified if they failed to respect this condition, as evidenced by a serious violation of the requirements of the Convention or by a serious lack of action in the implementation of their responsibilities under the declaration of maritime labour compliance. An approach of this kind could perhaps be considered analogous to that relating to withdrawal of documentation issued under the International Safety Management (ISM) Code adopted under Regulations in Chapter IX of the SOLAS Convention, 1974. Under ISM Guidelines, a document of compliance should be withdrawn if the periodical verification (audit of the management system to ensure continuous compliance) is not requested or if there is evidence of a major non-conformity with the ISM Code. Those Guidelines use the terms “non-conformity” and “major non-conformity” to describe situations where there is non-compliance with the safety management system (SMS) plan set out in the document of compliance. A “major non-conformity” is defined as “an identifiable deviation which poses a serious threat to personnel or ship safety or a serious risk to the environment and requires immediate corrective action”; in addition, the lack of effective and systematic implementation of the ISM Code is also considered a major non-conformity.¹⁶

¹⁶ See also IMO: *Procedures concerning observed ISM Code major non-conformities*, doc. MSC/Circ.1059, MEPC/Circ.401, 16 Dec. 2002, which provides in para. 1 of the annex that a major non-conformity identified in an audit can be “downgraded” if the administration or recognized

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5. Accordingly, if the wording in paragraph 17 is not appropriate, one approach may be to explicitly include the point that if there is evidence that a shipowner is unable or unwilling to effectively implement measures for ensuring compliance with the requirements of the Convention, the certificate would be withdrawn. Such evidence might be constituted where, in particular, an inspection brings to light a serious violation of those requirements, which ought to have been prevented or detected and promptly rectified if the on-board procedures had been properly implemented, or where the inspectors have repeatedly required the ship to rectify the same kinds of deficiencies. If an approach of this kind is adopted, the ground for withdrawal of a certificate might be worded along the following lines:

if by reason of the frequency or the seriousness of cases of non-compliance or for other considerations, the shipowner concerned clearly appears to be unable or unwilling to take the necessary measures to ensure compliance with the national law implementing the requirements of this Convention on board the ship for which the certificate was issued.

Note 12: Regulation 5.1.5, Standard A5.1.5 and Guideline B5.1.5

Comment 36 of the Commentary, points 13 and 14
Report of PTMC Committee No. 1, PTMC04-RP4(Rev.),
paragraphs 363 and 364

1. Regulation 5.1.5 and the associated provisions in the Code, in the Recommended Draft, related to on-board complaints procedures. The majority of the provisions on this issue were not in brackets in the Recommended Draft as they were not considered controversial. They drew upon a proposal originally put forward in a joint submission by the Shipowners' and Seafarers' groups,¹⁷ in which there was general agreement on the on-board or "internal" procedures with areas of difference relating mainly to the issue of shore-based systems for addressing complaints by seafarers that their rights under the national law implementing the Convention had been breached. The issue of shore-based procedures is discussed below in Note 18. Despite the prior agreement on the Standard and Guidelines, none of the provisions relating to on-board complaint procedures was included in the Draft Convention because the precise wording of the paragraphs which set out the basic principles concerned in Regulation 5.1.5 was not the subject of agreement. The Regulation, Standard and Guideline are thus to be seen as a whole and as an unresolved issue.
2. It is important to place the issue of seafarer complaints about working conditions within the overall system of enforcement and compliance in Title 5. The flag State has a primary obligation to ensure that ships flying its flag comply with national laws implementing the Convention. It has issued certificates to that effect. However, given the nature of shipping, it is difficult for the flag State to identify breaches of national law. The flag State can ensure continued compliance through the required inspections and through the assistance of port state inspection which will help to verify that continuing compliance. The other way in which the flag State can ensure compliance is through systems whereby concerns can be raised by those protected by the laws (seafarers) regarding possible breaches of national law. Failing this the flag State will not be properly fulfilling its obligation to

organization is satisfied that effective corrective action is being taken and a "schedule not exceeding three months should be agreed for completion of the necessary corrective actions."

¹⁷ *Joint submission by the Shipowners' and Seafarers' groups concerning provisional grievance procedures*, amended draft of 6 Feb. 2003, submitted to the Tripartite Subgroup of the High-level Tripartite Working Group on Maritime Labour Standards.

effectively implement and enforce its laws implementing the Convention. The on-board procedures are one mechanism whereby potential breaches of national law implementing the Convention or related issues can be identified and addressed by the shipowner before the matter requires the intervention of the flag state administration or recourse to other legal proceedings.

3. As indicated above, it is the basic principle underlying on-board complaint procedures that have been the subject of controversy, rather than the details of appropriate procedures, as set out in the rest of the provisions on the subject. Indeed, the (unbracketed) provisions concerned were the subject of few proposals for amendment. It would therefore seem useful to look first at the text that was not previously controversial and then to seek to elucidate the basic principles that can be inferred from that text.
4. This text is to be found in paragraphs 2 or 3 and 3 or 4 of the Regulations in the Recommended Draft) and the Standard and Guideline in the Recommended Draft. The amendments submitted to the PTMC have been included in the provisions below to allow full consideration of the issues and are indicated by square brackets and bold text. They are discussed in paragraphs 5 and 6 below.¹⁸

Regulation 5.1.5 – On-board complaint procedures

Members shall prohibit and penalize any kind of victimization of a seafarer for filing a complaint. **The term “victimization” covers [any adverse] action taken by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.**¹⁹

The provisions in this Regulation and related sections of the Code are without prejudice to a seafarer’s right to seek redress through whatever legal means he or she considers appropriate.

Standard A5.1.5 – On-board complaint procedures

1. Without prejudice to any wider scope that may be given in national laws or regulations or collective agreements, the on-board procedures may be used by seafarers to lodge complaints relating to any matter that is alleged to constitute a violation of the requirements of this Convention.

2. In its national laws or regulations, each Member shall ensure that appropriate on-board complaint procedures are in place to meet the requirements of Regulation 5.1.5. Such procedures shall seek to resolve complaints at the lowest level possible; however, in all cases, seafarers shall have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities.

3. The on-board complaint procedures shall include the right of the seafarer to be accompanied or represented during the complaints procedure, as well as safeguards against the possibility of victimization of seafarers for filing complaints. [The term “victimization” covers

¹⁸ Reference should also be made in this context to an amendment proposed by the Seafarers (Amendment 118, C.1/D.11) for the inclusion of a new paragraph in Regulation 5.1.1, which would read, “Seafarers, like shipowners and all other persons, are equal before the law and are entitled to equal protection of the law and shall not be subject to discrimination in their access to courts, tribunals or other dispute resolution mechanisms.”

¹⁹ Amendment 141: C.1/D.67, Regulation 5.1.5, para. 2/3. Submitted by the Shipowners. Proposal: After the existing text, add the following: “The term ‘victimization’ covers action taken by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made”.

any adverse action taken by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.]²⁰

4. [All seafarers must be provided, together with a copy of their seafarers' employment agreement, with a copy of the on-board complaint procedures applicable on the ship, including contact information for the competent authority in the flag State and, where different, in the seafarers' country of residence, and the name of a person or persons on board the ship who can, on a confidential basis, provide seafarers with impartial advice on their complaint and otherwise assist them in following the complaint procedures available to them on board the ship.] **A copy of the complaints procedure shall be available on board the ship.**²¹

Guideline B5.1.5 – On-board complaint procedures

1. Subject to any relevant provisions of an applicable collective agreement, the competent authority should, in close consultation with organizations of shipowners and seafarers, develop a model for fair, expeditious and well-documented on-board complaint-handling procedures for all ships that fly its flag.

2. In developing these procedures the following matters should be considered:

- (a) many complaints may relate specifically to those individuals to whom the complaint is to be made or even to the master of the ship. In all cases seafarers should also be able to complain directly to the master and to make a complaint externally;
- (b) in order to help avoid problems of victimization of seafarers making complaints about matters under this Convention, the procedures should encourage the nomination of a person on board who can advise seafarers on the procedures available to them and, if requested by the complainant seafarer, also attend any meetings or hearings into the subject matter of the complaint.

3. At a minimum the procedures discussed during the consultative process should include the following:

- (a) complaints should be addressed to the head of the department of the seafarer lodging the complaint or to the seafarer's superior officer;
- (b) the head of department or superior officer should then attempt to resolve the matter within prescribed time limits appropriate to the seriousness of the issues involved;
- (c) if the head of department or superior officer cannot resolve the grievance to the satisfaction of the seafarer, the latter may refer it to the master, who should handle the matter personally;
- (d) seafarers should at all times have the right to be accompanied and to be represented by another seafarer of their choice on board the ship concerned;
- (e) all complaints and the decisions on them should be recorded and a copy provided to the seafarer concerned;
- (f) if a complaint cannot be resolved on board, the matter should be referred ashore to the shipowner, who should be given an appropriate time limit for resolving the matter, where appropriate, in consultation with the seafarers concerned or any person they may appoint as their representatives;
- (g) in all cases seafarers should have a right to file their complaints directly with the master and the shipowner and competent authorities.

²⁰ Amendment 142: C.1/D.66, Standard A5.1.5, para. 3. Submitted by the Shipowners. Proposal: Delete the second sentence.

²¹ Amendment 143: C.1/D.70 Standard A5.1.5, para. 4. Submitted by the Shipowners. Proposal: Replace paragraph 4 with the following: "A copy of the complaints procedure shall be available on board the ship."

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5. The proposals for amendment were made by the Shipowners' group in the PTMC. Two of them would result in the transfer of the definition of "victimization" from the Standard (paragraph 3) to the Regulation, with the deletion of the words "any adverse" before the word "action". The main legal effect would be to prevent the Standard from later being amended in a manner that was inconsistent with the definition. With respect to the reference to "adverse action", it would seem that this or equivalent wording is needed; otherwise, the term "victimization" could cover, for example, action by a master to commend particular seafarers for their courage in lodging a complaint about a situation of which the master had been kept in ignorance.
 6. The other proposal was to replace paragraph 4 of the Standard by the sentence: "A copy of the complaints procedure shall be available on board the ship." While retaining the main thrust of the obligation in the paragraph as appearing in the Recommended Draft, the proposal would exclude two other elements which seem important: one is that seafarers should actually know about the complaint procedures and where they can be found, and be able to have convenient and confidential access to a copy; with the present wording, this concern is met by requiring a copy to be given to the seafarers together with their employment agreements. The other element in the Recommended Draft that would be excluded by the proposed sentence appears simply to be an extension of what has been agreed in earlier paragraphs of the Standard: namely, the seafarers' right to complain to appropriate external authorities where they consider it necessary (paragraph 2) and their right to be accompanied or represented during the complaints procedure (paragraph 3): they should presumably also be given the necessary information to be able to exercise those rights. However, if it is deemed useful to reduce the text in the paragraph and there is agreement on the general purposes underlying paragraph 4, one option might be to retain the substance of that paragraph, but with more general wording, and include the precise details in a new paragraph of the Guideline. Alternatively it may be appropriate to consider whether this paragraph could be transferred to Title 2, Standard A2.1, on seafarers' employment agreements.
 7. The basic principles in the Regulation were set out in alternative provisions in the Recommended Draft. Although they were not discussed in the PTMC, the Seafarers' representatives stressed the need to focus on serious complaints concerning non-compliance with the rights and requirements of the Convention. While in some cases a breach of a national law implementing the Convention may also constitute a breach of a seafarer's contractual rights under his or her employment agreement, which may also be a collective agreement, Regulation 5.1.5 is intended specifically to ensure that a mechanism is available on-board for seafarers to raise concerns about alleged breaches of the flag State's law implementing the Convention.²² One of the alternative texts proposed in the Recommended Draft established two requirements: one for suitable on-board procedures for handling seafarers' complaints; the other related to a flag state obligation to provide access to an external and independent dispute resolution mechanism. The concepts of a "complaint" and a "dispute" are related. In the context of on-board procedures, the action will always begin as a "complaint". As indicated in paragraph 2 of the proposed Standard, it will normally be made at the lowest level possible: guidance with respect to this system is set out in the Guidelines. If the complaint is not settled to the satisfaction of the seafarer, it then involves a "dispute" which will need to be looked into and resolved at a higher level or levels on board. If it cannot be resolved on board, it would then be resolved externally. As recognized in the Standard, seafarers would also have a right to voice a complaint directly to the master or externally. The obligations of the flag State to receive, keep

²² In the joint submission, see footnote 17, the term "grievance" was used. It was defined as a breach or allegation of a breach of matters specifically covered in the Convention, as accepted and applied by the flag State of the ship on which a seafarer was serving.

confidential and investigate complaints are currently addressed under Standard A5.1.4, paragraphs 5 and 10.

8. Since the essential purpose of a Regulation is to delimit the overarching right or obligation to be implemented as described in the specific obligations set out in the corresponding Standard, the first paragraph of Regulation 5.1.5 could be worded quite simply, using concepts and even wording that already appear in the Standard and the Guideline, which have been found largely acceptable. For example:

Each Member shall require that ships that fly its flag have fair, expeditious and well-documented on-board procedures for handling complaints by seafarers alleging that their rights under this Convention or the requirements of the Convention affecting them are not being respected. Adequate measures shall be taken to ensure that seafarers are aware of those procedures and can conveniently use them.

Note 13: Standard A5.2.1, paragraph 1

Comment 37 of the Commentary, point 2(a) and (d)
Report of PTMC Committee No. 1, PTMC04-RP4(Rev.),
paragraphs 372-381

1. Standard A5.2.1 relates to inspections in the port of a country other than the flag State. Paragraph 1 sets out under (a) to (d) the circumstances in which “a more detailed inspection *may* be carried out to ascertain the working and living conditions on board the ship”. The word “*may*”, italicized here, shows that port States are as a rule not obliged to carry out inspections. However, the last sentence of the paragraph states that they “shall” (obligatory) do so where the “deficiency concerned” could constitute a clear hazard to the safety or the health or the security of seafarers. This is what has been agreed so far. The issue that still needs to be resolved is a proposed requirement that an inspection should also be obligatory where the deficiency constitutes “a clear obstacle to the application of the principles or rights provided for in this Convention”.
2. In the PTMC, most Government representatives did not support the inclusion of the phrase quoted above, at least as worded. Some Government representatives considered that the assessment by the authorized officer in the port State in this respect could entail complex legal issues, which might require judicial review, and were not appropriate matters for the discretionary determinations of a single official in the port State. The Shipowner representatives also opposed the inclusion of the phrase as it appeared to extend port state inspection beyond working and living conditions on board ships. The Seafarer representatives considered that a phrase of this kind was required, pointing out that it could be understood as covering situations, such as inadequate food or the presence of vermin on board or where the crew did not understand instructions, which could, under the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) and the STCW Convention, be grounds for detention of a ship.
3. The PTMC discussions show that the whole of the last sentence of paragraph 1 should be made clearer, especially as regards what is meant by the “deficiency concerned”. In particular, the sentence was intended to cover only the situations in which a more detailed inspection “*may*” be carried out under the preceding subparagraphs (a) to (d) – namely, especially where either there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention or a complaint has been made to that effect. It is only in those situations that there could be an obligation to inspect under the last sentence. Thus, if inspectors carry out an inspection in the mistaken belief that a deficiency relating to working and living conditions constituted a clear hazard to safety etc., their power to do so cannot be contested as they *may* carry out

such inspections even if there is no such hazard. On the other hand, they could be accountable if they did not carry out an inspection where the hazard clearly existed.

4. It should in addition be noted that the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) does not specifically require a port state inspection to be carried out. It simply states that the Member concerned “may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health”. At the same time, it seems to be accepted that an inspector who has clear grounds to believe that certain conditions on board are so bad as to constitute a risk to safety or health must investigate the matter further. It thus may be considered appropriate for paragraph 1 to go beyond safety and health and security considerations as factors requiring a detailed inspection. This would be in keeping with the purpose of the new Convention, which covers all aspects of decent conditions of work for seafarers. However, the circumstances justifying the shift from “may” to “shall”, requiring a detailed inspection in all cases where the prima facie evidence of the documentation is called into question, should have the same degree of seriousness as a hazard to safety, health or security. In order for appropriate wording to be reached, it might be useful to think of the kinds of deficiencies (not already covered as a hazard to safety, health or security of the seafarer) that would indeed constitute “a clear obstacle to the application of the principles or rights provided for in this Convention”, in the sense that they simply could not be tolerated. Examples might be situations that involve humiliating or degrading or similarly inadmissible treatment of seafarers or a violation of fundamental principles or rights or otherwise put into question the credibility of the new Convention. From statements that have been made by constituents from the outset, it is clear that the Convention will rapidly lose credibility if it is seen to be failing in the realization of its raison d’être – if, in particular, substandard ships can continue to deny the right of seafarers to decent conditions of work, undermining the commitment of Governments and other shipowners to uphold decent work as well as involving unfair competition for those shipowners.
5. If this approach is adopted, the last sentence for paragraph 1 might begin as follows: “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 or the health or the security of seafarers **or ...**”.

After the last “or”, the following wording might be considered “could involve humiliating, degrading or similarly inadmissible treatment of seafarers, violate fundamental principles or rights or otherwise put into question the credibility of this Convention to ensure decent conditions of work”.

Note 14: Standard A5.2.1, paragraph 3

Comment 37 of the Commentary, point 2(g)

1. Paragraph 3 of Standard A5.2.1 concerns the response to complaints that may be made to authorized officials in a port State concerning the seafarers’ working and living conditions on board a ship, in accordance with subparagraph (d) of paragraph 1. In the case of the requirements of the Convention that are largely intangible, defects in their implementation are obviously more difficult for an official to discover unaided, as compared with structural or similar defects. The possibility of receiving complaints is therefore an important element of ensuring compliance and has been agreed. The second sentence of paragraph 3 provides the definition of “complaint” (based on Convention No. 147), which indicates who may make one. The definition is also not controversial although it may be useful to consider whether the words “or the security” should be added for consistency with paragraph 1. The issue to be resolved relates to the scope of inspection upon such complaints. It was the subject of the first sentence of paragraph 3 in the Recommended

Draft, which has been left blank. This provided that in the case of such complaints, “the inspection shall generally be limited to matters within the scope of the complaint, although a complaint may also provide clear evidence for a detailed inspection”.

2. This issue was not discussed in the PTMC except indirectly with respect to the obligatory inspections under paragraph 1. The sentence seems to be combining the principle that an investigation of a complaint should remain within the scope of the complaint with a statement of fact: namely, that while an authorized officer is looking into the allegations in a complaint or even simply visiting the ship for the purposes of the complaint, other circumstances may come to his or her attention which constitute “clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of this Convention” under Standard A5.2.1, paragraph 1 – and justify a more detailed inspection in accordance with subparagraph 1(b). If the above principle and statement of fact are acceptable, the wording could be made clearer in the following way:

In the case of a complaint under subparagraph (d) of paragraph 1, the inspection 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 subparagraph (b) of paragraph 1.

Note 15: Standard A5.2.1, paragraph 4(b)

Comment 37 of the Commentary, point 2(h)

Paragraph 4 of Standard A5.2.1 sets out the various steps of the procedure to be followed where, following a more detailed inspection, the working and living conditions on the ship are found not to conform to the requirements of the Convention. The first step is to bring the deficiency to the attention of the master of the ship concerned and to the flag State. The second step, in subparagraph (b) of the Recommended Draft, which is now blank, was to send an invitation to the flag State and request it to reply to the notification within a prescribed deadline. The paragraph contained two possible versions as to how the invitation should be formulated: the authorized officer of the port State would either “invite a representative of the flag State to be present, if possible,” or “invite the competent authority of that State to send a representative to discuss the matter”. The first formulation, which follows the approach in Convention No. 147, in the view expressed by a Government (during a consultation of constituents between meetings of the High-level Tripartite Working Group), might encourage the invited authority to resist the inspection and the necessary measures to be taken by the authorized officer of the port State. The second approach appears closer to IMO practice which prefers use of national contact points for maritime administrations.²³ The matter was not discussed in the PTMC. The choice between the two formulations (or other similar ones) does not seem to raise any controversial issue.

Note 16: Standard A5.2.1, paragraph 6; Guideline B5.2.1, paragraph 2

Comment 37 of the Commentary, point 2(i))

1. Paragraph 6 of Standard A5.2.1, in the Recommended Draft, concerned the question of detaining a ship which, after inspection, is found not to conform to the requirements of the

²³ IMO: *National contact points for safety and pollution prevention*, doc. MSC/Circ.781, MEPC.6/Circ.2 (Annexes 1 and 2).

Convention. It raised two kinds of issues: (1) the grounds justifying detention, and (2) the condition for release of the ship from detention.

2. *Grounds justifying detention.* The Recommended Draft set out three grounds. The first was the same as that contained in ILO Convention No. 147 (Article 4, paragraph 1), with the addition of the element of security, namely, “(a) where the conditions on board are clearly hazardous to the safety or the health or the security of seafarers”. It also proposed two other cases in which detention would be considered justified:
 - (b) where the non-conformity with the requirements concerned could, in all likelihood, cause serious material hardship to seafarers; or
 - (c) where the non-conformity constitutes a serious violation of the requirements of the Convention and [though this further element was the subject of disagreement] there is evidence that the ship concerned has on several recent occasions been in serious violation of those requirements.
3. Some of the wording in (b) and (c) above involves value judgements. It was not proposed to provide definitions of these terms in Part B of the Code, but rather to provide guidance on the kinds of situation that would be covered (see below).
4. Paragraph 6 was not discussed in the PTMC, but it has been the subject of criticism over several years, with some constituents considering that the extension of the grounds of detention goes too far, and others considering that it does not go far enough. However, the path to consensus might be made easier if the same approach were adopted as that underlying paragraph 1 of the Standard (see Note 13 above) concerning the grounds for carrying out a more detailed inspection. The approach of paragraph 1 is to distinguish between when action is *justified* (i.e. *may* be taken) and when action is *required* (i.e. *shall* be taken). Such an approach should be helpful to a number of Governments which are concerned, in particular, about the legal and other consequences of taking action in cases where they have doubts as to whether it is justified by the circumstances. With the “may” approach, their inspectors could refrain from taking action in such cases. On the other hand, since the elimination of substandard ships is in the general interest, most Governments can presumably be counted on to take action, in cases where it is clearly justified, to ensure that the situation is rectified even in the absence of an obligation to do so under international law. At the same time it is important to be aware of concerns about the negative human and economic impact of increased resort to detentions of ships and seafarers by coastal/port States and the need to avoid an abuse of discretion in this area.
5. In other words, in order to facilitate consensus on the content of the subparagraphs of paragraph 6, consideration might be given to making the following modification and addition in the text relating to the action to be taken, which follows those subparagraphs in the Recommended Draft. The modification would be to change the first “shall” in that draft to “may”, so that the text in that draft would begin: “the authorized officer carrying out the control **may** take steps to ensure that the ship shall not sail until ...”. The text that could be added would *require* the authorized officer to take the action referred to above where the conditions on board are “clearly hazardous to the safety or the health or the security of seafarers or involve humiliating or degrading or similarly inadmissible treatment, violate fundamental principles or rights or otherwise put into question the credibility of the Convention” (see Note 13 above, point 4).
6. Paragraph 2 of Guideline 5.2.1 provides the guidance, referred to above (see point 3), concerning wording in the proposed new grounds discussed above. In the Recommended Draft, paragraph 2(a) of the Guideline contained proposed guidance concerning the term “serious material hardship”. It suggested that a typical example of a deficiency giving rise to such hardship would be the non-payment of wages over several months. This has prompted questions concerning the relationship with the International Convention on the

Arrest of Ships, which, inter alia, covers “wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf”. In order to make it clear that there would be no requirement on inspectors to look into the financial circumstances of the particular seafarers affected but rather to judge whether the deficiency concerned “could, in all likelihood, cause serious material hardship to seafarers”, the Guideline pointed out that “the inspectors should consider the normal effect of such a situation on seafarers, in general. They should not, for example, be required to look into any other means of support that may be available to the persons concerned or the precise situation in the countries where the seafarers reside”.

7. Paragraph 2(b) provides guidance on what is meant by a “serious violation”. Its wording does not appear to be controversial (although an amendment on an important detail has been proposed by the Seafarers and several Governments).²⁴ The gap following the reference to “fundamental rights and principles or seafarers’ employment and social rights” contained the words “under Articles III and IV of this Convention”. They were removed as those two Articles had been the subject of controversy and had been in square brackets. The issue was resolved at the PTMC.
8. The guidance in paragraph 2(c) related to a ship having been in serious violation of principles or rights laid down in this Convention on “several recent occasions”. It was suggested that “the term ‘several recent occasions’ might be understood as requiring reports of serious violations on at least three occasions over the preceding year”.
9. For the discussion of the above grounds, the logical Cartesian approach would be to agree on the content of the subparagraphs in the Standard first and then consider how to formulate, for the Guideline, the kinds of situation that would be typically covered. However, if there is difficulty in reaching consensus, thought could be given to adopting the pragmatic approach of first considering the kinds of situations in working and living conditions that would definitely justify the detention of the substandard ship (and would not necessarily be covered by reference to safety, security or health) and then inducing the basic principles that should be included in addition to subparagraph (a) of paragraph 6 of the Standard.
10. Alternatively, another way forward may be to consider adopting some form of the existing practice of listing “detainable deficiencies”, found under, for example, the Paris Memorandum of Understanding on Port State Control (Paris MOU)²⁵ and in IMO guidance²⁶ on this issue.
11. *Conditions for release of the ship from detention.* According to an earlier draft of the consolidated Convention, if any of the conditions justifying detention applied, “the authorized officer carrying out the control shall take steps to ensure that the ship shall not sail until it can proceed to sea or leave the port *for the purpose of proceeding to the appropriate repair yard* without danger to the ship or persons on board.” This wording was based on Chapter 1, Regulation 19 of the SOLAS Convention. The Shipowner and

²⁴ See Amendments 154 (C.1/D.8) and 155 (C.1/D.37).

²⁵ See for example, section 9.3.3 or 9.3.4 of Annex 1 to the Paris MOU. Section 9.3.4.10 of the Paris MOU lists the “detainable deficiencies” under existing ILO Conventions (notably those addressed by Convention No. 147 and the 1996 Protocol).

²⁶ See IMO resolution A.882(21), section 4.6.2; see also IMO resolution A.787(19), Ch. 4 and Appendix I.

Seafarer representatives later proposed the deletion (italicized above) of the phrase relating to the repair yard, and the Seafarer representatives proposed the following alternative formulation under which the authorized officer carrying out the control was to take steps to ensure that the ship shall not sail until it can proceed to sea or leave the port without danger to the ship or persons on board *or until the authorized officer has approved a plan of action to rectify the non-conformity and is satisfied that the plan will be implemented in an expeditious manner and overseen by the competent authority* or (presumably) a recognized organization duly authorized for this purpose.

12. Many of the labour standards involve deficiencies which could not be rectified by a repair yard, in which case, depending on the issue, rectification in the port or an approved plan to rectify them is appropriate. However there are issues, particularly in Title 3, where proceeding to the nearest repair yard may be appropriate if the port does not have the necessary facilities to address the problem. It would therefore seem appropriate to have some form of both of the former provisions. It could be that a “plan” would be understood to include the nearest repair yard, in which case a specific reference to a particular course of action would be unnecessary.
13. There has so far been no tripartite discussion of the proposal to delete the phrase “for the purpose of proceeding to the appropriate repair yard” and of the proposal to add the clause in italics above relating to “a plan of action”. Constituents may therefore wish to consider these two proposals first.

Note 17: Standard A5.2.1, paragraph 7

Comment 37 of the Commentary, point 2(j))

1. In the Recommended Draft, Standard A5.2.1 included a paragraph 7 which read as follows: “Each Member shall ensure that its inspectors are given guidance, of the kind indicated in Part B of the Code, as to the kinds of circumstances justifying detention of a ship under paragraph 6 above.”
2. This paragraph does not appear to be controversial, although for consistency the provision should be adjusted from “inspector” to “authorized officers”. The importance of providing guidance to port state control officials has been constantly expressed. However, it may be considered more useful to develop more detailed materials to guide port state officers and flag state inspectors in line with existing port state inspection training materials.

Note 18: Regulation 5.2.2, Standard A5.2.2 and Guideline B5.2.2

Comment 37 of the Commentary, points 3 and 4
Report of PTMC Committee No. 1, PTMC04-RP4(Rev.),
paragraphs 381-383

1. In the Recommended Draft, Regulation 5.2.2 and its associated Standard and Guideline related to onshore seafarer complaint-handling procedures. All the provisions were submitted to the PTMC inside brackets; some were considered controversial, but most of them simply in need of discussion. At the PTMC, the representatives of the Seafarers stressed that this Regulation was a fundamental issue which raised important questions of international law such as equality, non-discrimination and rules regarding conflict of laws. A number of papers were to be prepared by participants on this issue. However, there was no further discussion. The provisions have therefore been left blank in the Draft Convention and are thus, as a whole, an issue to be resolved.

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2. The issue raised here has provided participants with difficulty throughout the development of the draft Convention. In the joint submission²⁷ the main issue upon which the Seafarer and Shipowners had differing views was whether all Members should be required to provide a mechanism for seafarers to voice complaints about breaches of the Convention requirements by a shipowner, or whether such complaints should be dealt with by the flag State only. This was initially a matter of concern primarily to one Government whose national law required exclusive jurisdiction for matters relating to its legislation. At the PTMC the issue appeared to be linked to concerns about courts or adjudicators of one State potentially interpreting legislation and passing judgment on another State.
 3. The Seafarers submitted a paper articulating their view that it is not appropriate for this Convention to contain a provision which essentially dictates choice of forum for seafarers. The problem faced by seafarers is that often ships may not ever be in the flag State, or be in the flag State long enough, to bring a complaint: it may not be possible for the seafarer to bring a complaint in the flag State if the issue is not resolved by the on-board procedures under Regulation 5.1.5. In their view, seafarers should be able to then bring a complaint about a breach of the national law of the flag State implementing the Convention in whatever forum they choose, subject to the national rules and practices regarding the exercise of jurisdiction by the particular forum. To require that seafarers pursue their rights only through the flag State in effect bars them from seeking other forums: it treats them differently from other people and is contrary to the principle of equality.
 4. The main concern of the Shipowner group in the PTMC, which appears from a paper prepared by it to assist Government representatives in the relevant Committee, is that the flag State should be responsible for handling and settling conflicts and should not leave such matters to other States. The flag State should be expected to have in place laws and regulations providing for expeditious and fair procedures for the handling and settlement of seafarers' complaints. The basic right of the seafarer would be to get the matter reported to the flag State and to the flag State's foreign stations or representatives in the port State. If the flag State's laws and regulations do not provide for handling and settling complaints overseas, in their view, the appropriate forum should be the seafarer's State of residence.
 5. For Governments the issue raises a mix of questions. From a port state perspective it appears to be a matter of concern that they may be expected to provide services to address complaints by individuals regarding a breach of another State's laws. For one or two Governments there is a concern about the barriers to ratification if a matter over which they would claim exclusive jurisdiction is heard in another State. It also raises concerns that the flag State may not then be given the information or opportunity to fulfil its international responsibility to address the breach of its laws by a ship under its flag.
 6. Under international law, individuals are not parties to conventions even when they are beneficiaries of the convention concerned. It is the State that has the obligation to implement conventions and is accountable internationally for a failure to do so. There have been some instances where individuals have been able to bring complaints against their State of nationality for a failure to implement international obligations in the State; however, the doctrine of exhaustion of local remedies would normally apply. Failure on the part of the flag State to fulfil its responsibilities under the Convention on its ships would result in its being in breach of its international obligations. It would be accountable under the ILO supervisory procedures and be subject to the procedures, under articles 24 and 26 of the ILO Constitution, allowing action by employers' and workers' organizations as well as by other ratifying Members and the ILO Governing Body. It is important in this context to be clear then that the seafarer complaints under discussion would be with

²⁷ See Note 12, para. 1.

respect to breaches of a seafarer's rights under the relevant flag State's laws implementing the Convention, rather than breach of the Convention per se by the flag State.

7. Nevertheless, the principle that local remedies should first be exhausted, which is applied by international forums, may also be relevant in the context of the seafarer complaints under discussion. For example, a communication by an individual alleging a violation of a right under the International Covenant on Civil and Political Rights may not be considered, *inter alia*, "unless it is ascertained that ... the individual has exhausted all available domestic remedies".²⁸ However, the provision continues: "This shall not be the rule where the application of the remedies is unreasonably prolonged." Moreover, as seems to be indicated in the Seafarers' paper, there could be other legitimate exceptions to the rule, connected for example to the need to preserve the anonymity of the seafarer concerned.
8. In developing an approach which meets the range of concerns involved, including the need for the flag State to be informed of breaches where they occur and to have the opportunity to take action to enforce its national laws and for the seafarers to be able to raise such concerns irrespective of location, it may be useful to consider what is already available, since the new Convention has as its mandate to "consolidate" existing Conventions and to have a strong enforcement component. Title 5, for the most part, can be seen as building upon the foundation provided by Convention No. 147 and Convention No. 178. Both address flag state responsibilities, but Convention No. 147 also provides for a port state role. Under Convention No. 147, Article 4, if a Member in whose port a ship is present receives a complaint or obtains evidence that the ship does not conform to the standards of the Convention, it may prepare a report to the flag State, which is copied to the Director-General of the ILO. It may also take measures necessary to rectify conditions on board that are clearly hazardous to safety or health. Complaints can be made by a seafarer member of the crew, a professional body, an association, a trade union and any person with an interest in the safety of the ship. In other words the port State has the right, if not the obligation, to report complaints to the flag State, with a copy to the ILO, and to also take steps to rectify the situation.
9. Another important aspect of port state action under Convention No. 147 is the "may" rather than the "shall", referred to in Note 13 above. In this context there is an important difference between Title 5 and Titles 1 to 4 of the Convention. The mandatory "shall" is important in the earlier Titles, setting out obligations with respect to substantive rights, in order to ensure that there is a level playing field of minimum standards. This consideration does not apply to Title 5, which covers action by Members to ensure that the ships of other Members conform to those minimum standards. Moreover, the Governments concerned have stressed the voluntary character of their cooperation in this respect.
10. Given the very different positions with respect to the handling of on-shore complaints, the solution therefore might be to strengthen the enforcement system, not by substantially creating new obligations, but rather consolidating the action that Governments are already taking or are prepared to take with respect to on-shore complaints. The provisions might thus allow the normal rules on jurisdiction and conflict-of-law principles in each ratifying Member to take their course. For example, the Convention could, in the Regulation, contain a provision recognizing the right of a seafarer on a ship calling at a port in a ratifying Member's territory to file a complaint alleging a breach of the requirements relating to his or her working and living conditions on the ship. The complaint would then be dealt with by the courts or other competent authorities of each Member in accordance with the country's national law and practice. The Convention could then provide for certain obligations on the port State that would essentially be of a practical nature, to make

²⁸ Art. 5.2(b) of the Optional Protocol to the Covenant.

sure that seafarers are able to properly exercise their right of complaint and are certainly not inhibited from doing so. In particular, it is presumably accepted that the officer receiving a complaint must take some action, such as channelling the complaint to the competent authorities of the flag State. It might also be helpful to have an obligation on each Member to identify and designate an officer in its ports who could receive such complaints and to provide advice to the complainants of a procedural nature. Other action, such as actually considering the complaint, could be left to the national law and practice of the ratifying Member. The Standard would also have to lay down certain minimum requirements to protect the fundamental rights of the seafarer – in particular, a duty to take reasonable steps to protect the confidentiality of the complaint.

Note 19: Regulation 5.3, paragraph 3

Comment 38 of the Commentary, point 4

1. Regulation 5.3 was not discussed at the PTMC because of time constraints. As a result, paragraph 3, which had been in square brackets, was removed and is now regarded as an unresolved area. As noted in the Commentary, the paragraph was intended to require legislation by Members that may have labour supply responsibilities to address situations where a seafarers' employment agreement was not in compliance with Convention requirements. It sought to provide an appropriate remedy by requiring that the agreement be interpreted as though it had provisions consistent with the Convention. Any restrictive provisions which were contrary to the Convention would be considered null and void. The application and enforcement of this provision would be a matter for national courts. The issue would arise in cases where, for example, a matter was raised regarding a particular seafarers' employment agreement.
2. The question is whether such a provision is required or useful. At one time it had been placed in Title 2 but had been moved to Title 5 as it was thought to relate more generally to enforcement and compliance. If it is thought to be useful to have such a provision, then the text that was not considered at the PTMC may be a good starting point for this consideration:

Each Member shall, through its national laws and regulations, make appropriate provision to cover cases where a seafarers' employment agreement:

- (a) is inconsistent with the requirements of this Convention; or
- (b) does not include a matter required by the Convention.

Any inconsistent provision shall be considered null and void and the agreement shall be deemed to include the requirements, relating to the matters referred to under (b) above, as implemented in the Member's laws and regulations, applicable collective agreements or other measures.

Note 20: Appendices A5-I and A5-III

Comment 36, point 7(d), Comment 37, point 2(f) and
Comment 39, point 1 of the Commentary
Report of PTMC Committee No. 1, PTMC04-RP4(Rev.),
paragraphs 256, 260, 263

1. Standard A5.1.3, paragraph 1 of the Draft Convention, relating to flag state certification, provides that: "A list of matters that must be inspected and found to meet national law and regulations or other measures implementing the requirements of this Convention regarding the working and living conditions of seafarers on ships before a maritime labour certificate can be issued is found in Appendix A5-I". Standard A5.2.1, relating to port state

inspections, provides (paragraph 2) that “Where a more detailed inspection is carried out on a foreign ship in the port of a Member . . . , it shall in principle cover the matters listed in Appendix A5-III”. The PTMC did not, however, have time to consider the content of the lists referred to in those provisions. The lists have therefore been left blank in the Draft Convention and are issues still to be resolved.

2. As noted in the Commentary, many of the items in these two appendices were generally agreed in the HLTWG, with a few exceptions placed inside square brackets. The two lists of items (with adjustments to reflect decisions taken on some items in relation to other issues – such as the decision to remove the Regulation on seafarers’ identity documents) are set out in Annex B (flag state list) and Annex C (port state list) to these Notes in order to assist discussion of these issues. The square and soft brackets that had been in place for the purposes of the PTMC procedures have been removed from the proposed lists of items.
3. In considering the lists, it may be useful to keep in mind the point that the intention is to provide a list of objectively verifiable items that can be used as indicia of a ship’s compliance or non-compliance with the labour standards both at a particular point in time when inspected and on an ongoing basis when it goes to a number of ports. They are not the total of all of the obligations of the flag State or the shipowner under flag state law implementing the Convention, but are simply an agreed list of matters for the purpose of ship certification systems and for the port state inspection process.

Note 21: Appendices A5-II and B5-I

Comment 36, point 7(c) and Comment 39,
points 2 and 3 of the Commentary
Report of PTMC Committee No. 1, PTMC04-RP4(Rev.),
paragraphs 384-389

1. Appendix A5-II in the Recommended Draft contained proposed models for the maritime labour certificate and the declaration of maritime labour compliance, to be attached to that certificate, and the interim maritime labour certificate. These would be the models prescribed by the Code with which the national certificates and declaration would have to conform in accordance with Regulation 5.1.3, paragraph 3. As recalled in Note 10 above, a Working Party of the Government group drew up a streamlined version of the declaration of maritime labour compliance, which the PTMC did not have time to discuss. The Working Party also suggested consequential changes to the maritime labour certificate. A maritime labour certificate and declaration of maritime labour compliance, which are essentially based on the Working Party’s proposals, are reproduced in Annex D to these Notes.
2. It should be noted that the various subject matter headings in the model declaration will depend upon the decisions taken on the list of areas of inspection referred to in Note 20 above. Only one item, minimum age, is included at present and is used simply to illustrate the way the information might be presented.
3. A model for an interim maritime labour certificate, which takes account of suggestions made in the PTMC in relation to the relevant provisions of Title 5, is contained in Annex E below.
4. According to paragraph 5 of Guideline B5.1.3, an “example of the kind of information that might be contained in a declaration of maritime labour compliance” is to be given in Appendix B5-I. A working basis for this Appendix is proposed in Annex F below. It seeks to illustrate an approach for implementing the provisions suggested by the Government group Working Party referred to in Note 10. Since the appendix is not to contain a model,

but rather to illustrate an approach, the appendix currently presents two of the different substantive areas that are likely to be dealt with in the declaration, minimum age and medical certificates.

Annex A

Merchant fleets of the world by country of registration, 2003 ¹

Registration ²	Gross tons	World percentage	ILO percentage
Albania	70 026	0.01	0.01
Algeria	872 028	0.14	0.15
Angola	44 811	0.01	0.01
Antigua and Barbuda	6 004 650	0.99	1.03
Argentina	433 909	0.07	0.07
Australia	1 905 778	0.31	0.33
Austria	31 991	0.01	0.01
Azerbaijan	637 994	0.11	0.11
Bahamas	34 751 748	5.74 ³	5.98
Bahrain	276 065	0.05	0.05
Bangladesh	446 838	0.07	0.08
Barbados	467 653	0.08	0.08
Belgium	1 392 901	0.23	0.24
Belize	1 533 673	0.25	0.26
Benin	1 003	0.00	0.00
Bolivia	420 356	0.07	0.07
Brazil	3 258 407	0.54	0.56
<i>Brunei</i>	<i>479 972</i>	<i>0.08</i>	
Bulgaria	747 929	0.12	0.13
Cambodia	2 048 296	0.34	0.35
Cameroon	186 825	0.03	0.03
Canada	2 723 001	0.45	0.47
Cape Verde	20 895	0.00	0.00
Chile	963 966	0.16	0.17
China	18 427 955	3.04	3.17
Hong Kong, China	20 507 453	3.39	3.53
Macao, China	2 321	0.00	0.00
Taiwan, China	3 477 144	0.57	0.60

¹ Based on information contained in Lloyd's Register – Fairplay: *World Fleet Statistics 2003*; see also footnote 8.

² The designations employed in this table 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. Countries indicated in *italics* are not ILO Members.

³ Figures of 1 per cent or more are shown in bold.

Registration ²	Gross tons	World percentage	ILO percentage
Colombia	71 131	0.01	0.01
Comoros	416 739	0.07	0.07
Congo	3 402	0.00	0.00
Costa Rica	4 603	0.00	0.00
Côte d'Ivoire	8 958	0.00	0.00
Croatia	847 734	0.14	0.15
Cuba	90 179	0.01	0.02
Cyprus	22 054 166	3.64	3.79
Democratic Republic of the Congo	12 918	0.00	0.00
Denmark	320 356	0.05	0.06
Denmark (DIS)	7 246 602	1.20	1.25
Faeroe Islands	136 855	0.02	0.02
Faeroes (FAS)	22 839	0.00	0.00
Djibouti	4 060	0.00	0.00
Dominica	39 786	0.01	0.01
Dominican Republic	12 790	0.00	0.00
Ecuador	324 472	0.05	0.06
Egypt	1 151 430	0.19	0.20
El Salvador	5 602	0.00	0.00
Equatorial Guinea	31 229	0.01	0.01
Eritrea	21 092	0.00	0.00
Estonia	358 218	0.06	0.06
Ethiopia	81 933	0.01	0.01
Fiji	23 145	0.00	0.00
Finland	1 452 075	0.24	0.25
France	1 459 752	0.24	0.25
French Antarctic Territory	3 285 721	0.54	0.57
Wallis and Futuna Islands	113 748	0.02	0.02
Gabon	12 697	0.00	0.00
Gambia	2 183	0.00	0.00
Georgia	814 934	0.13	0.14
Germany	6 111 779	1.01	1.05
Ghana	121 316	0.02	0.02
Greece	32 203 117	5.32	5.54
Grenada	2 821	0.00	0.00
Guatemala	5 230	0.00	0.00
Guinea	14 488	0.00	0.00
Guinea-Bissau	5 943	0.00	0.00
Guyana	31 633	0.01	0.01
Haiti	1 286	0.00	0.00
Honduras	812 524	0.13	0.14

Registration ²	Gross tons	World percentage	ILO percentage
Hungary	7 568	0.00	0.00
Iceland	187 362	0.03	0.03
India	6 960 567	1.15	1.20
Indonesia	3 840 408	0.63	0.66
Iran, Islamic Republic of	4 851 927	0.80	0.83
Iraq	160 971	0.03	0.03
Ireland	471 031	0.08	0.08
Israel	766 004	0.13	0.13
Italy	10 245 809	1.69	1.76
Jamaica	56 761	0.01	0.01
Japan	13 561 521	2.24	2.33
Jordan	224 217	0.04	0.04
Kazakhstan	15 300	0.00	0.00
Kenya	17 803	0.00	0.00
Kiribati	4 198	0.00	0.00
<i>Korea, Democratic Republic of</i>	<i>958 997</i>	<i>0.16</i>	
Korea, Republic of	6 757 400	1.12	1.16
Kuwait	2 324 290	0.38	0.40
Lao People's Democratic Republic	2 370	0.00	0.00
Latvia	90 927	0.02	0.02
Lebanon	193 324	0.03	0.03
Liberia	52 434 624	8.66	9.02
Libyan Arab Jamahiriya	156 725	0.03	0.03
Lithuania	442 103	0.07	0.08
Luxembourg	1 005 966	0.17	0.17
Madagascar	34 808	0.01	0.01
Malaysia	5 745 771	0.95	0.99
<i>Maldives Islands</i>	<i>63 675</i>	<i>0.01</i>	
Malta	25 134 314	4.15	4.32
<i>Marshall Islands</i>	<i>17 628 157</i>	<i>2.91</i>	
Mauritania	47 647	0.01	0.01
Mauritius	67 634	0.01	0.01
Mexico	972 695	0.16	0.17
<i>Micronesia</i>	<i>18 288</i>	<i>0.00</i>	
Mongolia	336 836	0.06	0.06
Morocco	503 754	0.08	0.09
Mozambique	36 270	0.01	0.01
Myanmar	433 039	0.07	0.07
Namibia	74 524	0.01	0.01
Netherlands	5 702 641	0.94	0.98
Netherlands Antilles	1 510 656	0.25	0.26

Registration ²	Gross tons	World percentage	ILO percentage
New Zealand	205 188	0.03	0.04
<i>Cook Islands</i>	17 615	0.00	
Nicaragua	3 619	0.00	0.00
Nigeria	418 688	0.07	0.07
Norway	3 512 740	0.58	0.60
Norway (NIS)	16 996 583	2.81	2.92
Oman	16 041	0.00	0.00
Pakistan	321 666	0.05	0.06
Panama	125 721 658	20.77	21.63
Papua New Guinea	73 296	0.01	0.01
Paraguay	45 108	0.01	0.01
Peru	223 585	0.04	0.04
Philippines	5 115 708	0.85	0.88
Poland	282 384	0.05	0.05
Portugal	263 868	0.04	0.05
Portugal (MAR)	892 466	0.15	0.15
Qatar	561 646	0.09	0.10
Romania	563 078	0.09	0.10
Russian Federation	10 430 783	1.72	1.79
<i>Saint Helena</i>	1 710	0.00	
Saint Kitts and Nevis	300	0.00	0.00
Saint Vincent and the Grenadines	6 318 042	1.04	1.09
<i>Samoa</i>	10 166	0.00	
Sao Tome and Principe	84 374	0.01	0.01
Saudi Arabia	1 363 912	0.23	0.23
Senegal	45 772	0.01	0.01
Serbia and Montenegro	1 061	0.00	0.00
Seychelles	64 473	0.01	0.01
Sierra Leone	23 157	0.00	0.00
Singapore	23 240 945	3.84	4.00
Slovakia	29 235	0.00	0.01
Slovenia	1 737	0.00	0.00
Solomon Islands	7 401	0.00	0.00
Somalia	6 343	0.00	0.00
South Africa	170 917	0.03	0.03
Spain	676 163	0.11	0.12
Spain (CSR)	1 974 844	0.33	0.34
Sri Lanka	140 701	0.02	0.02
Sudan	23 899	0.00	0.00
Suriname	5 229	0.00	0.00
Sweden	3 579 269	0.59	0.62

Annex B

Appendix A5-I

The working and living conditions of seafarers that must be inspected and approved by the flag State before certifying a ship in accordance with Standard A5.1.3, paragraph 1.

Minimum age

Medical certification

Qualifications of seafarers

Seafarer employment agreements

Use of a licensed private recruitment and placement service

Hours of work or rest

Manning levels for the ship

Accommodation

On-board recreational facilities

Food and catering

Health and safety and accident prevention

On-board medical care

On-board complaint procedures

Payment of wages

Annex C

Appendix A5-III

General areas that are subject to a detailed inspection by an authorized officer in a port State carrying out an inspection pursuant to Standard A5.2.1.

Minimum age

Medical certification

Qualifications of seafarers

Seafarer employment agreements

Use of a licensed private recruitment and placement service

Hours of work or rest

Manning levels for the ship

Accommodation

On-board recreational facilities

Food and catering

Health and safety and accident prevention

On-board medical care

On-board complaint procedures

Payment of wages

Annex D

Appendix A5-II

Maritime Labour Certificate

(Note: This Certificate shall have a Declaration of Maritime Labour Compliance attached)

Issued under the provisions of Article V and Title 5 of the *Maritime Labour Convention, 2005*
(referred to below as “the Convention”) under the authority

of the Government of:

.....
(full designation of the State whose flag the ship is entitled to fly)

by

(full designation and address of the competent person or organization
duly authorized under the provisions of the Convention)

Particulars of the ship

Name of ship

Distinctive number or letters

Port of registry

Date of registry

Gross tonnage

IMO number

Type of ship

Name and address of the shipowner (as defined in Article II, paragraph 1(j),
of the Convention)

.....
This is to certify:

1. That this ship has been inspected and verified to be in compliance with the requirements of the Convention, and the provisions of the attached Declaration of Maritime Labour Compliance.
2. That the seafarers’ working and living conditions specified in Appendix A5-I of the Convention were found to correspond to the abovementioned country’s national requirements implementing the Convention. These national requirements are summarized in the Declaration of Maritime Labour Compliance, Part I.

This Certificate is valid until subject to inspections in accordance with
Standards A5.1.3 and A5.1.4 of the Convention.

This Certificate is valid only when the Declaration of Maritime Labour Compliance issued at
..... on is attached.

Completion date of the inspection on which this Certificate is based was

Issued at on

Signature of the duly authorized official issuing the Certificate

(Seal or stamp of issuing authority, as appropriate)

Endorsements for mandatory intermediate inspection and any additional inspection (if required)

This is to certify that the ship was inspected in accordance with Standard A5.1.4 of the Convention and that the seafarers' working and living conditions specified in Appendix A5-I of the Convention were found to correspond to the abovementioned country's national requirements implementing the Convention.

Intermediate inspection: Signed
(to be completed between (signature of authorized official)
the second and third Place
anniversary dates) Date
(Seal or stamp of the authority, as appropriate)

Additional endorsements (if required)

This is to certify that the ship was the subject of an additional inspection for the purpose of verifying that the ship continued to be in compliance with the national requirements implementing the Convention, as required by Standard A3.1, paragraph 3, of the Convention (re-registration or substantial alteration of accommodation) or for other reasons.

Additional inspection: Signed
(if required) (signature of authorized official)
Place
Date
(Seal or stamp of the authority, as appropriate)

Additional inspection: Signed
(if required) (signature of authorized official)
Place
Date
(Seal or stamp of the authority, as appropriate)

Additional inspection: Signed
(if required) (signature of authorized official)
Place
Date
(Seal or stamp of the authority, as appropriate)

Maritime Labour Convention, 2005

Declaration of Maritime Labour Compliance – Part I

(Note: This must be attached to the ship's Maritime Labour Certificate)

Issued under the authority of: (insert name of competent authority as defined in Article II, paragraph 1(a) of the Convention)

In respect to the provisions of the Maritime Labour Convention, 2005, the following referenced ship:

Name of ship	IMO number	Gross tonnage

is maintained in accordance with Standard A5.1.3 of the Convention.

The undersigned declares, on behalf of the abovementioned competent authority, that:

- (a) the provisions of the Maritime Labour Convention are fully embodied in the national requirements referred to below;
- (b) these national requirements are contained in the national provisions referenced below; explanations concerning the content of those provisions are provided where necessary;
- (c) the details of any substantial equivalencies under Article VI, paragraphs 3 and 4, are provided *under the corresponding national requirement listed below or in the section provided for this purpose below* <amend as appropriate>; and
- (d) any ship-type specific requirements under national legislation are also referenced under the requirements concerned.

1. Minimum age (Regulation 1.1).....

[List of items from Appendix A5-I to be inserted when agreed]

Name:
Title:
Signature:
Place:
Date:

Substantial equivalencies

(Note: Strike out the statement which is not applicable)

The following substantial equivalencies, as provided under the Convention, Article VI, paragraphs 3 and 4, except where stated above, are noted: [insert description if applicable]

.....
.....

No equivalencies have been granted

Name:
Title:
Signature:
Place:
Date:

Declaration of Maritime Labour Compliance – Part II

Measures adopted to ensure ongoing compliance between inspections

The following measures have been drawn up by the shipowner, named in the Maritime Labour Certificate to which this Declaration is attached, to ensure ongoing compliance between inspections:

<State below the measures drawn up by the shipowner to ensure compliance with each of the items in Part I>

1. Minimum age (Regulation 1.1)

.....
.....
.....
.....

[List from Appendix A5-I to be inserted when agreed]

.....

The above measures have been reviewed by <insert name of competent authority or duly recognized organization> and, following inspection of the ship, have been determined as meeting the purposes set out under (b) of paragraph 10 of Standard A5.1.3, regarding measures to ensure initial and ongoing compliance with the requirements set out in Part I of this Declaration.

Name:

Title:

Company address:

.....

Signature:

Place:

(Seal or stamp of the competent authority)

Annex E

Interim Maritime Labour Certificate

Issued under the provisions of Article V and Title 5 of the
Maritime Labour Convention, 2005 (referred to below as “the Convention”)
under the authority of the Government of:

.....

(full designation of the State whose flag the ship is entitled to fly)

by

(full designation and address of the competent person or organization
duly authorized under the provisions of the Convention)

Particulars of the ship

Name of ship

Distinctive number or letters

Port of registry

Date of registry

Gross tonnage

IMO number

Type of ship

Name and address of the shipowner (as defined in Article II, paragraph 1(j), of the Convention)

.....
.....

This is to certify, for the purposes of paragraph 7 of Standard A5.1.3 of the Convention, that:

- (a) this ship has been inspected, as far as reasonable and practicable, for the matters listed in Appendix A5-I to the Convention, taking into account verification of items under (b), (c) and (d) below;
- (b) the shipowner has demonstrated to the competent authority or recognized organization that the ship has adequate procedures to comply with the Convention; and
- (c) the master is familiar with the requirements of the Convention and the responsibilities for implementation; and
- (d) relevant information has been submitted to the competent authority or recognized organization to produce a Declaration of Maritime Labour Compliance.

This Certificate is valid until subject to inspections in accordance with Standards A5.1.3 and A5.1.4.

Completion date of the inspection referred to under (a) above was

Issued at on

Signature of the duly authorized official issuing the interim certificate.....

(Seal or stamp of issuing authority, as appropriate)

Annex F

Appendix B5-I

See Guideline B5.1.3, paragraph 5

SAMPLE of a national Declaration

Maritime Labour Convention, 2005

Declaration of Maritime Labour Compliance – Part I

(Note: This must be attached to the ship's Maritime Labour Certificate)

Issued under the authority of: **The Ministry of Maritime Transport of Xxxxxx**

In respect to the provisions of the Maritime Labour Convention, 2005, the following referenced ship:

Name of ship	IMO number	Gross tonnage

is maintained in accordance with Standard A5.1.3 of the Convention.

The undersigned declares, on behalf of the abovementioned competent authority, that:

- (a) the provisions of the Maritime Labour Convention are fully embodied in the national requirements referred to below;
- (b) these national requirements are contained in the national provisions referenced below; explanations concerning the content of those provisions are provided where necessary;
- (c) the details of any substantial equivalencies under Article VI, paragraphs 3 and 4, are provided *under the corresponding national requirement listed below or in the section provided for this purpose below* <amend as appropriate>; and
- (d) any ship-type specific requirements under national legislation are also referenced under the requirements concerned.

1. Minimum age (Regulation 1.1)

Shipping Law, No. 123 of 1905, as amended ("Law"), Chapter X; Shipping Regulations ("Regulations"), 2006, Rules 1111-1222.

Minimum ages are those referred to in the Convention.

"Night" means 9 p.m. to 6 a.m. unless the Ministry of Maritime Transport ("Ministry") approves a different period.

Examples of hazardous work restricted to 18-year-olds or over are listed in Schedule A hereto. In the case of cargo ships, no one under 18 may work in the areas marked on the ship's plan (to be attached to this Declaration) as "hazardous area".

2. Medical certificate (Regulation 1.2)

Law, Chapter XI; Regulations, Rules 1223-1233.

Medical certificates shall conform to the STCW Convention requirements, where applicable; in other cases, the STCW requirements are applied mutatis mutandis.

Qualified opticians on list approved by Ministry may issue certificates concerning eyesight.

Medical examinations follow the ILO/IMO/WHO guidelines referred to in Guideline B1.2.1

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Declaration of Maritime Labour Compliance – Part II

Measures adopted to ensure ongoing compliance between inspections

The following measures have been drawn up by the shipowner, named in the Maritime Labour Certificate to which this Declaration is attached, to ensure ongoing compliance between inspections:

<State below the measures drawn up by the shipowner to ensure compliance with each of the items in Part I>

1. Minimum age (Regulation 1.1)

Date of birth of each seafarer is noted against his/her name on the crew list.

The list is checked at the beginning of each voyage by the master or officer acting on his or her behalf (“competent officer”), who records the date of such verification.

Each seafarer under 18 receives, at the time of engagement, a note prohibiting him/her from performing night work or the work specifically listed as hazardous (see Part I, section 1, above) and any other hazardous work, and requiring him/her to consult the competent officer in case of doubt. A copy of the note, with the seafarer’s signature under “received and read”, and the date of signature, is kept by the competent officer.

2. Medical certificate (Regulation 1.2)

The medical certificates are kept in strict confidence by the competent officer, together with a list, prepared under the competent officer’s responsibility and stating for each seafarer on board: the functions of the seafarer, the date of the current medical certificate(s) and the health status noted on the certificate concerned.

In any case of possible doubt as to whether the seafarer is medically fit for a particular function or functions, the competent officer consults the seafarer’s doctor or another qualified practitioner and records a summary of the practitioner’s conclusions, as well as the practitioner’s name and telephone number and the date of the consultation.