

**Tripartite Intersessional Meeting on the Follow-up
to the Preparatory Technical Maritime Conference**Geneva
21-27 April 2005

Report of the discussion

Introduction

1. In accordance with the decision taken by the Governing Body of the International Labour Office at its 291st (November 2004) Session, the Tripartite Intersessional Meeting on the Follow-up to the Preparatory Technical Maritime Conference (PTMC) (hereafter referred to as the “Tripartite Intersessional Meeting”) met at the International Labour Office from 21 to 27 April 2005. The work of the Tripartite Intersessional Meeting was divided into two parts, answering to the requirements of the two resolutions: discussion of issues which were not resolved by the PTMC; and discussion of amendments to unbracketed text proposed during the PTMC.

Composition of the Tripartite Intersessional Meeting

2. The Tripartite Intersessional Meeting was attended by 69 Government delegations, with a total of 171 participants, and 44 Shipowners’ and 34 Seafarers’ delegates and advisers. A number of observers from intergovernmental organizations and non-governmental organizations were also present.

3. The Tripartite Intersessional Meeting unanimously elected the following Officers:

Chairperson: Mr. B. Carlton (Government representative, United States)

Vice-Chairpersons: Mr. Zhang Xiaojie (Government representative, China)

Mr. D. Lindemann (Shipowner representative, Germany)

Mr. B. Orrell (Seafarer representative, United Kingdom)

4. It also re-established the PTMC Drafting Committee, to work throughout the Meeting, consisting of:

Mr. D. Roussel (Government member, Canada)

Mr. P. Sadler (Government member, United Kingdom)

Mr. A. Yahmadi (Government member, Tunisia)

Mr. D. Dearsley (Shipowner member, United Kingdom)

Mr. P. McEwen (Seafarer member, United Kingdom)

In addition to the Secretary-General of the Meeting and the Legal Adviser, or their representatives, the members of the Drafting Committee, without the representatives of the Office, also formed a Tripartite Drafting Group to make recommendations as requested by the Meeting before agreed text was considered by the Drafting Committee.

5. The Chairperson of the Meeting, in his opening remarks, reminded the Meeting that, even though the PTMC had been a success, it had not completed its work. Consequently, this Meeting had a clear mandate to produce, in a tripartite manner, a finished piece of work for the consideration of the Conference in February 2006.
6. Mr. J.-M. Schindler, Chairperson of the High-level Tripartite Working Group on Maritime Labour Standards asked the participants to bear in mind their mandate: to deal with unresolved issues and to consider amendments that had been submitted to the PTMC but had not yet been considered. Their task could be summed up in two words: reach compromise.
7. The Secretary-General (Ms. C. Doumbia-Henry, Director of the International Labour Standards Department) summarized the process which had led to the Preparatory Technical Maritime Conference and the holding of the present meetings. She recalled the high level of consensus that had developed with respect to the principles, structure and content of the proposed consolidated maritime labour Convention. She introduced documents PTMC/2005/1 and PTMC/2005/2 and explained that the decision to hold the Intersessional Meeting had been taken to assist the Office in preparing a report to be submitted to the 94th (Maritime) Session of the International Labour Conference due to be held in February 2006. In accordance with two resolutions adopted by the PTMC, this Meeting was to enable further tripartite deliberation on the aspects of the draft Convention that could not be completed at the PTMC. To this effect, the Meeting was, firstly, asked to provide advice to the Office on generally acceptable wording on controversial, unresolved issues (particularly in Title 5) and, secondly, to consider the amendments submitted during the PTMC but which had not been discussed. The Secretary-General noted with regret that, for budgetary reasons, the present Meeting could only work in English, but stated that all new wording on the controversial issues which achieved tripartite consensus would be sent, for comment, to all the constituents in English, French and Spanish. The Secretary-General reminded the Meeting of the initial agreement on structure, content and fundamental approach adopted three years ago at the first meeting of the High-level Tripartite Working Group on Maritime Labour Standards and stressed certain key points such as the importance of having an effective enforcement mechanism as well as the underlying principle of inflexibility with respect to rights, and flexibility with respect to methods of implementation. It was important that the spirit of cooperation of previous meetings continued to prevail to ensure that this final lap on the track to a new Convention would be successfully completed.
8. The Shipowner spokesperson stated that the Shipowners' group remained committed to the goals agreed by the social partners in the Geneva Accord in January 2001 and confirmed later by the Governments during the first session of the High-level Tripartite Working Group. As the current meetings were a continuation of the PTMC of September 2004, all statements made by the Shipowners' group at that Meeting were still valid. The Shipowners' position regarding unresolved issues was reflected in the proceedings of the PTMC. Their views were reflected in a more concise manner in the submission made by the International Shipping Federation on behalf of the Shipowners' group. The stakes of the present Meeting were high. If no broad consensus could be reached on outstanding issues, especially on the enforcement component of Title 5, the definition of seafarers, and on the scope of application, there would be little prospect of the International Labour Conference in February 2006 being a success. The result would be that maritime issues would be removed from the ILO's agenda for a long time.

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9. The Seafarer spokesperson regretted that the present Meeting was necessary, since so many other meetings had been held in the last three years. The issues at hand had all been previously discussed at length. He recalled the agreement set out in the Chairperson's summary, in an appendix to the report of the first meeting of the High-level Tripartite Working Group in 2001, which set out that the new Convention should be simple, clear and easy to apply. The agreement also stressed the importance of effective enforcement mechanisms, both for flag States and port States, and the inclusion of the principle of "no more favourable treatment". It was further agreed that the instrument should involve an extension of port state control, beyond the provisions of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). The Seafarers' group remained committed to these original objectives set by all parties when this process began. They wanted a new Convention that was clear, easy to ratify and to implement, which provided meaningful minimum standards, which would be effectively implemented in practice, establish a level playing field and be on a par with the IMO instruments SOLAS, MARPOL and STCW. While they sought widespread ratification, the Seafarers would not accept a reduction of existing standards. From the outset, the Seafarers had stressed that enforcement and control were fundamental to them. The difficult debates on Title 5 indicated that the Shipowners and many Governments seemed to have moved away from what was originally agreed. There was a real danger that the "seafarers' bill of rights" would become a further tool for deregulation. This was unacceptable. Without effective enforcement and control, existing maritime labour standards would be watered down without securing anything meaningful. The draft Convention's structure retained principles in the mandatory section, while prescriptive details, currently found in existing mandatory Conventions, had been moved to Part B of the Code. The current balance on social security was unacceptable. The Seafarers' group had made substantial concessions that were based on the understanding that effective enforcement and control would be granted in return. If the new Convention did not establish minimum standards which were enforceable and which provided meaningful rights for seafarers, then the Seafarers would prefer to retain the existing instruments, with all their faults. If this Meeting did not provide for effective enforcement and control, the Seafarers' group would consider the process closed and see no point in the holding of a Maritime Session of the ILC. As a way forward, the Seafarers suggested taking into consideration the proposed solutions set forth in the document on unresolved issues for the draft consolidated maritime labour Convention.

Discussion of unresolved issues for the draft consolidated maritime labour Convention, 2006, as set out in PTMC/2005/1

10. The Meeting decided to discuss first the notes on Title 5: Compliance and enforcement, in the document *Unresolved issues for the draft consolidated maritime labour Convention, 2006* (PTMC/2005/1). The report below treats the notes in the order in which they appear in the document, not in the order in which they were discussed.

Note 1: Article II, paragraph 4

Note 2: Article II, paragraph 6

11. Notes 1 and 2 were considered together. The Shipowner spokesperson stated that the Convention must apply to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships of less than 500 gross tons. This condition would make the Convention acceptable to member States. Although excluding ships in domestic trade might have implications for a large number of ships and seafarers,

he recognized the administrative burden for the flag States that including vessels in domestic trade would entail.

12. The Seafarer spokesperson agreed that the Convention should be ratifiable, but disagreed with the Shipowner spokesperson on the definition of ships to be covered by it. He recalled the importance of compliance and enforcement in this Convention. The Convention ought to cover all seafarers, whether on large or small vessels and whether in domestic or worldwide trade. He could not accept that seafarers on vessels of less than 500 gross tons or trading in national waters did not require protection. In fact, seafarers on these vessels might need more protection rather than less. Thus, the Convention should apply to all ships, irrespective of size or trade. Arguments to the contrary would have to be very convincing. Institutionalized “maritime apartheid” was unacceptable. Referring to exceptions in the application of the Convention, i.e. ships engaged in fishing or in similar pursuits and traditional vessels, he saw these as clear cases.
13. He recalled discussions at the PTMC in September 2004, when some of the texts discussed comprised very strict limitations and conditions to any exceptions of vessels under 500 gross tons and in domestic trade. The conditions set by the Seafarers’ group included: the member State, as a result of its stage of development, being unable to ratify the Convention if domestic shipping was to be included; the fundamental rights of seafarers referred to in Article III and seafarers’ employment and social rights referred to in Article IV, paragraphs 1 to 4, being protected by national laws and regulations; the member State, at the time of ratification, declaring its intention progressively to extend the requirements of the Convention to vessels engaged in domestic trade; and the Member agreeing to make annual reports, under procedures similar to article 22 of the ILO Constitution, setting out the progress made to secure the inclusion of ships engaged in domestic trade within the scope of the Convention. Domestic trade would be restricted, in the context of the Convention, to trade solely between ports or terminals within the State the flag of which the ship is entitled to fly, without entering into the territorial waters of other States. Citing *Note 2, Article II, paragraph 6*, he indicated that the Office proposals might show the way towards a satisfactory solution to this question.
14. A small working group consisting of the representatives of the Governments of China, Greece, Japan, Norway, the Philippines, the United Kingdom and the United States was set up by the Government group to draft a proposal for discussion. A representative of the Government of the United States summed up the group’s mandate as drafting a text which would be ratifiable by member States while covering as many seafarers as possible.
15. The representative of the Government of the United Kingdom introduced the proposals that were a package to be submitted to the Maritime Conference. The group proposed to insert “Except as expressly provided otherwise,” at the beginning of Article II, paragraph 4. Article II, paragraph 6, should be deleted. With regard to Title 3, a small tripartite working group should be formed to make proposals for any changes needed to it. Regarding Title 5, the group felt that a maritime labour certificate and a declaration of compliance should be required for ships of 500 gross tons and over which were on international voyages, so that they could be verified by port state control. Therefore, a provision worded as follows was to be inserted in a new paragraph in Regulation 5.1.3.1: “This Regulation only applies to ships of 500 gross tons and over for ships making international voyages.” Consequently, a definition of “international voyage” based on the SOLAS Convention should be introduced into the Convention (Article II). The group also addressed the Shipowners’ group’s concern with regard to inspections and the issuance of the maritime labour certificate and declaration of compliance if and when requested by individual shipowners. Since there was no agreed international standard with respect to the inspection of ships smaller than 500 gross tons, although these ships were still subject to inspection by port States, Guidelines should be developed for their inspection. While ships on non-international voyages would not require a maritime labour certificate and a

declaration of compliance, they would still be subject to the inspection requirements by the flag State. He concluded by referring to other items requiring consequential amendments and stressing the seafarers' right to make a complaint under Title 5.

16. The Shipowner spokesperson supported most of the proposals but needed to consult further on the concept of "Regulation 5.1.3.1 applying only to ships of 500 gross tons and over for ships making international voyages". He had believed that this "Regulation would apply to all ships on international voyages whether they were above or under 500 gross tons".
17. The Shipowner spokesperson suggested that the PTMC Drafting Committee should make it very clear that if the shipowner wanted a certificate, he could get one, but there was no obligation to have one. Nevertheless, the possibility to obtain them should be included in the text.
18. The Seafarer spokesperson referred to the definition of the term "ship" in Article II of the Recommended Draft. According to this definition, "ship" "meant a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply". He asked whether this meant that all seafarers on board ships irrespective of their tonnage, navigating outside inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply, were covered by the scope of this Convention. He also asked whether ships below 500 gross tons or over, regardless of whether they have been engaged or not engaged in international trade, have been covered by the scope of the Convention when these ships were flying the flag of the Member other than the Member with which the trade was conducted. He provided an example of a Liberian ship trading between two ports of the United Kingdom, which was over 500 gross tons and not engaged in international trade. Such a ship should be required to carry a labour certificate and a declaration of compliance. However, the Seafarers' group believed that the present text did not require such a vessel to carry these certificates. Perhaps some wording would be needed to ensure that such a ship would do so. Then he referred to Title 5 of the Draft dealing with port state control. He asked whether port state control was an enforcement mechanism for the standards of the Convention on all ships other than those which navigated exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations applied.
19. The representative of the Government of the United Kingdom stated that the Convention applied to ships trading along the coast of another Member, regardless of their tonnage. As concerned the second question of the Seafarer spokesperson, a Liberian ship of more than 500 gross tons should have a certificate. Port state control was an enforcement mechanism but vessels were subject to flag state inspection every three years regardless of the issuance of certificates. On the other hand, port state control inspectors had the possibility to inspect the ship whenever they wanted to.
20. A Special Adviser of the Office on the consolidated maritime labour Convention (Mr. D. Devlin), upon a request of the Seafarer spokesperson, confirmed that the Convention applied to all seafarers working on any ship covered by the Convention, namely all ships within the definition of the term "ship", except as indicated in paragraph 4 of Article II of the Recommended Draft, and as expressly provided otherwise in the Convention. Some of the ships to which the Convention applies may be excluded from certain provisions of the Convention.
21. The Seafarer spokesperson, referring to Regulation 5.2.2 of Title 5, again used the example of the Liberian ship operating between ports of the United Kingdom. He asked whether this provision meant that there could not be any complaints regarding that Liberian ship brought to the United Kingdom authorities, and they had to be brought instead to the respective authorities of Liberia.

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22. The representative of the Government of the United Kingdom stated that the relevant provision had been drafted having in mind vessels not engaged in international voyages. If these ships were in the waters of another Member, the port state control provisions came into play. Correspondingly, a complaint could be brought to the port state authorities.
 23. The Seafarer spokesperson indicated that even though such a Liberian ship would not be required to have a certificate or declaration of compliance, it should have them. Maritime labour certificates and declarations of compliance should be issued to all ships trading away from the flag State. This issue was not controversial and could go to the PTMC Drafting Committee.
 24. The Shipowner spokesperson said that when ships were away from the flag State, port state control should apply.
 25. The representative of the Government of Canada said that the definition of the ship in the Recommended Draft was a modified definition from the STCW Convention. It was possible to modify this definition even further, by including into it the clarification that it applied only to the ships in the waters of a member State, and not in “another member State”. He provided an example of Canada, where Swedish ships were navigating in winter in the Great Lakes. The Government of Canada wanted the full Convention to be applied to these ships.
 26. The representative of the Government of the United Kingdom did not agree, as it would interfere with the application of the Convention as a whole. The PTMC Drafting Committee should consider this issue. The representative of the Government of Greece agreed.
 27. The representative of the Government of Norway recognized the Seafarers’ group’s problem, which could be resolved by amending the definition of “ship”. When the ship was navigating between two national ports, national sovereignty should be exercised. This might mean more documents for open cabotage than required by the Convention.
 28. The PTMC Drafting Committee was asked to prepare text reflecting the working group’s proposals and the present discussions.
 29. The representative of the Government of the Philippines considered that it was preferable to have a more general clause for the application of Title 3 and suggested the following wording: “After consultation with the relevant shipowners’ and seafarers’ organizations, the competent authority may decide to what extent the provisions of this Title do not apply to ships of less than 500 gross tons.” The Shipowner spokesperson agreed with the proposal.
 30. The Seafarer spokesperson stated that the general clause should not apply to the entire Title 3, which included issues such as food and catering, noise levels, etc. Furthermore, the proposal appeared to allow for the competent authority to consult with the relevant shipowners’ and seafarers’ organizations and then decide not to apply the whole of the Title to ships of less than 500 gross tons. He requested further discussion of this suggestion.
 31. The representative of the Government of the United States recalled that Committee No. 2 of the PTMC recognized that Title 3 might change depending on consideration of Article II. There were two options: either a flexibility clause introduced for small vessels to each relevant section in Title 3, or a general exemption clause. She supported the proposal made by the representative of the Government of the Philippines.

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- 32.** The Seafarer spokesperson considered that the general clause needed to identify where exactly changes could take place. He expressed concerns about it covering all of Title 3, which would allow too much flexibility. The proposal should go to the Tripartite Drafting Group and come back to the Meeting for further debate.
- 33.** The representative of the Government of the United Kingdom, as member of the Tripartite Drafting Group, sought clear instructions that the proposal of the Philippines should only apply to Regulation 3.1 of Title 3, “Accommodation and recreation facilities” and be put in the Regulation at the appropriate place.
- 34.** The Shipowner spokesperson recalled that the discussion in Committee No. 2 of the PTMC on food and catering had not been controversial. Even in the case of small ships and small crews, the text had not been contentious. Regulation 3.1 was clear; the Tripartite Drafting Group could make a proposal on Regulation 3.2.
- 35.** The Seafarer spokesperson had a different view. Accommodation was an important issue and his group would be unwilling to have a clause that enabled the possible exclusion throughout Title 3.1 without a full debate. Even if the flexibility clause applied only to Title 3.1, it would be too broad, since many accommodation issues were important for all ships regardless of size. The proposal made by the Government group was a package and should be referred to the PTMC Drafting Committee. However, a small ad hoc tripartite group of technical experts should meet intersessionally before the deadline for papers for the Conference in order to discuss and make proposals necessary to Title 3. If a small tripartite group got together during the present Meeting to identify possible areas that the ad hoc tripartite group of technical experts should consider afterwards, it could be useful.
- 36.** A small tripartite working group, composed of representatives of the Shipowners’ and Seafarers’ groups, as well as representatives of the Governments of China, Japan, Republic of Korea, Norway, United Kingdom and United States, met and produced the following proposal for inclusion at the end of Standard A3.1:
9. Members may, after consultation with the organizations of shipowners and seafarers concerned, exempt ships below 200 gross tonnes where it is reasonable to do so, in relation to the requirements listed below, taking into account the size of the vessel and the number of persons on board.
 - a. A3.1.5(r), (v) and (z/i);
 - b. A3.1.5(e) with respect to the air conditioning only;
 - c. A3.1.5(aa), (bb), (cc) and (dd) – all with respect to floor area only.
 10. Any exemptions with respect to the requirements of this Standard may be made only where they are expressly permitted in this Standard and only for particular circumstances in which such exemptions can be clearly justified on strong grounds and subject to the protection of the seafarers’ health and safety.
- 37.** A spokesperson for the group said that, notwithstanding the flexibility in the draft instrument, further flexibility was needed in order to exclude vessels below a certain limit. The working group had agreed on a limit of 200 gross tonnes. Second, it had agreed that consultation would be necessary before any exemption could be allowed, since the size of the vessel and the number of persons on board must be taken into account. Third, it felt that the nature of the requirement concerned needed to be taken into account.
- 38.** The Shipowner spokesperson supported the proposed text and the reasoning behind it.

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39. The Seafarer spokesperson said that the results of the working group had fallen short of their expectations. The draft instrument should not include standards lower than those in the proposed Convention on work in the fishing sector that would be considered by the 93rd Session of the International Labour Conference in June 2005. For this reason, the Seafarers preferred deferring decision on this matter until July 2005, when the final version of the Convention on the fishing sector would be available.
 40. It was agreed that the drafting group's text could be adopted and sent to the PTMC Drafting Committee with the reference to 200 gross tonnes in square brackets for consideration at the Maritime Conference.
 41. The Chairperson concluded that there was consensus on the way to go forward. The Meeting referred the text to the PTMC Drafting Committee.

Note 3: Article VIII, paragraph 3

42. The Shipowner spokesperson stated that, since as many seafarers as possible should be covered by the Convention, a quick entry into force was necessary. On the other hand, the "no more favourable treatment" provisions called for more ratifications to make the Convention credible. He therefore supported the first part of the Office proposal: that the Convention "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 those Members with a share of at least [one] per cent of the world's gross tonnage of ships". However, he did not agree with the second part of the Office proposal which would add the words "and at least half the number of Members supplying seafarers ...".
43. The Seafarer spokesperson said the issue could be settled at the Maritime Conference in 2006. The first part of the Office proposal was constructive, though it might be useful to consider tonnage held by traditional flag States, as opposed to that held by flags of convenience, before reaching agreement. He also opposed the second part of the proposal. The Seafarers' group's current position was that the number of ratifications should be 30, and that the total share of the gross tonnage of ships should be 33 per cent. He added that consideration might also be given to requiring that half the Members should have a fleet of perhaps 0.8 per cent or 0.7 per cent, as opposed to 1 per cent.
44. The representative of the Government of the Netherlands made a statement on behalf of the European Union States present at the Meeting. She highlighted that there was no such thing as an EU block ratification of a Convention; it was a national procedure. She then stated that the Article in question should indicate the lowest possible number of Members and share of gross tonnage. She agreed that it would be more appropriate to discuss this question at the Maritime Conference in February 2006. This position was supported by the representatives of the Governments of Norway and Cyprus, though the latter said he was sure that the EU would require its Member States to ratify the Convention at a later date.
45. The representative of the Government of Japan was concerned about the Office proposal, particularly having regard to the principle of "no more favourable treatment", which was being included for the first time in an ILO Convention.
46. The Chairperson said it was clear that a conclusion on this issue could not be reached during this Meeting; the item would therefore need to be taken up in the Maritime Conference in February 2006.

Note 4: Article XIV, paragraph 5

47. The Shipowner and Seafarer spokespersons said that their groups' positions remained the same as expressed at the PTMC: they preferred that amendments be ratified by 12 Members with a total share in world shipping tonnage of at least 12.5 per cent.
48. The Chairperson asked whether any Government representatives wished to state their position on this issue. However, in recognition of the fact that they had not had an adequate opportunity to discuss this issue in detail, it was set aside until the Maritime Conference.

Note 5: Article XV, paragraph 2

49. The Shipowner and Seafarer spokespersons said that the positions their groups had taken at the PTMC had not changed: they preferred that amendments introduced by a Government must be supported by nine other Governments (1 + 9).
50. Two Government representatives proposed alternative formulations: the representative of the Government of Japan proposed a total of five or seven, and the representative of the Government of the Republic of Korea proposed "1 + 4". The issue was not further discussed.
51. The Chairperson of the Government group noted that in their group meeting, many Governments had expressed their views on the numbers required to support the amended proposal. Most had concurred with the position of the social partners (1 + 9 solution); some had preferred the 1 + 4 option.

Note 6: Article XV, paragraph 7

52. The Shipowner and Seafarer spokespersons wanted paragraph 7 to provide that "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 from more than one-third of the Members which had ratified the Convention". However, the Shipowners' group did not want any requirement concerning the share of the world's tonnage, while the Seafarers' group wanted a requirement of not less than 50 per cent of the world's tonnage.
53. In relation to this issue, as well as other provisions where there were blank spaces in the text, the Shipowner spokesperson indicated that it would perhaps be better not to end the present Meeting with a draft Convention that had blank spaces. The draft should reflect the Meeting's good ideas even if the question of entry into force was left pending.
54. The Secretary-General responded by saying that the Office's responsibility was to prepare the text and the report and present it to the Maritime Conference in February 2006, in accordance with the Standing Orders of the Conference. The PTMC, as well as the present Meeting, had provided enough guidance as far as legal requirements were concerned, but the practicalities were different. It would simplify matters for the Maritime Conference if the Meeting produced a document without any blanks, in which case the Office text would remain unless an amendment to it received majority support. It would be preferable if the only issue left blank concerned the entry into force requirements.
55. The Seafarer spokesperson would accept either Office text or blank spaces and assumed that an innovative procedure for introducing amendments and making them receivable in the latter case would be devised for February 2006.

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56. Several Government representatives said that the issue should be decided at the Maritime Conference. Some of them said that, where blanks did appear, the issue could be addressed in the Office report accompanying the draft Convention.
57. The Chairperson closed the discussion. The language was generally agreed, it was the numbers that remained open. As there was no consensus, reference to Members supplying seafarers in the draft could be omitted.
58. The Secretary-General stressed that the possible reference to Members supplying seafarers was simply one of the ideas put forward by the Office to help achieve consensus on the unresolved issues in the draft Convention adopted by the PTMC. Where tripartite consensus was not reached, as was the case with regard to Article VIII.3 and Articles XIV and XV, the text as set out in the draft Convention would, as a general rule, be presented to the Maritime Conference in February 2006.

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

59. The Shipowner and Seafarer spokespersons explained that their groups had reached agreement on paragraphs 1(a) and (b) of Standard A4.2, as follows:
- (a) shipowners shall be liable to bear the costs for seafarers working on their ships in respect of sickness and injury of the seafarers occurring between the date of commencing duty and the date upon which they are deemed duly repatriated or arising from their employment between those dates.
 - (b) shipowners shall provide financial security to provide compensation in the event of the death or the long-term disability of seafarers due to an occupational injury, illness or hazard as set by national law or the seafarers' employment agreement or collective agreement.
60. The representative of the Government of Ukraine expressed his reservations regarding the substitution of "insurance coverage" by "financial security" the meaning of which was not clear.
61. The representative of the Government of Singapore said there should be wording to ensure that the compensation set out in the seafarers' employment agreement or collective agreement was not lower than the limits set by national law.
62. The representative of the Government of the Philippines pointed out that in cases where insurance cover was used to provide financial security, the terms and conditions were clearly determined in advance. While not disagreeing with the wording suggested by the social partners, he sought clarification.
63. In response, the Shipowner spokesperson explained that the term "financial security" had been used to allow adequate cover to be provided by various means, including insurance. He found the wording suggested by the representative of the Government of Singapore to be unnecessary, since such a contract would, in any case, be void.
64. The representative of the Government of Norway asked the Meeting to consider the possibility that the Singapore Government representative's suggestion could be mistaken for a provision introducing minimum wages; caution was necessary.
65. The Shipowner spokesperson was also uneasy about introducing wording that might not be in line with other agreed provisions.

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66. In response to a request for clarification by the representatives of the Governments of Cyprus and the Islamic Republic of Iran on the meaning of “national law” in paragraph 1(b), the Seafarer spokesperson pointed to the beginning of paragraph 1 and explained that this formulation referred to the national law of the flag State.
 67. The representative of the Government of Greece acknowledged that also from a practical point of view flag States were able to deal adequately with employment contracts of foreign seafarers. The wording suggested by the representative of the Government of Singapore was superfluous because this aspect could be dealt with in national laws and need not be included in a Convention setting out minimum standards.
 68. In view of the understanding that the amendment proposed by the representative of the Government of Singapore was unnecessary, since any agreement below limits set by national laws would be illegal, the Meeting agreed to the text as proposed by the Shipowners’ and Seafarers’ groups.

Note 8: Guideline B4.5, paragraph 5

69. The Shipowner spokesperson announced that a new text had been agreed by the two social partners on this issue. It was proposed that paragraph 5 of Guideline B4.5 should read as follows:

Members who have nationals, non-nationals or both serving on ships that fly their flags should provide the social security protections in the Convention as applicable and periodically review the branches of social security protection in Standard A4.5.1 with a view to identifying any additional branches appropriate for the seafarers concerned.

70. The Seafarer spokesperson confirmed his agreement with the text but requested that it refer specifically to seafarers. The text could otherwise be left to the PTMC Drafting Committee. The representatives of the Governments of Namibia and Pakistan agreed.
71. The representative of the Government of France agreed with the draft text, but noted that in his country and in many others, it would be more relevant to refer to “residents or non-residents” rather than to “nationals or non-nationals” since national legislation would govern residents regardless of their nationality.
72. The representative of the Government of the Netherlands proposed the following change: “Members who have seafarers serving on ships who fly their flags”. This would satisfy the Seafarers’ group’s concern and ensure there was no distinction between nationals and residents.
73. The representative of the Government of Ghana noted that in many countries social security is not adequately captured in existing statutes. The proposed text should read: “periodically review the branches of social security protection in Standard A4.5.1 as deemed appropriate for the seafarers concerned”.
74. The Seafarer spokesperson stated that the use of the terms “nationals, non-nationals or both” was important with regard to multinational crews but that the social partners might be able to accept “residents, non-residents or both”. Regarding the proposed deletion of “any additional branches”, he reminded the Governments that this referred to the nine branches of social security and should be mentioned clearly in the text. He cautioned against amending the text proposed by the social partners.
75. The Shipowner spokesperson said the draft text was a good compromise on a difficult task. He supported the use of “nationals or non-nationals” but could also agree to the terms

“residents or non-residents”. The Shipowners would need to consult their experts on social security before giving their opinion on the changes proposed by the representative of the Government of Ghana.

76. The representative of the Government of the United Kingdom welcomed the new text. Use of “residents or non-residents” could lead to conflict with Standard A4.5, paragraph 3. The representative of the Government of the United Kingdom, therefore, supported by the representatives of the Governments of Germany and Japan, agreed the proposed text with the addition of the word “seafarers”.
77. The representative of the Government of Cyprus agreed with the proposed new text, with the addition of “seafarers” and the use of the term “residents or non-residents”.
78. The representatives of the Governments of the Netherlands, Nigeria, Norway and Singapore agreed with the text as proposed by the social partners.
79. The representative of the Government of the Republic of Korea supported the proposal with the use of “residents or non-residents”.
80. The Secretary-General indicated that following consultations with the Office’s social security experts, and in light of Standard A4.5, paragraph 3, the wording “nationals or non-nationals” was probably more appropriate than “residents or non-residents”.
81. The representative of the Government of the United States saw no harm in accepting the proposal tabled by the Seafarers’ and Shipowners’ groups, and having it reviewed by national social security experts before the Maritime Conference.
82. The Chairperson suggested that this point could be taken up by the PTMC Drafting Committee. In the meantime, clear guidance could be provided by the Office on the use of terms such as “nationals” or “residents”. In addition, since many Governments present were not accompanied by social security experts, they would have the opportunity to consult them in their respective capitals. The Meeting agreed to refer this text, with all the comments made, to the PTMC Drafting Committee.

Note 9: Title 5, paragraph 3

83. The Shipowner spokesperson noted that the issue was to allow the Standards in Title 5 to be amended in the same way as the Standards in the other Titles. His group might be able to support this if Governments indicated that it would not hinder ratification.
84. The Seafarer spokesperson supported the reasoning in the Office report. It would be difficult to get the Standards in Title 5 completely correct when the Convention was adopted, thus changes would be needed in the future. A simplified amendment procedure should therefore apply to these Standards. They, too, wished to hear first the views of Governments.
85. The representative of the Government of China said that Government representatives were generally in favour of Note 9, paragraph 4, option (b), i.e. to delete paragraph 3 of Title 5, though some Governments still had concerns about the effect this might have on certification.
86. The Meeting agreed to the deletion of paragraph 3.

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

87. The Shipowner spokesperson said that, since this was mainly a point for Governments, his group would like to hear their position first.
88. The Seafarer spokesperson indicated that his group had considered reducing paragraphs 10 and 11 to a single paragraph 10. The Office proposal was acceptable, but he also wanted first to hear from Governments. Referring to paragraph 10(a) of Note 10, he asked the Office to clarify the meaning of: “the national requirements embodying the relevant provisions of the Convention”. With reference to paragraph 10(b) of Note 10, he also asked for clarification of the meaning of “the purposes of the present provision”.
89. The representative of the Government of China, on behalf of the Government group, agreed with the proposed text of the PTMC Working Party, and with the draft model documents presented in Annexes D, E and F.
90. The Special Adviser explained that the “relevant provisions” were to be identified in the model declaration of maritime labour compliance – Part II. As could be seen from Part II of the Declaration in Appendix A5-II, the “relevant provisions” concerning minimum age were Regulation 1.1 and the respective provisions of the Code. However, in the present draft Convention this list of the “relevant provisions” had not been completed; it would list all such provisions once Appendix A5-I was agreed. As concerned the meaning of the “purposes of the present provision”, the Intersessional Drafting Group established by the PTMC resolutions had met and had changed all references to “this Article” or “this Standard” etc. because they were not clear. The meaning of “the present provision” would presumably be clarified in the same way.
91. The Shipowners’ and Seafarers’ groups agreed with the Office proposal for paragraphs 9 and 10 of Standard A5.1.3 and paragraphs 1 and 2 of Guideline B5.1.3, and it was accepted by the Meeting.

Note 11: Standard A5.1.3, paragraph 17

92. The Shipowner and Seafarer spokespersons initially said that their groups could support the Office proposal for new text as set out in paragraph 5 of Note 11.
93. The representative of the Government of China, on behalf of the Government group, said that there had been discussion of, and general agreement with, a proposal initially put forward by a small working group consisting of the representatives of the Governments of Bahamas, Greece, Netherlands and the United Kingdom.
94. The representative of the Government of the United Kingdom said that there had been a number of concerns to be accommodated. The original PTMC text had been preferred to the wording proposed by the Office in paragraph 5 of Note 11. The Government group had borne in mind that a proposal at the PTMC to introduce the concept of substantial non-compliance had not been accepted. The thinking behind the proposal was that withdrawal of a certificate is a serious but necessary sanction available to flag States to properly enforce the Convention. The decision to withdraw the certificate could only be made by the flag State, or the recognized organization if so authorized by the flag State. The Convention text therefore needed to be simple yet flexible to cater for all possible scenarios but should also allow for a single serious non-compliance as well as frequent less serious breaches. The proposal consisted of the original PTMC text with the deletion of the final words “by the ship”. It also called for a new provision in the Guidelines, in Guideline

B5.1.3, as paragraph 6, which would read as follows: “When considering whether a maritime labour certificate should be withdrawn, the competent authority or recognized organization should take into account the seriousness and frequency of cases of non-compliance.” The ultimate decision to withdraw the certificate remained with the flag State.

95. The representative of the Government of China noted that several Governments had wished to add a phrase to the effect that the withdrawal of a certificate would have to be in accordance with national laws or regulations. However, this additional text did not have substantial support within the Government group.
96. The Shipowner spokesperson still preferred the wording proposed by the Office in paragraph 5 of Note 11.
97. The Seafarer spokesperson agreed to the proposal of the Government group with two proposed minor changes. In the Standard, the word “the” should be added before “recognized organization” and, in the Guideline, the word “and” should be replaced by “or the”. The PTMC Drafting Committee should consider adding “by the flag State” after the term “purpose”. This was supported by the representative of the Government of the United Kingdom.
98. The Shipowner spokesperson could accept the proposal of the Government group, on the condition that the text of the Guideline was moved to the Standard and, accordingly, “should” became “shall”. This was accepted by the representatives of the Governments of Bahamas, Canada, France, Greece, Malta, Netherlands, Singapore, Sweden, Ukraine and the United Kingdom.
99. The Seafarer spokesperson accepted the Shipowners’ group’s condition. In doing so, he observed that, under the current proposal, the Standard referred to any non-compliance, whereas in the Guidelines, there was a gradation of non-compliances. Moving this text from Guidelines to Standard would thus mean that “serious” non-compliance should be taken into consideration.
100. The Meeting accepted the Government group’s text, as amended, and the proposal to move text from the Guidelines to the Standard with the consequential amendment.

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

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

101. The Shipowner spokesperson recalled that the issues dealt with in Notes 12 and 18 of document PTMC/2005/1 had originally been dealt with together and only separated at a later stage. The text proposed in paragraph 8 of Note 12 was, in principle, acceptable to his group. These provisions should, however, be moved to Title 2, since they resulted from the employment contract. Additionally, thought would need to be given to including provisions on disciplinary measures, which were, so far, lacking in the Convention. It was important to differentiate between minor matters that could be resolved on the ship and others that could not; only the latter should be dealt with under Title 5. Regarding onshore procedures, the propositions in paragraph 10 of Note 18 provided a possible way forward. The speaker referred to paragraph 9.3 of document PTMC/2005/6 and stressed that his group agreed with the Seafarers’ group’s understanding of the limitations of port state

control contained therein. Consequently, complaints procedures were a matter for flag States rather than port States.

- 102.** The Seafarer spokesperson said it was possible to move text on grievance procedures to Title 2. It was crucial, however, to properly differentiate between grievances and complaints. While the former dealt with minor day-to-day issues, the latter required serious attention. He accepted the suggestion of the Shipowners to introduce provisions on disciplinary measures. Regarding onshore complaints, the speaker drew the attention of Governments to Annex 1 of the Seafarers' group's document (PTMC/2005/6), since it provided a good overview of the significance of the issue. Paragraph 3 of Note 18 reflected the Seafarers' group's views: seafarers could not be expected to have knowledge of every flag State's legislation making a reference to solely national laws problematic. In connection with the "no more favourable treatment" clause, if a flag State had not ratified the Convention, it could have no appropriate legislation. In such a case complaints could not be dealt with, rendering useless the "no more favourable treatment" clause. His group agreed to the suggested reporting procedure in paragraph 8 of Note 18, since this would address problems commonly found in cases where flag States were unresponsive or unreachable. This problem would be resolved if seafarers could report to port state control inspectors, who could evaluate actual situations. In response to the Shipowners' support for the concepts contained in paragraph 10 of Note 18, his group opposed the wording "working and living conditions on the ship" unless this term was defined as "seafarers' working and living conditions" in Article 1, paragraph 7(e), of the Labour Inspection (Seafarers) Convention, 1996 (No. 178). The departure from this well-established definition needed to be resolved.
- 103.** In response to a question by the representative of the Government of Ukraine, the Seafarer spokesperson explained that his group gave less importance to the provision of on-board grievance resolution. Onshore complaint procedures were far more important before decisions could be taken regarding onboard procedures and their possible placement under Title 2.
- 104.** The representative of the Government of Canada noted that agreement between the Seafarers' and Shipowners' groups' positions on on-board grievances seemed to exist. Referring to the two options proposed for Regulation 5.1.5 by the Office in document PTMC/04/1, he asked the two groups to elaborate further on their preferred solutions.
- 105.** The Seafarer spokesperson indicated that the proposal of the Office (document PTMC/2005/1, page 25, paragraph 8) provided a possible solution, but it could be improved. Seafarers had to be aware of the existing procedures and have access to them. It was inappropriate for seafarers to go to somebody to ask for a copy of the relevant procedures. Instead, they should have a copy of the procedures together with the employment contract, which would enable them to verify for themselves whether there were grounds for bringing a complaint. Seafarers needed access to the courts in the port where the ship was staying. He referred to the paper submitted by the Seafarers' group and emphasized that he was referring to complaints on issues far wider than those dealing with working and living conditions. Access to courts should be taken only as a last resort. Therefore, it was necessary to rewrite the relevant provisions, preferably in a small working group.
- 106.** The representative of the Government of Liberia indicated that the onshore complaint procedure posed real difficulties. The proposal of the Seafarers' group had to be considered very carefully. His personal position was that it was necessary to create a mechanism to resolve existing difficulties before they escalated. The social partners had to resolve the issue of the onshore complaint procedure first; only then could governments address this issue.

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- 107.** The representative of the Government of Norway recalled that there were considerable concerns about earlier drafts at the PTMC. The explanations provided in paragraph 10 on page 32 of document PTMC/2005/1 were not very helpful. There were diverging national rules, which were not globally recognized through international Conventions. Paragraph 10 might allow for legal action in each ratifying Member. He questioned whether this was supposed to mean that each port was a potential legal venue. This was strange in light of international treaty law. It was necessary to use a different approach. The legal venue for lawsuits had to be addressed directly, rather than implicitly. If the Seafarers' group were ready to do it explicitly, his delegation was ready to agree that the state of incorporation of the company owning the ship, or country of legal residence of the respective seafarers were to be included among possible legal venues. There were a certain number of other options in this regard. However, his delegation could not agree that the mere fact of a ship calling into any port created a venue for all legal suits.
- 108.** The Seafarer spokesperson emphasized the need to differentiate between the procedures dealing with contractual issues and complaints related to breaches of rights. The on-board complaint procedures in Title 5 were necessary. He urged caution in considering the comments made by the representative of the Government of Norway. The position of the Seafarers' group was clearly stated in their paper (PTMC/2005/6). The exclusive jurisdiction of the flag State existed only when the ship was on the high seas. On-board complaint procedures would be used first but these would have limitations and in many circumstances an access to jurisdiction was required in the port where the ship was situated. The issue had to be addressed in a practical way, and it was not possible to ponder the peculiarities of a certain number of ports. A proper onshore complaint procedure was necessary, and it might be helpful to ask the PTMC Drafting Committee to work on this issue.
- 109.** A Shipowner representative indicated that, as far as on-board complaint procedures were concerned, the group would accept the text proposed in paragraph 8 of Note 12, subject to certain adjustments. The grievance mechanism could be moved to Title 2, so that it could also be used to deal with the cases of misconduct. The social partners should address this issue, but only after receiving feedback from the governments. Referring to paragraph 10 of Note 18, he stated that the principles listed there were closely related to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). However, some of the proposals went beyond the principles of Convention No. 147. Complaints should be addressed by the competent authority, not by the courts. Paragraph 9.3 of the paper submitted by the Seafarers' group said that the port state control officer would be required to report any non-conformity which was identified as a result of a ship inspection, which related to the application of national laws, regulations or collective bargaining agreements to the flag State and to the ILO. In this regard, there appeared to be a possible bridge between the opposing views. It was worthwhile to take into account both the principles referred to in paragraph 10 of Note 18, and the views expressed by the Seafarers in their paper.
- 110.** The representative of the Government of China, on behalf of the Government group, stated that most Governments could accept the Office proposals in Note 12. As concerned Note 18 on the onshore complaint-handling procedures, they felt that the text of the Recommended Draft of the consolidated maritime labour Convention, submitted to the PTMC, should be used as a basis and modified to take account of the following stages in the complaint procedures:
- right of a seafarer to report a complaint to the port State;
 - initial investigation of a complaint by the port State, checking that it cannot be resolved by on-board procedures;

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- seeking early rectification by the ship, where practicable;
 - where the complaint cannot be resolved at the ship level, the port State to refer it to the flag State, seeking advice and a plan of action for rectification;
 - where the complaint is not resolved after the foregoing actions have been taken, the port State to report, as appropriate, the matter to the flag State, the ILO, and Shipowners' and Seafarers' representatives in the member State, including any response given by the flag State (as per paragraph 5 of Standard A5.2.1);
 - recording of complaints relating to the Convention.
- 111.** The Government group requested that the Tripartite Drafting Group produce a new draft on that basis. The new text should remain silent on, and not explicitly or implicitly refer to, the legal right of the seafarer to pursue a complaint in a court of law, e.g. absence of all references to jurisdiction, hearings and to the International Convention on the Arrest of Ships, 1999 (“Arrest Convention”). In particular, the new draft text should recognize the need to ensure a practical means of redress for the seafarer, while also clearly recognizing the inherent limitations of port state control (paragraph 9.3 of the Seafarers’ paper) and that the port state authorized officer should have no obligation to resolve all complaints, only to investigate and resolve, if possible.
- 112.** The Shipowner and Seafarer spokespersons agreed that the proposals of the Government group were a good basis for a new text and the Tripartite Drafting Group was requested to prepare one on the basis of the views expressed.
- 113.** The representative of the Government of the United Kingdom reported on the Tripartite Drafting Group’s proposed text regarding Regulation 5.2.2, Standard A5.2.2 and Guideline B5.2.2. The Regulation was open in language and tried not to limit the seafarer regarding the process to be followed. Standard A5.2.2 outlined one procedure that might be employed to implement Regulation 5.2.2, but remained silent on any other possible means. He drew the attention of the Meeting to the use of the word “may” in the first sentence of paragraph 1. However, once the complaint was reported to an authorized port officer, the rest of the procedure became compulsory (“shall”). In paragraph 3, the resolution of the complaint at the ship-board level should be distinguished from the on-board complaint procedure. Paragraph 5 concerned the reporting from port State to flag State in the absence of resolution. If the flag State provided no advice and corrective plan of action, paragraph 6 required the port State to report to the ILO and to its shipowners’ and seafarers’ organizations. He referred to bracketed text in this paragraph, favoured by some members of the Government group, which would require all complaints, whether unresolved or resolved, to be reported to the ILO; the reason was to have the complaints placed in a database which would give an overview of the global situation. Guideline B5.2.2 remained much as it was, except for the new paragraph 5, which dealt with the case of a positive response of the flag State to the request of the port State in paragraph 5 of Standard A5.2.2.
- 114.** The representative of the Government of China, on behalf of the Government group, supported the text, but preferred to suppress the text between brackets since it represented too big a burden.
- 115.** The Shipowner spokesperson supported the text in its entirety and requested it to be referred to the PTMC Drafting Committee.
- 116.** The Seafarer spokesperson felt that the text between brackets should be reconsidered. Regarding the Guideline in paragraph 5, flag States still had to demonstrate their ability to

deal with a complaint. As a consequence, the paragraph needed to be revisited or even deleted.

117. The Shipowner spokesperson agreed to keep the text between brackets, but wanted to move paragraph 5 in the text of the Standard.
118. The representative of the Government of the Netherlands agreed that any unresolved complaint should be reported to the ILO. However, in the case of a resolved case, she was of the opinion that such a reporting would be superfluous, since complaints would be reported under article 22 of the ILO Constitution.
119. An observer (Chairperson of the Paris Memorandum of Understanding) explained that the port state control officer having controlled a vessel would draft a report, mentioning any complaint, resolved or not. This report, once entered into the MOU database, could be automatically passed to the ILO.
120. The Secretary-General specified that reports made under article 22 were submitted at regular intervals determined by the Governing Body, usually several years. This interval would be too long to make ILO interventions effective in complaint resolution. Reporting of complaints to the ILO should be more on a case-by-case basis, and should not be an unacceptable burden to the Office. She gave as an example the database developed by the ILO, in collaboration with the IMO, on abandonment, and assured that the necessary follow-up would be given to such reports.
121. The representative of the Government of Namibia pointed out that the Paris MOU database would not replace the obligation to report as per article 22 of the ILO Constitution.
122. The representative of the Government of Malta had no objection to the retention of the text between square brackets.
123. The representative of the Government of New Zealand, speaking as former Chairperson of the Tokyo MOU, assured the Meeting that the Tokyo Port State Control MOU would have no difficulty in passing on to the ILO the same kind of information as the Paris MOU.
124. The representative of the Government of Norway was of the opinion that, for practical reasons, the expression “copy of the authorized officer’s report” should be rephrased.
125. The representative of the Government of India, on paragraph 6, suggested that the Meeting should specify a periodicity of the reporting. Regarding paragraph 5 of the Guideline, she reminded the Meeting that the flag State always had a first duty to resolve a complaint.
126. The Seafarer spokesperson was encouraged by the debate. A solution could be found to paragraph 5 of the Guideline if “may” was inserted instead of “should”, adding something like “on receiving an acceptable plan of action”, at the end of the paragraph. The Shipowner spokesperson agreed to this proposal.
127. The Meeting agreed that the text relating to the onshore complaints procedure would be referred to the PTMC Drafting Committee, including a number of drafting points that had been raised.
128. The Shipowner spokesperson pointed out that on-board grievances and complaints were usually matters to be solved between the social partners, although he was of the opinion that there was also a need for government involvement. A draft text on the issue was being prepared.

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- 129.** The Seafarer spokesperson, having mentioned that the procedure in Title 2 was not to be involved in the present debate, observed that in Regulation 5.1.5, paragraph 1 could be discussed, whilst paragraphs {2}{3} and {3}{4} had been agreed previously and should be included in the text. Paragraph 4 was important to the Seafarers' group, in particular regarding the copy of the complaints procedure to be provided with the employment agreement. In paragraph 3 there would be amendments, in particular regarding the use of the word "victimization". Guideline B5.1.5 could be improved by the Tripartite Drafting Group. Finally, some of the procedures could be moved to Title 2, but he agreed that it was not for the current discussion.
- 130.** The Meeting agreed that the on-board complaints procedure should be submitted to the Tripartite Drafting Group.
- 131.** The Seafarer member of the Tripartite Drafting Group reported that, after much reflection, the group had agreed to revisit the text of on-board complaint procedures in Regulation A5.1.5, Standard A5.1.5 and Guideline B5.1.5 of the Recommended Draft of the consolidated maritime labour Convention, as submitted to the PTMC. It agreed to replace the two alternative texts for paragraph 1 of Regulation 5.1.5 with the following text:
- Each Member shall require that ships that fly its flag have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of this Convention (including seafarers' rights).
- 132.** The group then agreed to delete paragraph 2 and renumber paragraph "{2}{3}" as paragraph 2, and paragraph "{3}{4}" as paragraph 3 and retain, without change, Standard A5.1.5 and Guideline B5.1.5 of the Recommended Draft.
- 133.** The Meeting agreed and sent the text to the PTMC Drafting Committee.

Note 13: Standard A5.2.1, paragraph 1

- 134.** The Shipowner spokesperson found the Office note useful and generally agreed with it. Port state inspections should be conducted on objective grounds and the amount left to the discretion of inspectors should be limited.
- 135.** The Seafarer spokesperson found the reference to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), extremely helpful. There was a clear distinction between "shall inspect" and "may inspect". Convention No. 147 did not require the States to exercise port state control; such control had to be exercised where there were clear grounds to believe that there was a deficiency. It was totally appropriate for the port state control inspectors to exercise a "value judgement", also known as "professional judgement". Many port state control inspectors were well trained and they could detect many deficiencies relating to ILO standards especially if they were trained. He supported the text proposed by the Office, which provided a good basis for the resolution of this issue.
- 136.** The representative of the Government of China indicated that the Government group had not yet discussed this issue specifically. It seemed easy to accept paragraph 1, but paragraph 2 continued to pose serious concerns to a number of Governments.
- 137.** The representative of the Government of the Netherlands agreed with the first part of paragraph 5 of the Note. As far as the second part of paragraph 5 was concerned, she proposed the following modification: "could violate fundamental principles or rights within the scope of this Convention". Although several Governments including Bulgaria,

Canada and the United States supported the Netherlands' proposal, she withdrew it in favour of a proposal from the Government of Japan.

- 138.** The representative of the Government of Japan supported a strong enforcement mechanism of the Convention. However, port state control should only be complementary to flag state inspections, and its criteria should be clear and objective. The second part of the proposal in paragraph 5 of Note 13 contained far too subjective language. He suggested the following new wording, inspired from Standard A5.1.4, paragraph 7(c), concerning flag state inspections: “a serious breach of the requirements of this Convention (including seafarers’ rights)”.
- 139.** The representative of the Government of Germany suggested that elements of subjectivity could be easily removed by means of guidelines to be developed for port state inspectors. The representative of the Government of the Republic of Korea added that it might be useful to agree on terms of reference for the elaboration of these guidelines.
- 140.** The representatives of the Governments of Australia, Bahamas, China, Ghana, India, Islamic Republic of Iran, Republic of Korea, Liberia, Malaysia, New Zealand, Philippines, Russian Federation and Singapore supported the proposal tabled by the representative of the Government of Japan. The term “fundamental principles” was too subjective, and the alternative suggested by the representative of the Government of Japan included the essence of the proposal by the representative of the Government of the Netherlands while setting more objective, clear and specific criteria and being more consistent with the flag state provisions and Governments which had initially supported this proposal also supported the Japanese proposal when the former was withdrawn.
- 141.** An observer (Chairperson of the Paris Memorandum of Understanding), recalling the recent concentrated inspection campaign on ILO issues, recognized that this was a very subjective area. It took port state inspectors much time and effort to do their job properly. Clear guidelines therefore needed to be developed with the ILO for the training of inspectors in this important area. Port state inspectors would need guidance as to what constituted a violation of fundamental principles and rights. The Japanese proposal was attractive because it reflected flag state responsibilities. However, port state control should not go beyond flag state responsibilities but rather ensure that flag States and shipowners complied with the requirements of the Convention.
- 142.** The representative of the Government of the Republic of Korea observed that Article III of the proposed Convention stipulated that fundamental rights were to be assessed by flag States, not by a port state control system.
- 143.** The Seafarer spokesperson did not find the allocation of responsibilities regarding seafarers’ fundamental rights and principles in Article III as said by the representative of the Government of the Republic of Korea. Moreover, since so many ships rarely had the opportunity to be inspected by their flag State, port state control played an important role in this respect. If the representative of the Government of Japan’s suggestion were to be adopted, allusions to fundamental rights and principles would be lost. The Seafarers’ group reserved its position.
- 144.** The Secretary-General pointed out that the proposal by the Government of Japan emphasized the seriousness of the “breach”. The wording “requirements of this Convention” was defined by Article II, paragraph 1(e), of the draft Convention and referred to the Articles, the Regulations and Part A of the Code.
- 145.** The Seafarer spokesperson was still of the opinion that there was a difference between Article II and the representative of the Government of Japan’s proposal. On the point of

the wording used in paragraph 7(c) of Standard A.5.1.4, regarding flag state versus port state responsibilities, there was a lack of consistency.

146. The Seafarers' group's proposal for insertion in Standard A5.2.1, paragraph 1 was 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 where the authorized officer has grounds to believe that a case of non-compliance constitutes a serious breach of the requirements of this Convention (including seafarers' rights)."
147. The Seafarer spokesperson also remarked that the Office proposal contained in Note 16, paragraph 5, contained interesting wording, and that the allusion to complaints in paragraph 1(d) of Standard A.5.2.1 seemed rather restrictive.
148. The Shipowners' group could accept the Seafarers' group's proposed text, noting that this would not affect their position on later provisions in the text.
149. The Meeting accepted the Seafarers' group's text.

Note 14: Standard A5.2.1, paragraph 3

150. The Meeting accepted the text proposed by the Office.

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

151. The Shipowner spokesperson was willing to follow the majority of the Governments in this issue, since it primarily concerned them.
152. In response to a request for clarification by the Seafarers' group, the Secretary-General explained that two different procedures could be envisaged. One was the procedure contained in paragraph 2 of Article 4 of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), the other was based on IMO rules on national contact points for safety and pollution prevention (MSC/Circ.781, MEPC.6/Circ.2 (Annexes 1 and 2)).
153. An observer (Chairperson of the Paris Memorandum of Understanding) said that paragraph 4 only referred to cases where detailed inspections were carried out and deficiencies were found, but the ship was not detained. Under such conditions, port state control inspectors would normally simply record those deficiencies. The current proposal, however, would go beyond this practice and introduce a requirement specifically to inform flag States. Moreover, it required port state control officers to indicate what measures needed to be taken to rectify deficiencies. This was a large departure from current practice and de facto transferred responsibilities of the flag State to the port state control officer, who might thus be made liable.
154. The representative of the Government of Liberia suggested replacing "shall" with "may" at the end of the chapeau of paragraph 4 to allow for more flexibility and address cases of not necessarily detainable offences.
155. The representative of the Government of Denmark pointed out that while in theory every intervention needed to be reported under SOLAS, actual reports were only made in cases of detention.
156. The Seafarer spokesperson explained that the provision needed to be agreed upon by the Governments. While he supported the opening of records, he reminded Governments of

concerns raised in earlier meetings that too far-reaching requirements could possibly hinder inspection.

- 157.** The representative of the Government of Norway said this was a cumbersome procedure from the perspective of the flag State. In some cases it could take considerable time for an honorary consul to get to the port and when the vessel was not to be detained there was no reason to insist on this travel. He proposed deleting paragraph 4(b) and reintroducing the issue in paragraph 6.
- 158.** Many Government representatives, including Argentina, Australia, Canada, China, Cyprus, Estonia, France, India, Islamic Republic of Iran, Liberia, Malaysia, Malta, Namibia, Netherlands, Panama, Russian Federation, Singapore and Sweden, expressed their support for Norway's proposal.
- 159.** The representative of the Government of Brazil agreed with the first option, namely to invite a representative of the flag State to be present, if possible. He suggested that if paragraph 4(b) were to be deleted, then paragraph 5 might not be clearly understood. The representative of the Government of Pakistan also supported the first option, stating that the presence of a flag state representative could be helpful.
- 160.** The representatives of the Governments of Italy and Malaysia agreed that paragraph 5 should be reviewed.
- 161.** The representative of the Government of the Islamic Republic of Iran supported the Norwegian Government representative's proposal, noting that in paragraph 6 there had been no mention of calling a flag state representative. He wondered why a flag state representative would be sent in cases where there was no cause for detention.
- 162.** An observer (Chairperson of the Paris Memorandum of Understanding) pointed out that his organization carried out 24,000 inspections annually. At the last count, 50 per cent of ships were found to be deficient under current ILO Conventions. This would mean 12,000 notifications being sent a year, with large flag States receiving five or six per day.
- 163.** The representative of the Government of Greece agreed with the Norwegian Government representative's proposal that paragraph 4(b) be added to paragraph 6 with the other references to detention. In paragraph 4(a) there was a provision that the port State shall notify the diplomatic representative of the flag State. Paragraph 5 contained clearly drafted text stating that if the port State felt it should inform the ILO about an inspection then it should also present the views of the flag State. Therefore, rather than inviting a representative to be present, the text could be reworded to invite the flag State to comment on the outcome of a detailed inspection. The representative should be invited to be present only in the case of a detention.
- 164.** The representative of the Government of the Islamic Republic of Iran noted the concern expressed by several delegations regarding paragraph 5. He proposed deleting paragraph 4(b) but retaining the last sentence and adding it to paragraph 4(a).
- 165.** The representative of the Government of India stated that calling for comments from the flag State would be time-consuming. She noted that the new regime of port state control in India was significantly different from the previous one. It would require time to understand labour laws of all countries. She suggested that paragraph 4(b) could be redrafted to allow the flag State to choose either to send a representative or to provide comments. In cases of detention, a flag state representative should be present.

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166. The Shipowner spokesperson noted the majority support for the Norwegian Government representative's proposal and joined the general agreement to move the last phrase from paragraph 4(b) to paragraph 4(a) with the deletion of the rest of paragraph 4(b).
167. The Seafarer spokesperson stressed the importance of paragraph 4(a). There were more deficiencies that did not require detentions than those that did. What might appear to be a minor issue to one party could be of prime importance to another. The notification of deficiencies was therefore important for the Seafarers' group. It could allow for labour inspectors and shipowners to be involved if necessary. The Seafarers' group would support moving paragraph 4(b) to paragraph 6, keeping the final part, "and request the flag State to reply to the notification within a prescribed deadline" in paragraph 4(a). Paragraph 5 should be retained. He acknowledged the high figures regarding annual notifications provided by the Paris Memorandum of Understanding, but highlighted the importance of the notification of deficiencies to seafarers.
168. The Meeting therefore agreed to delete paragraph 4(b), to amend the text of paragraph 4(a) by adding the last phrase from paragraph 4(b), and to include the provision regarding notification (in paragraph 4(b)) in paragraph 6..

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

169. The Shipowner spokesperson said that the port state control officer should be able to require that the ship be brought up to the standards of the Convention. This might involve a single major deficiency or cumulative minor deficiencies. The Shipowners' group wished to hear in particular from the Paris MOU representative on which areas presented difficulties for port state control inspection.
170. The Seafarer spokesperson recalled that the discussion on this issue at the PTMC had been inconclusive. There was nothing frightening about the concept of detaining a ship for labour issues. Port state control officers were professionals, with sound professional judgement. The logic developed in paragraphs 4 and 5 of Note 16 was acceptable.
171. The Seafarer spokesperson then gave a detailed summary of document PTMC/2005/6 that had been submitted by his group. It provided an overview of the original objectives behind the development of the consolidated maritime labour Convention and a general overview of port state control in the context of ILO instruments. It also examined the current regime established by ILO Convention No. 147 and how it was enforced. The purpose of the paper was to build on current practice and to draw on the relevant experience elsewhere and his group's expectations on port state control enforcement in the context of the proposed new Convention. The document first stressed the importance of the existence of enforcement mechanisms. It then provided views on the notion of substandard shipping. It referred to how port state control was conducted, particularly within the Paris MOU system, as regards Convention No. 147 and various IMO instruments. It included a list of factors and areas in the draft Convention that could cause port state control officers to detain a ship. In conclusion, though recognizing the inherent limitations of port state control, it set out how port state control officers might, if not always act on certain issues, report to the flag State and to the ILO on non-conformities to be addressed by the flag State or, failing that, the ILO oversight system. The Seafarers' group had a pragmatic approach to Guideline B5.2.1, as referred to in paragraph 6 of Note 16. As for the issue of allowing a ship to be released to sail to a repair yard (paragraph 11 of the note), this was slightly problematic, although deficiencies related to accommodation could justify such a requirement.
172. An observer (Chairperson of the Paris Memorandum of Understanding) appreciated the Seafarers' document. He confirmed that his organization wanted to use the

SOLAS/MARPOL approach with the present Convention. This approach, or model, had two main principles: the existence of clear grounds, and the ultimate responsibility resting with the flag State not the port state control officer. The ILO had to be kept involved in the procedures. The new Convention would go further than Convention No. 147, and the Paris MOU could check on anything, as long as proper and clear indications on implementation were given to the appropriate personnel. Paragraph 6 of A5.2.1 was less onerous than paragraph 4. The Paris MOU was ready to work with the ILO on the development of clear guidance, but which might, however, be a slow process.

- 173.** The representative of the Government of Norway, supported by the representative of the Government of Denmark, expressed sympathy for the Seafarers' document, but raised a problem of principle regarding the issue of non-payment of wages, where he saw a contradiction between the application of the Arrest Convention and the recourse to the arrest of the vessel that was being envisaged in this Convention through port state control. Existing arrangements, such as the deposit of a guarantee in a bank by the shipowner, could be jeopardized if recourse to port state control action was systematically applied.
- 174.** The representative of the Government of Canada requested the view of the Seafarers' group on their preferred method. The Seafarer spokesperson remarked that wages were a new area in this respect. The application of the Arrest Convention involved strong action, such as the auction of the vessel. Such a drastic solution was not always necessary, and the involvement of a court always took time. The port state control solution usually was quicker and simpler.
- 175.** The representative of the Government of Ukraine referred to examples of possible factors and areas that could result in detention of a vessel by port state control officers, as provided in paragraph 8.6 in the Seafarers' paper and asked which of these points were of the highest priority. In response, the Seafarer spokesperson said that this was a list of areas of concern and they did not expect all of the items to be retained and incorporated in the guidelines.
- 176.** The representative of the Government of the Republic of Korea said that if there was an infringement of seafarers' rights, it had to be rectified; detention of a ship was the only way the situation could be rectified.
- 177.** The Seafarer spokesperson said that if a ship was about to depart on a long voyage, and its crew had not been paid, the port state control officer might try to rectify the issue, but would not necessarily propose the detention of the ship. The action to be taken would be based on the professional judgement of the port state control officer. He was confident that port state control officers would easily be able to undertake the new responsibilities proposed to be included in the Convention.
- 178.** The representative of the Government of the Islamic Republic of Iran drew attention to the need to consider the problem that developing countries would face with regard to the proposed new port state control responsibilities. The inspection items were more subjective compared to items in IMO Conventions.
- 179.** The Seafarer spokesperson reminded the Meeting that, with regard to port state control, the word "may" rather than "shall" should be used, and there was no expectation that developing countries would be able to implement the Convention immediately at the level of the Paris and Tokyo MOUs.
- 180.** The Shipowner spokesperson also expressed his group's appreciation of the paper produced by the Seafarers' group. Points in paragraph 8.6 could be used in the discussion of when "detention" was appropriate and when it was not. The Shipowners' group were agreeable to the use of "may" rather than "shall" as in the previous intervention, with

regard to paragraphs 4 and 5 of Note 16. He also said that “humiliating and degrading” in paragraph 5 should be replaced. The text put forward by Seafarers should be examined to see which items in the proposal could be incorporated in the Convention.

- 181.** The representative of the Government of China, on behalf of the Government group, reported that they agreed on a proposed text for paragraph 6 of Standard A5.2.1 that took into account the importance of having consistency between language and scope. This proposal also had consequential changes for paragraph 2 of Guideline B5.2.1, and read as follows:

Standard A5.2.1, paragraph 6

Where following a more detailed inspection by an authorized officer, the ship is found not to conform to the requirements of this Convention, and:

- (a) the conditions on board are clearly hazardous to the safety or the health or the security of seafarers; or
- (b) the non-conformity constitutes a serious or repeated breach of the requirements of this Convention (including seafarers’ rights);

the authorized officer carrying out the control shall take steps to ensure that the ship shall not proceed to sea until any non-conformities that fall within the scope of (a) or (b) of this paragraph, have been rectified, or until the authorized officer has accepted a plan of action to rectify these non-conformities and is satisfied that the plan will be implemented in an expeditious manner. If the ship is prevented from sailing, the authorized officer shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline. The authorized officer shall also inform the appropriate seafarers’ and shipowners’ organizations in the Member in which the inspection was carried out.

- 182.** The Government group proposed that, as a consequence of this proposal, two of the definitions in former paragraph 2(a) and (c) of Guideline B.5.2.1 would not be necessary. Moreover, the remaining definition would need to be referred to the PTMC Drafting Committee for renumbering and a consideration as to whether the term “breach” or “violation” is more appropriate and adjusted accordingly.
- 183.** The Shipowner spokesperson basically agreed with the text, but subparagraph (c) of Guideline B5.2.1 should be kept.
- 184.** The Seafarer spokesperson suggested that the term “authorized officer” should be defined. He also requested the insertion of “forthwith” after “inform” in the last sentence of the main paragraph. Regarding the Guideline, he did not accept keeping subparagraph 2(c). Finally, he requested a response to the following question: since some references to serious material hardship and to wages had been removed from the text of Standard A5.2.1, did subparagraph (b) permit the detention of a ship for a non-compliance pertaining to Regulation 2.2 and Standard A2.2?
- 185.** The Secretary-General of the Meeting explained that subparagraph (b) referred to serious or repeated breaches of the requirements of the Convention. She noted that, in paragraph 1(e) of Article II, “requirements of the Convention refers to the requirements in these Articles and in the Regulations and Part A of the Code of the Convention”. If, in the professional judgement of the port state control officer, a case of non-compliance with Regulation 2.2 and Standard A2.2, on wages, was a “serious or repeated breach of the requirements”, then detention would be permitted. Proper detailed guidance for port state control inspectors would have to be developed to assist the port state control officer in exercising professional judgement in this and other cases.

186. The Seafarer spokesperson interpreted this response as positive. This was confirmed by the Secretary-General. He accepted the proposal, but noted that his full acceptance would be based on the outcome of the discussion of the items contained in Appendix A5-III.

187. The Shipowner spokesperson announced that his group withdrew its request to retain subparagraph (c).

188. The text, with the addition of “forthwith” was sent to the PTMC Drafting Committee.

Note 17: Standard A5.2.1, paragraph 7

189. The Meeting agreed to the proposal in the Office text to replace “inspectors” with “authorized officers” and asked the PTMC Drafting Committee to review it.

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

(See Note 12)

Note 19: Regulation 5.3, paragraph 3

190. The representative of the Government of Liberia wondered whether there might be a need for labour-supplying States to ensure that manning agents would comply with the Convention as regards checking employment agreements for consistency with the Convention.

191. The Shipowners and Seafarers agreed that this matter was dealt with in Title 2, which clearly established that flag States were responsible. Including text here concerning the role for labour-supplying States would be superfluous and confusing.

192. It was decided that paragraph 3 of Regulation 5.3 should not be included in the draft Convention.

Note 20: Appendices A5-I and A5-III

Appendix A5-I

193. The Shipowner spokesperson had three suggestions on how Appendix A5-I should be amended. First, the reference to the Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185) should be removed, since it was a stand-alone instrument. Second, reference to licensed recruitment and placement services needed to be deleted, since shipowners were often not the direct employer. Moreover, this issue was already covered by the item on the employment contract. Third, in order to reflect the discussions on grievance and disciplinary procedures, these procedures should be added to the item relating to on-board complaint procedures. While his group did not have a suggestion regarding the item on payment of wages, he asked Governments to provide clarification on how they would determine compliance with this requirement.

194. The Seafarer spokesperson agreed that the reference to Convention No. 185 should be omitted and that the item on on-board complaint procedures should be amended by adding references to grievance and disciplinary procedures, once those had been agreed. The

reference to recruitment and placement services should remain and be amended by adding “where appropriate” to reflect cases where these services were not used. In response to the question the shipowners had put to the Governments concerning compliance with the payment of wages, he pointed out that monthly statements of payment would be evidence.

- 195.** A Shipowner representative, commenting on the issue concerning flag state oversight of recruitment and placement services, indicated that certain labour-supplying States might not have a licensing system, yet the employment agreements of seafarers originating from these States might still conform to the requirements of the Convention. He did not wish to see this requirement prevent such seafarers from being employed. Referring to the payment of wages, while he agreed this item should be kept on the list, the issue of minimum wages was addressed in the Guidelines but not in the Standard. The representative of the Government of the Netherlands also wished to hear more on how payment of wages could be inspected.
- 196.** The Seafarer spokesperson clarified that, as regards wages, he was referring to paragraph 4(e) of Standard A2.1, which provided that seafarers’ employment agreements shall contain, among other particulars, “the amount of the seafarers’ wages or the formula for calculating them when wages were calculated using a formula”. This could be checked by the flag State. As concerned the issue of recruitment and placement, he was referring to paragraph 8 of Standard A1.4, which provided that Members “shall require that shipowners of ships that fly their flag, who use seafarers’ recruitment and placement services based in countries or territories in which this Convention does not apply, ensure, as far as practicable, that those services meet the requirements of this standard.” If a Member had ratified the Convention, it had to meet these obligations in order to avoid abuse, such as the seafarers having to pay to obtain jobs. The flag State had to know where the respective seafarers came from, and whether the recruitment agency complied with the requirements of the Convention.
- 197.** A Shipowner representative drew attention to paragraph 2 of Standard A1.4, which provided that “If a Member has private seafarer recruitment and placement services operating in its territory, they shall be operated only in conformity with a standardized system of licensing or certification or other form of regulation”. In his view, Members could have their own form of regulation, which did not necessarily have to involve “licensing or certification”. This might be corrected by changing the wording to “licensing or certification or other form of regulation”.
- 198.** The representative of the Government of Japan, supported by the Shipowner spokesperson, felt that a Member’s supervision over private recruitment and placement agencies in its territory should be differentiated from the flag state responsibility to bring its ships into conformity with the requirements of the Convention. The new paragraph 3 of Regulation 1.4 and paragraph 8 of Standard A1.4 only concerned the flag State’s responsibility to ensure, as far as practicable, that in case of the use on its ships of recruitment and placement services based in *non-ratifying* countries, these services meet the requirements of the Convention. However, there was no requirement establishing such responsibility of the flag State in case of the use on its ships of recruitment and placement services based in States that had ratified the Convention. Paragraph 2 of Regulation 1.4 and paragraph 2 of Standard A1.4 did not entitle the flag State to inspect ships using recruitment and placement services based in States having ratified the Convention. Therefore, the item concerning recruitment and placement services in Appendix A5-I setting out an inspection checklist for flag States should, for the sake of consistency, either be deleted or be amended to refer only to the inspection recruitment and placement services operating in non-ratifying countries. The speaker had similar concerns about Appendix A5-III and asked the Office to clarify this situation.

199. The Seafarer spokesperson requested that it be clarified whether or not this responsibility of the flag State is covered in Regulation 1.4 or Standard A1.4. If not, it would be necessary to correct this serious omission and introduce wording to that effect, since it was a flag state responsibility to ensure by means of inspection that seafarers on board from both ratifying and non-ratifying countries were protected by the Convention.

200. The representative of the Government of Singapore, supported by the representative of the Government of the Philippines, remarked that the flag State and the shipowner had the responsibility to ensure that recruitment services conformed to the requirements of the Convention. There was no need to revisit the matter, which could be also solved by taking away the expression “use of a licensed private”.

201. The Secretary-General clarified that two questions had been raised by the representative of the Government of Japan concerning the inclusion, in the lists of areas to be inspected, of a reference to the use of recruitment and placement services:

Is it appropriate to include this area for flag state inspection, bearing in mind in particular that, in the relevant Regulation (1.4), the obligations expressly placed on flag States are limited to regulating their shipowners in connection with recruitment services based in non-ratifying countries (Regulation 1.4, paragraph 3)?

And, if the area is included, what should be the scope of the responsibility of a Member with respect to ships that fly its flag?

202. She noted that the Regulations in the draft Convention are normally expressed as rights that are generally applicable to all seafarers. With respect to minimum age, for example, the flag state inspectors must ensure that the requirements of the Convention under Regulation 1.1 are observed in the case of all seafarers on ships that fly their country’s flag. However, the basic obligations concerning recruitment and placement services have been worded to take account of their special nature. While the obligation under paragraph 1 of Regulation 1.4 is general in nature, the obligations under paragraphs 2 and 3 are linked to the place where the recruitment and placement services concerned are based. In this connection, there are three possible situations to be considered:

- (a) Shipowners using private recruitment and placement services based in the Member’s own territory.
- (b) Shipowners using recruitment and placement services on the territory of Members ratifying the Convention.
- (c) Shipowners using recruitment and placement services based in countries that have not ratified the Convention.

203. She explained that the situation under (a) above is covered by paragraph 2 of Regulation 1.4: “Seafarer recruitment and placement services operating in a Member’s territory shall conform to the standards set out in the Code”. This is an obligation on each Member as such, irrespective of the capacity in which it is acting. If therefore recruitment and placement services were included on the list of areas to be inspected, the obligation would be relevant in the context of the flag state inspections of the Member, which could of course rely on the supervision of the recruitment and placement services that have already been carried out by the Member.

204. The situation under (c) above is covered, she said, by paragraph 3 of Regulation 1.4: “In respect of seafarers who work on ships that fly their flag, Members shall require that shipowners who use seafarer recruitment and placement services that are based in countries or territories in which this Convention does not apply, ensure that those services conform to the requirements set out in the Code.” The Member’s obligations as a flag State

would essentially relate to ensuring that its shipowners have a proper system for verifying that the recruitment and placement services conform to the requirements in the Code. This is clarified in Standard A1.4 , paragraph 8.

- 205.** Finally, the situation under (b) is covered implicitly by the fact that the obligation under paragraph 3 is limited to countries that have not ratified the Convention. The flag State would therefore not be expected to carry out any further inspection in this situation beyond ascertaining that the recruitment and placement services that the shipowner has used are based in a Member that has ratified the Convention and that the service used is on that Member's list of recruitment and placement services provided regularly to the ILO by the member State concerned. Of course if they had received clear indications that the basic rights in paragraph 1 of the Regulation were not being observed with respect to seafarers on a ship that flies its flag, then they may need to further investigate the situation.
- 206.** The representative of the Government of the United Kingdom, supported by the Seafarer spokesperson, suggested making the terms used in the list in Appendix A5-I consistent with the terms used for the same issues in the headings of the Regulations and Standards of the Convention. This might help avoid some of the problems that had been raised by the Shipowners and certain Governments. This intervention led to a wide-ranging discussion on the possible impact of such a change on the obligations of flag States. It was concluded that this matter should be addressed by the Tripartite Drafting Group.

Appendix A5-III

- 207.** The Shipowner and Seafarer spokespersons suggested that Appendix A5-III, which concerned inspections by port state control officers, should be consistent with Appendix A5-I.
- 208.** The representative of the Government of Germany asked how port state control officers would handle wages issues, especially if they were not the result of a complaint.
- 209.** The Seafarer spokesperson reminded the Meeting that his group's agreement to paragraph 6 of Standard A5.2.1, was conditional on agreement on the appendices. It was clear that the port state control officer did not have to check on wages unless there were clear grounds for doing so. This was not a difficult task for port state control officers to perform, and the issue of wages should remain in the list in the appendix.
- 210.** The representative of the Government of the Republic of Korea drew attention to the matter of inspecting a seafarer's employment contract, citing duplication with other inspection items. In his opinion, the articles of agreement did not contain all the details of the contract. As a consequence, only the particulars listed in paragraph 4 of Standard A.2.1 should be subject to port state control.
- 211.** It was agreed that Appendix A5-III should be referred to the Tripartite Drafting Group.

Note 21: Appendices A5-II and B5-1

- 212.** The representative of the Government of Denmark suggested adding a footnote to the Maritime Labour Certificate in Appendix A5-II to ensure that ships with an interim tonnage figure under the Tonnage Convention, 1969 were adequately dealt with. This was supported by the Meeting, which referred it to the PTMC Drafting Committee that should take up this suggestion.

Annex A

213. The representative of the Government of Argentina read the following statement:

Regarding the way Islas Malvinas appear in Annex A of document PTMC/2005/1, Argentina reaffirms its sovereign rights over Malvinas, South Georgia and South Sandwich Islands and their surrounding maritime areas, which form part of its national territory and in respect of which there is a sovereignty dispute, recognized in the resolutions of the United Nations General Assembly Nos. 2065, 3160, 31/49, 37/9, 38/12, 39/6, 40/21, 41/40, 42/19, 43/25. Unfortunately, these circumstances have not been properly reflected in the abovementioned document.

214. The representative of the Government of the United Kingdom, in response to the statement made by the representative of the Government of Argentina, read the following statement:

The United Kingdom position was last set out in detail by the United Kingdom's Permanent Representative to the United Nations, Sir Emyr Jones Parry, in a written right of reply, dated 30 September 2004, to the statement by President Nestor Carlos Kirchner of the Argentine Republic in the United Nations General Assembly on 21 September 2004. The United Kingdom has no doubts about its sovereignty over the Falkland Islands, South Georgia and the South Sandwich Islands and their surrounding maritime areas.

Discussion of proposed amendments to the draft consolidated maritime labour Convention, 2005

215. The Tripartite Intersessional Meeting reviewed the 159 proposed amendments which had been submitted at the PTMC but not discussed at the time. These amendments were summarized in the *Compendium of proposed amendments to the draft consolidated maritime labour Convention, 2006* (document PTMC/2005/2) which was before the Meeting. The report below treats the amendments in the order in which they appear in the document, not in the order in which they were discussed. It records the discussion of the proposals that were found acceptable, as well as other proposals which were the subject of extensive substantive discussion.
216. The Chairperson reminded the Meeting that, in accordance with the relevant resolution of the PTMC, only amendments achieving tripartite consensus at the Meeting would be included in the Office's report to the Conference.

Amendment 5: C.1/D.14 Preamble, ninth paragraph

217. The representative of the Government of Venezuela strongly opposed the insertion of references to an instrument that not all future Members to the consolidated Convention might have ratified. Issues of sovereignty required them to be removed from the Preamble.
218. The Secretary-General referred to the explanatory texts in document PTMC/2005/2 and added that many ILO Conventions referred to other Conventions in their preamble. The Preamble was drafted to reflect the inspiration and context of the new instrument and did not create any binding obligations. Only references in the substantive text were binding on ratifying member States.
219. The Shipowner spokesperson recalled a discussion on Article III in which the Legal Adviser had confirmed that references in preambles did not create binding obligations.
220. The amendment did not receive tripartite consensus.

Amendment 8: C.1/D.12
Article II, paragraph 1(c)

221. The amendment obtained tripartite support.

Amendment 12: C.1/D.19
Article II, paragraph 4

222. The amendment obtained tripartite support.

Amendment 25: C.2/D.2
Regulation 1.2, Purpose clause

223. The representatives of the Governments of Brazil, China, Ghana, Indonesia, Japan, the Republic of Korea, Liberia, Malta, Nigeria, Pakistan, the Philippines, Singapore and the United States expressed their support of the amendment.

224. The Shipowner spokesperson stated that, while a seafarer might be on shore during leave or while visiting the offices of a shipowner's organization, these areas were not of concern to the Convention. Rather, the Convention dealt with a seafarer's fitness while at sea and the medical certificate indicated this.

225. The Seafarer spokesperson stated that the purpose of this amendment "to ensure a seafarer was medically fit to perform at sea" was a good one and the Seafarers' group supported it.

226. Following some discussion, the representative of the Government of the Netherlands, speaking on behalf of the governments of the EU Member States and acceding States present at the Meeting and Norway, joined the tripartite consensus on this amendment.

227. The amendment obtained tripartite support.

Amendment 30: C.2/D.7
Standard A1.2, paragraph 9

228. The amendment was supported by the Shipowners' and the Seafarers' groups, as well as representatives of Governments, particularly those of Canada, India, the Islamic Republic of Iran, the Republic of Korea, the United States and the EU Member States and acceding States present at the Meeting and Norway.

Amendment 33: C.2/D.23
Regulation 1.3

229. The Shipowner spokesperson did not support this amendment.

230. The representative of the Government of Liberia stated that this amendment had been superseded by the Preparatory Technical Maritime Conference. This was supported by the representatives of the Governments of the United Kingdom and the United States.

231. The amendment did not have tripartite support.

Amendment 34: C.2/D.25
Regulation 1.3, paragraph 2

232. The representative of the Government of Greece was in favour of the amendment, as the definition of a “seafarer” included people on board who would not be certified seafarers but would need familiarization. The amendment was supposed to provide consistency with agreed international standards.
233. The representative of the Government of Liberia reminded the Meeting that familiarization was already a current practice provided for in the STCW Convention. He was supported by the representatives of the Governments of Namibia, Pakistan and Singapore,.
234. The representative of the Government of the United States agreed with the statement of the representative of the Government of Greece, but, in view of the fact that the draft Convention clearly and correctly made a distinction between familiarization and training, she could not support the amendment.
235. The representative of the Government of Indonesia mentioned Chapters 6.1.1 and 6.1.2 of the STCW Convention which referred to different kinds of training. He therefore proposed to use “and” instead of “or” when referring to familiarization and training in the amendment.
236. The representative of the Government of Cyprus said the text should take care of both training and familiarization. The amendment should therefore read “... training and familiarization”.
237. The representative of the Government of the Netherlands supported the requirement of familiarization for people on board who were not professional seafarers.
238. The Seafarer spokesperson stressed that certain shipboard staff needed training on safety in order to make them reliable for emergency situations. He did not like the wording “or familiarization”, as he could not see how familiarization could be “successfully completed,” but his group agreed to the wording “and familiarization”. The Shipowner spokesperson agreed to the new version of the amendment.
239. The representative of the Government of Cyprus proposed to introduce “when necessary” before “and familiarization”.
240. The representative of the Government of the Bahamas pointed out that account should be taken of the circumstances and the type of workers concerned. Some of them needed only familiarization, but not as an alternative to training.
241. The Shipowner spokesperson withdrew the amendment and announced that a new version, taking into account what was said in the Meeting, would be submitted to the Conference.

Amendment 37: C.2/D.31
Regulation 1.4

242. The representative of the Government of Japan supported the promotion of free public employment offices, as his country was providing such services. However, he was concerned with the requirement to “continue” providing them after the entry into force of the Convention, as this could establish a perpetual obligation. Governments might therefore rather discontinue those services before ratifying the Convention. If the intention

was to prevent the undue proliferation of private employment intermediation, this was already taken care of by paragraph 2 of Standard A1.4.

243. The Seafarer spokesperson agreed with that statement and withdrew the amendment.

Amendment 47: C.2/D.41
Standard A2.1, paragraph 1(a)

244. A subamendment was proposed so that the employment agreement would have to be “signed by both the seafarer and the shipowner or a representative of the shipowner”. The amendment, as subamended, obtained tripartite support.

Amendment 48: C.2/D.42
Standard A2.1, paragraph 1(d)

245. The amendment obtained tripartite support.

Amendment 51: C.2/D.45
Standard A2.2, paragraph 1

246. The representative of the Government of Greece proposed to add “... unless otherwise provided for in any applicable collective agreement”. His concern was that the stipulation of monthly intervals should not contradict any larger interval agreed upon in other collective agreements.

247. The representative of the Government of the Islamic Republic of Iran proposed to change “and in agreement with any applicable collective agreement” to “or in agreement with ...” in order to take care of the Greek Government representative’s concern.

248. The amendment received tripartite support, without subamendment.

Amendment 53: C.2/D.47
Guideline B2.2.2, paragraph 1(d)

249. The amendment received tripartite support.

Amendment 55: C.2/D.49
Standard A2.3, paragraph 5

250. The representative of the Government of Japan supported the amendment, as it was in line with the STCW Convention which stipulated a daily ten-hour rest period. He was supported by the representatives of the Governments of Liberia, United States, Philippines, Cyprus, Denmark, and the Netherlands speaking on behalf of a majority of EU Member States present at the Meeting and Norway.

251. The Seafarer spokesperson objected to the notion of “overriding operational conditions” and asked that those should be defined. Ships were often given early orders to sail without any regard to the rest period of the seafarers concerned. He referred to a report on the fatigue of seafarers published in the United Kingdom. Fatigue was the cause of many

casualties and was therefore a crucial issue. He called upon the Governments to reconsider their position since the question would re-emerge at the Conference.

252. The amendment did not receive tripartite support.

Amendment 58: C.2/D.52
Standard A2.7, paragraph 2

253. The representative of the Government of the Netherlands, speaking on behalf of the majority of EU Member States present at the Meeting and Norway, supported the proposal, since it took into account the staffing requirements of the ship's food and catering services.

254. The representative of the Government of Japan objected to the amendment because Standard A2.7 concerned manning levels to ensure the safe, efficient and secure operation of the ship. Food and catering had nothing to do with the operation of the ship and should not be considered when determining manning levels.

255. The representative of the Government of the Netherlands said that food and catering services necessitated work and time, which should be taken into account for the purpose of compliance with the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180).

256. The representative of the Government of the Republic of Korea agreed, considering that the ILO manning levels were wider than those of the IMO.

257. The Shipowner spokesperson, having listened to the arguments, accepted the amendment, which received tripartite support.

Amendment 59: C.2/D.12
Regulation 3.1, paragraph 1

258. The Seafarer spokesperson introduced a subamendment to replace the words "seafarers living and working on board" by "seafarers living and/or working on board". This subamendment was required in order to cover those seafarers who were working but not living on board ship.

259. The amendment as subamended received tripartite support.

Amendment 61: C.2/D.13
Regulation 3.1, paragraph 2

260. While there was no consensus on this amendment at the outset, the representative of the Government of the United Kingdom wished to debate the principle. New ships would be covered by the Convention to be adopted but existing ships had to be covered by the Convention from the point of view of standards prescribed by Conventions Nos. 92 and 133. If the amendment was not accepted, the provisions of the new Convention would not cover ships built on the day before the day of its coming into force. The Seafarer spokesperson said a legal opinion on this issue would be very helpful.

261. The representative of the Government of the United States supported the amendment and wondered if reference could be made in the new Convention to the obligations assumed by Members under Conventions Nos. 92 and 133.

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262. The representatives of the Governments of the Republic of Korea and Sweden expressed a strong support for the proposal of the Government representative of the United Kingdom.
263. The Special Adviser stated that the new Convention could establish requirements of the kind envisaged. Even though the old Conventions would cease to bind Members that had ratified them once those Members had become bound by the new Convention, that Convention could contain a provision requiring the Members to continue to observe their obligations under Convention No. 92 and/or No. 133 in the case of existing ships.
264. The representative of the Government of the United States noted that the proposed amendment appeared to be unduly broad as it could be understood as also covering countries that had not ratified Convention No. 92 or No. 133. It was necessary to make sure that ships built before the entry of the new Convention into force were still covered by the requirements of those Conventions that were applicable to them at the time of entry into force.
265. The representative of the Government of Japan supported the questions posed by the representative of the Government of the United States and, with the representative of the Government Canada, supported the principle behind the amendment.
266. The Seafarer and Shipowner spokespersons tended to agree with the principle but thought it could be better worded. The PTMC Drafting Committee could look at this issue with the assistance of the Legal Adviser.
267. It was decided that the amendment should not be deemed to have tripartite support at this stage but that if it could be redrafted with the advice of the Office, it could be picked up again at the Conference in February 2006.

Amendment 63: C.2/D.14
Standard A3.1, paragraph 1(a)

268. The Seafarer spokesperson introduced the following subamendment (shown in bold text):
- (a) meet minimum standards for safe and decent working and living accommodations and recreational facilities for seafarers who are required to **work and/or** live on board ...
- and said that the changes were the same as for Amendment 59, which had received tripartite consensus, and this amendment was consequential.
269. The Shipowners' group did not support this subamendment. The amendment did not receive tripartite consensus.
270. The amendment was deemed not to have tripartite support but that, if it could be redrafted with the advice of the Office, it could be picked up again at the Conference in February 2006.

Amendment 65: C.2/D.15
Standard A3.1, paragraph 1

271. The representative of the Government of the Netherlands, on behalf of the EU Member States present at the Meeting, indicated that they had no common position on the matter. There had been many concerns regarding small and special ships, such as dredgers. She proposed that the small working group constituted earlier should look at the issue.

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272. The Shipowner spokesperson and the representative of the Government of Greece agreed to refer the matter to the small working group.
273. The representatives of the Governments of the Bahamas, Denmark, Germany, the Republic of Korea, Liberia, Norway and Sweden supported and strongly recommended support for this amendment considering that the requirement would only apply to new ships.
274. The representative of the Government of Japan drew the attention of the Meeting to the broad meaning of the term “accommodation”. Spaces on open deck referred to in Standard A3.1 (paragraph 13) of the draft Convention as reviewed by the Intersessional Drafting Group, could also be regarded as accommodation. He did not support this amendment.
275. The representative of the Government of Indonesia agreed and asked for clarification on how to handle the issue in case of rural ships where accommodation was situated at the stern.
276. The Seafarer spokesperson said that open space could obviously not be considered as accommodation and inquired about the reason for the position of the Shipowners’ group.
277. The Shipowner spokesperson replied that this amendment would cause problems because dredgers were constructed differently from other merchant ships.
278. The Seafarer spokesperson felt that the Convention would apply to a very limited number of dredgers. The term “ship” was defined as a ship that did not navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations applied.
279. The representative of the Government of Denmark agreed that most dredgers would fall outside the scope of the Convention. The existing Conventions only stipulated that sleeping rooms should not be situated forward of the collision bulkhead.
280. The Special Adviser indicated that the term “accommodation” did not include recreational facilities.
281. The representative of the Government of the Islamic Republic of Iran said that dredgers were not always confined to sheltered waters; they undertook international voyages to do dredging work all over the world.
282. The amendment did not attract tripartite consensus.

Amendment 69: C.2/D.21

Guideline B3.1.5, paragraph 11

283. The representative of the Government of the Republic of Korea proposed a subamendment to add the words “including a spring bottom or a spring mattress” at the end of the first sentence. While there was a need for berths of better quality and comfort, this could be assured by means other than mere spring bottoms or spring mattresses.
284. The Seafarer spokesperson agreed with the amendment as subamended. The amendment as subamended obtained tripartite support.

Amendment 76: C.3/D.27
Regulation 4.1, paragraph 2

285. The representative of the Government of Denmark explained that the proposal, which should be read in conjunction with Amendment 80, intended to clarify the extent of health protection in the Regulation. A part of the Standard was, therefore, moved into the Regulation, which made the text shorter and clearer. In case of lack of support for this proposal, Amendment 80 would be withdrawn.

286. The Seafarers' group disagreed. The amendment did not receive tripartite support.

Amendment 82: C.3/D.9
Standard A4.1, paragraph 4(a)

287. The Seafarer spokesperson, in view of the decisions on Title 3 to place the tonnage limit of 200 gross tons in brackets (see paragraph 40 above), could now support the amendment.

288. The amendment received tripartite support.

Amendment 83: C.3/D.24
Standard A4.1, paragraph 4(a)

289. As amendment No. 83 was, in substance, the same as Amendment No. 82, it also received tripartite support.

Amendment 84: C.3/D.8
Standard A4.1, paragraph 4(e)

290. The Government representative of Norway pointed out that the text of Standard A4.1, paragraph 4(e), in the draft Convention has been based on Convention No. 164, which, though it had been ratified by 14 member States, had not been ratified by States with large fleets. The obligations created by Convention No. 164 placed expenses on the State that should be placed on the shipowners. Medical services and telecommunications were increasingly commercial services and not public utilities. He therefore proposed to amend the text as follows: "To ensure medical treatment for seafarers at sea, Members shall adopt laws and regulations to ensure that ships that fly their flag have access to medical advice by radio or satellite communication at sea, including specialist advice available at any hour of the day or night. Any provided medical advice shall be free of charge to the seafarer." The Government representative of the Netherlands supported the amendment.

291. The Shipowner spokesperson indicated that this matter had been discussed at length in earlier meetings. His group could not support this shift of the cost to shipowners and thus opposed the amendment.

292. The amendment did not obtain tripartite consensus.

Amendment 92: C.3/D.10
Guideline B4.1.4, paragraph 1(c)

293. The Government representative of the United Kingdom pointed out that requiring a State to maintain a list of doctors was impractical, as these lists would change too often. The

Government representatives of the Bahamas, Cyprus, Denmark, Germany, Greece, Liberia, Malta, the Netherlands and Portugal supported this position.

294. The Seafarer spokesperson stated that the current provision drew on Convention No. 164. Medical facilities did not always have doctors on hand; it was therefore important to compile and maintain a list of doctors.

295. The amendment did not obtain tripartite consensus.

Amendment 98: C.3/D.35
Standard A4.2, paragraph 1(d)

296. The Government representative of the Netherlands supported the amendment.

297. The Government representative of India pointed out that situations might arise where there would be no next of kin to receive a body or arrange for burial. In such situations the shipowner should be liable for burial costs at the closest port. This situation should be taken into consideration in the amendment.

298. The Government representative of Liberia agreed and, with the support of the Shipowners' group, suggested that the text be amended to read: "Shipowners shall be liable to pay for burial expenses or for a body or ashes to be brought home in accordance with the wishes of the next of kin in the case of death occurring on board or ashore during the period of engagement." The Government member of India could support such text if it meant that shipowners would cover the cost of burial, whether or not they were also responsible for bringing home a body or ashes.

299. The Government representatives of Namibia and the United States pointed out that a legal problem could arise when a deceased seafarer had provisions in a will that did not correspond to the wishes of the next of kin with regard to transport of the body and burial arrangements.

300. The Seafarer spokesperson stated that the current provisions were based on provisions of Convention No. 55, which had 17 ratifications. The cost of burial should not be passed on to the grieving family of the seafarer. The Government representatives of Cyprus and Singapore supported the Seafarers' group's position.

301. The Government representative of the Netherlands proposed amending the text to read: "Shipowners shall be liable to pay for a body or ashes to be brought home in accordance with the wishes of the next of kin and/or for burial expenses in the case of death occurring on board or ashore during the period of engagement."

302. The Seafarer spokesperson stated that his group would only support this proposal if the "and/or" were to read "and". However, the Shipowner Vice-Chairperson, supported by the Government representative of Liberia, stated that his Group would only support the "and/or" option.

303. The amendment did not obtain tripartite consensus.

Amendment 100: C.3/D.2
Standard A4.2, paragraph 3(b)

304. The amendment obtained tripartite support.

Amendment 109: C.3/D.15
Standard A4.4, paragraph 2

305. Following a request for clarification by the Shipowners, the Government representative of the United Kingdom explained that the proposal was intended to cover situations where no welfare boards existed.
306. The Seafarers' group could not support the amendment. It did not obtain tripartite consensus.

Amendment 112: C.3/D.3
Standard A4.6 (New)

307. The Government representative of the Philippines supported the amendment in principle but expressed concern that, by adopting it, problems could arise in relation to Standard A4.5. The Government member of Nigeria also supported the amendment, noting that, for the record, his Government had recently put in place a pension scheme for seafarers and dockers.
308. The Seafarer spokesperson recalled that the text of the amendment had been taken directly from the Seafarers' Pensions Convention, 1946 (No. 71), which had been ratified by 13 States. If such text was not included in the new Convention, the protection provided by Convention No. 71 would be lost. He invited Government representatives from States that had ratified the Convention to speak in favour of it.
309. The Government representative of Greece said that, although his Government had ratified the Convention and applied it fully, he would not support the proposal because several Governments had earlier indicated that this would present an obstacle to ratification. The Government representative of Sweden confirmed this by saying that his Government would have a great problem with the Convention as a whole if this amendment were adopted.
310. The Seafarer spokesperson said that if the amendment was not accepted, Convention No. 71 should not be on the list of Conventions in Article X that would be revised by the consolidated maritime labour Convention.
311. The amendment did not obtain tripartite consensus.

Amendment 113: C.1/D.65
Title 5, paragraph 1

312. The Shipowner spokesperson introduced the amendment, and explained that it should clarify the English text.
313. Following a question as to whether this would change the meaning of the text when translated into French, the representative of the Government of Canada said that the term should not create problems. The Seafarers' group and the representative of the Government of the Netherlands, speaking on behalf of the governments of the EU Member States and acceding States present at the Meeting and Norway, supported this amendment, which thus obtained tripartite support.

Amendment 118: C.1/D.11
Regulation 5.1.1, new paragraph

314. The Seafarer spokesperson explained that this was an important matter to his group since it concerned fundamental rights of seafarers.
315. The representative of the Government of Canada suggested that this principle would be better dealt with in the Preamble. By including it in Title 5, its scope was narrowed. The representatives of the Governments of Japan, the Republic of Korea and Liberia agreed.
316. The representative of the Government of Sweden opposed the amendment and pointed out that the principle in question was enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Given their level of ratification, there was no need to reaffirm the principle. This view was also shared by the representatives of the Governments of Denmark and the Russian Federation.
317. The Seafarer spokesperson explained that bilateral agreements did not allow seafarers to exercise their rights. Since the amendment had failed to gather tripartite consensus, the Seafarers' group would introduce a new amendment to the Conference on this matter.

Amendment 131: C.1/D.18
Standard A5.1.4, paragraph 4

318. The representative of the Government of the Republic of Korea, as a sponsor, wished to withdraw his support for the amendment.
319. The representative of the Government of Liberia also withdrew his support, but suggested that the question of the interval of inspections should be aired. Because of the matters being checked, an annual inspection, as opposed to inspections at intervals of two or three years, was more appropriate.
320. The representative of the Government of Japan did not support annual inspections, which would lead to an increased financial and administrative burden.
321. The representative of the Government of Denmark suggested that inspections under the new Convention should be in line with ISM and ISPS requirements.
322. The representative of the Government of the Islamic Republic of Iran pointed out that the current wording allowed flag States to inspect more often, since the provisions only provided for the minimum requirements. The representative of the Government of the United Kingdom agreed and noted that flag States should concentrate on those ships more likely to be non-compliant than having to inspect ships that were not suspected of infringements.
323. The representatives of the Governments of the United States, Liberia and the Bahamas further suggested that the ILO should agree with the IMO on how ISPS and ISM audits could be coordinated with inspections under the new Convention.
324. In response to a request for clarification, the Secretary-General said that a framework agreement existed between the ILO and the IMO, and that the two agencies already had a well-established working relationship. Should the Conference agree on the suggestions made, a specific arrangement on this matter could be sought. She also informed the Meeting that resolutions not related to the agenda item, i.e. the Convention, would not be discussed at the Conference since there was no provision for a Resolutions Committee.

Resolutions concerning the agenda item could be developed and submitted during the Conference.

Amendment 133: C.1/D.23
Standard A5.1.4, paragraph 9

325. The representative of the Government of Japan noted that the text for Standard A5.1.4, paragraph 9, came from Article 7, paragraph 2, of the Labour Inspection (Seafarers) Convention, 1996 (No. 178). It was much more severe and inflexible than the text found in Convention No. 178. It did not provide inspectors with the same level of discretion to give warnings and advice. There was concern that inspectors would feel obligated to initiate proceedings whenever there was a prior history of violations, irrespective of the nature of those prior violations.
326. The representative of the Government of the Netherlands, speaking on behalf of the governments of the EU Member States and acceding States present at the Meeting and Norway, supported the amendment.
327. The Seafarers did not support it. There was no tripartite consensus.

Amendment 134: C.1/D.35
Standard A5.1.4, paragraph 9

328. The representative of the Government of the United Kingdom stated that not only was it a great administrative burden to record all exercises of discretion, but it might lead to inspectors giving less advice and warnings in order to avoid the ensuing paperwork.
329. The Seafarers did not support the amendment. There was no tripartite consensus.

Amendment 135: C.1/D.42
Standard A5.1.4, paragraph 10

330. The representative of the Government of the United Kingdom, supported by the representative of the Government of Liberia, stated that while the utmost efforts should be made to safeguard a seafarer's confidentiality, in some cases it might be extremely difficult to do so. Also, some countries had freedom of information legislation that might conflict with this provision. The amendment was also supported by the representative of the Government of the Netherlands, speaking on behalf of the governments of the EU Member States present at the Meeting and Norway.
331. The Seafarer spokesperson questioned the meaning of the term "reasonable and practicable", stating that it seemed subjective. His group did not support the amendment. There was no tripartite consensus.

Amendment 137: C.1/D.38
Guideline B5.1.4, paragraph 10(a)

332. The representative of the Government of the United Kingdom stated that this amendment was intended to remove an unnecessary burden from governments. It would be extremely difficult to identify all legislation that could relate to seafarers, especially since it would not be limited to maritime legislation. In addition, the list would need to be continually

revised and updated, creating a further burden on governments. He was supported by the representative of the Government of the Netherlands, speaking on behalf of the governments of the EU Member States and acceding States present at the Meeting and Norway.

333. The representative of the Government of Canada further noted that when a country deposited its instrument at the ILO it would have to present such a list at that time. There was no need, however, continually to update this list.

334. The Seafarer spokesperson stated that in many countries the creation of such a list would not be overly complicated, as the majority of legislation excluded seafarers. He supported the comment made by the representative of the Government of Canada that such a list would have to be created in any case at the time of ratification.

335. The Seafarers' group did not support the amendment. There was no tripartite consensus.

Amendment 139: C.1/D.40
Guideline B5.1.4, paragraph 10(d)

336. The representative of the Government of the United Kingdom stated that this amendment also dealt with practical concerns. The Convention extended the scope of persons considered to be seafarers, and governments did not have information on these persons. Collecting this information would be a difficult task. The representative of the Government of the Netherlands, speaking on behalf of the governments of the EU Member States and acceding States present at the Meeting and Norway, stated that the majority of these countries supported the amendment. The representative of the Government of the Russian Federation also expressed his support.

337. The Seafarers' group did not support the amendment. There was no tripartite consensus.

Amendment 140: C.1/D.41
Guideline B5.1.4, paragraph 10(f)

338. The representative of the Government of Germany, speaking on behalf of the governments of the EU Member States and acceding States present at the Meeting and Norway, proposed a subamendment that would read "statistics on reported occupational injuries and diseases, at least those within the scope of the International Health Regulations of the WHO, affecting seafarers". This would clarify the meaning of the provision, while broadening its scope.

339. The Seafarer spokesperson said his group was not clear on what was contained in the International Health Regulations. Furthermore, this Convention did not deal with diseases requiring quarantine but with occupational safety and health diseases and their prevention. The provisions were therefore not appropriate.

340. There was no tripartite support for the amendment.

Amendment 147: C.1/D.30
Regulation 5.2.1

341. The Seafarer spokesperson, supported by the representative of the Government of the Republic of Korea, believed that this amendment had been overtaken by the preceding

discussions on the detention of ships. The Governments were able to offer a compromise as to how Standard A5.2.1 should be amended and this covered the issue of detentions as well. The amendment was not supported.

Amendment 151: C.1/D.13
Standard A5.2.1, paragraph 3

342. The Seafarer spokesperson said the issue relating to Standard A5.2.1 had been overtaken by earlier discussions.
343. The representative of the Government of Denmark stressed the need to refer to the Regulation stipulating the respective requirement. It was not acceptable for surveyors to claim the existence of deficiencies without indicating their source. The Government representative of the Netherlands, on behalf of the governments of the EU Member States present at the Meeting, had agreed.
344. The Seafarers were not convinced by this argument. There was no tripartite consensus.

Amendment 153: C.1/D.25
Standard A5.2.1, paragraph 4

345. The Government representative of Japan supported the new subparagraph (e). It was important, taking into account the issue of fairness, to make information available to all parties with an interest in the situation. His Government was already making available on its website the information concerning the detention of ships. However, it did not make public any personal information. An agreement had been reached on Regulation 5.2.2 with regard to complaint procedures. The information had to be open, but in a fair way.
346. An observer (Chairperson of the Paris MOU) said that all inspections conducted within the framework of the Paris MOU were made available on EQUASIS. Under normal circumstances, the information would be placed on the public website.
347. The Government representative of the Netherlands, on behalf of the governments of the EU Member States present at the Meeting, and supported by the Government representative of Ukraine and the Shipowners' group, supported the amendment, with a subamendment to substitute the words "available to the extent necessary" by the words "available upon request and to the extent necessary".
348. The Seafarer spokesperson was not convinced. The amendment did not achieve tripartite consensus.

Amendments 154 and 155: C.1/D.8 and C.1/D.37
Guideline B5.2.1, paragraph 2(b)

349. The Government representative of the Netherlands, speaking on behalf of the governments of the EU Member States present at the Meeting, emphasized the importance of this amendment and supported it. The amendment was also supported by the representatives of the Governments of Brazil, Republic of Korea, Nigeria, Pakistan, Philippines and Singapore and received tripartite consensus.

Other amendments

350. All the other amendments were either withdrawn or fell as a result of lack of tripartite support without substantive discussions.

Closing

351. The representative of the Government of Liberia regretted the speed at which the Meeting had worked. The need for tripartite acceptance meant that many amendments failed. He hoped that they would not simply reappear. While the social partners could meet regularly, this was not the case for governments. Therefore, he requested that a pre-meeting of Government representatives be scheduled at the Maritime Conference in February to allow them to coalesce around issues. This should greatly expedite obtaining consensus in plenary. The representative of the Government of the Bahamas agreed and hoped that the Conference would allow the maximum amount of time for Government group meetings.
352. The Secretary-General agreed that the idea of a pre-Conference meeting for governments had merit, but the Office lacked resources for such a meeting. She invited governments to provide financial support for such a meeting.
353. The Seafarer spokesperson said that his group would be disappointed if all the amendments that failed in this meeting were resubmitted in 2006. The Seafarers' group would not be submitting many new amendments, despite their having lost support for several at this Meeting.
354. The representative of the Government of Mexico, on behalf of the Latin American countries registered for the Meeting, expressed satisfaction with the progress. But their participation had been hampered by the lack of a Spanish version, despite Spanish being a working language, of some of the major proposals, and by the lack of simultaneous interpretation services due to the budgetary restrictions known to all. Bearing in mind such restrictions, they thanked the Office for all efforts and hoped that such limitations would not be present in the future. With the aim of facilitating progress in negotiations, they would not oppose the adoption of the documents resulting from the Meeting, but put on record that their delegations would reserve their position and could revisit the issues treated in the Meeting during the forthcoming Maritime Conference.
355. The Special Adviser, on behalf of the Secretary-General, noted that the Tripartite Intersessional Meeting had been attended by 171 Government representatives from 69 countries, 44 Shipowner representatives, 34 Seafarer representatives and representatives from 10 international organizations, for a total of 261 participants. The draft report of the Meeting would be sent to all participants for corrections, as would a version of the Convention that reflected the work so far achieved. Referring in particular to the concerns expressed by the Government of Mexico, on behalf of Latin American countries, the Special Adviser noted that the wording of previously unresolved provisions on which tripartite consensus had now been reached would be sent to all constituents in English, French and Spanish, and a summary of comments received would be included in the Office's report to the Conference. As concerned the Maritime Conference itself, which would be held from 7 to 23 February 2006, there would be a credentials committee but no resolutions committee. Following the usual practice for Maritime Sessions of the International Labour Conference, the Director-General would prepare a report on developments in the maritime industry. But the report would not be discussed until the Convention had been finalized. Under the Standing Orders of the Conference, the Office would seek to provide its report to member States as close as possible to four months in advance.

356. The Secretary-General, the President of the PTMC, the Chairperson, and the Government, Shipowner and Seafarer Vice-Chairpersons, as well as other participants, thanked everyone involved for their hard work, dedication and cooperation.

(Signed) B. Carlton,
Chairperson.