
INTERNATIONAL LABOUR ORGANIZATION
Sectoral Activities Programme

**Sub-Group of the High-Level
Tripartite Working Group
on Maritime Labour Standards
(first meeting)**

Two draft papers on enforcement and
simplified amendment

Geneva, 2002



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Sectoral Activities Programme

Two draft papers for discussion at the

**Sub-Group of the High-Level
Tripartite Working Group on
Maritime Labour Standards
(first meeting)**

Considerations for provisions on inspection and control
in a consolidated maritime labour Convention (Draft I);
Simplified amendment procedure for the proposed new
maritime labour Convention (Draft II)

Geneva, 2002

Preface

The task of the Sub-Group of the High-Level Tripartite Working Group on Maritime Labour Standards is to “prepare and consider the working papers” in advance of the Working Group’s next meeting, which is to be held in October 2002. The Office is accordingly now submitting to the Sub-Group, for its consideration, two draft papers, entitled:

- (a) *Considerations for provisions on inspection and control in a consolidated maritime labour Convention (Draft I)*; and
- (b) *Simplified Amendment Procedure for the proposed new maritime labour Convention (Draft II)*.

The attached drafts seek to take into account all the observations that were made on the those subjects at the first meeting of the High-Level Tripartite Working Group in December 2001, and in particular the observations that “IMO Conventions should be closely reviewed as a source of inspiration” and that “modifications of IMO solutions may be suggested where appropriate”. As suggested by the Sub-Group, each draft ends with preliminary suggestions concerning possible provisions to be included in the proposed new instrument.

The Sub-Group may wish to comment on the general approach of each draft, highlight any missing elements or statements considered to be wrong or misleading and make observations or suggestions in relation to specific parts of the draft, particularly as far as the ingredients for provisions are concerned. The draft will then be modified and finalized for submission to the Working Group in the light of the Sub-Group’s discussions and conclusions. The latter’s observations and suggestions might, depending on their nature, be reflected in modifications to the attached drafts or be recorded in the paper concerned as the views of the Sub-Group on the issues dealt with.

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Draft I

Considerations for provisions on inspection and control in a consolidated maritime labour Convention

Introduction

1. At its first meeting in December 2001, the High-Level Tripartite Working Group on Maritime Labour Standards gave its full support to eight “preferred solutions”¹ in relation to the proposed new consolidated maritime labour Convention. One of them was that the new instrument “should contain provisions giving responsibility to all States to ensure that decent conditions of work apply on all ships that are placed under their jurisdiction or that come within their jurisdiction”.
2. In his summary of the High-Level Tripartite Working Group’s discussions,² the Chairperson formulated certain “preliminary thoughts on the various issues” concerning a possible new Convention. The following appear particularly relevant to the issue of enforcement:
 - that “the new instrument should be clearly based on the existing body of ILO standards”, but that “International Maritime Organization (IMO) Conventions should be closely reviewed as a source of inspiration” and that “modifications of IMO solutions may be suggested where appropriate”;
 - that “the instrument should set out standards that are clear, simple, easy to ratify and easy to implement” and that “the respective roles and responsibilities of flag States, port States and labour-supplying States should be clearly defined”.
3. The Chairperson noted that many participants in the High-Level Tripartite Working Group had stressed the importance of effective enforcement mechanisms:
 - (a) both flag States and port States should be responsible for enforcement;
 - (b) the principle of “no more favourable treatment” (see paragraph 24 below) was supported;
 - (c) consideration should be given to the appropriateness of the following enforcement mechanisms or solutions:
 - (i) extension of port State control as provided for in Convention No. 147 and strengthening of related remedial measures;

¹ ILO: High-Level Tripartite Working Group on Maritime Labour Standards (first meeting), doc. TWGMLS/2001/1 (Geneva, 2001), pp. 17-18.

² ILO: High-Level Tripartite Working Group on Maritime Labour Standards (final report), doc. TWGMLS/2001/10 (Geneva, 2001), pp. 23-24.

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- (ii) the IMO “panel of competent persons” mentioned in paragraph 28 below (there were however drawbacks to be studied);
 - (iii) obligation of Members to submit their enforcement procedures for review at the time of ratification;
 - (iv) integration into IMO instruments such as the International Safety Management Code (ISM Code) (see paragraph 25 below) or creation of similar mechanisms could be explored; and
 - (v) creation of a database recording violations of social rights.

4. This paper suggests the main ingredients for possible provisions for the new instrument on the subject of “enforcement”. The Office understands this subject to cover any provisions which are directly or indirectly relevant to ensuring that the substantive provisions of a legal instrument are actually being implemented. These provisions may be adopted at the national level, relating in particular to inspection and control, or at the international level, exemplified by the ILO’s own supervisory system for ratified Conventions. One of the conclusions of the present study is that there should be a line of continuity starting from the actual drafting of a substantive provision and continuing through national inspection systems and national systems for the quality control of the national inspection system up to the international supervisory system. The main ingredients for possible provisions, which the Office suggests in paragraph 41, are therefore only one part of the enforcement picture: aspects of enforcement will be relevant in the design of many other parts of the proposed new instrument. This point is touched upon in paragraph 42. The proposed ingredients are based on the various solutions and ideas identified in the preceding sections, which cover the practice of other organizations, in particular the IMO, as well as the scope for strengthening the existing port State control provision.

Enforcement of ILO standards at the national level

(a) *Role of the flag State*

5. In the existing system of enforcement, the flag State is given a primary role. In the basic Convention of general scope, the United Nations Convention on the Law of the Sea, 1982, the role and responsibilities of the flag State are set out in Article 94, which provides that:

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.
2. In particular every State shall:
 - (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
 - (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.
3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:
 - ...
 - (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
 - ...

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6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.
6. The obligation of the flag State to exercise effective jurisdiction in social matters had in fact already been set forth six years earlier in the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). This Convention has been ratified by 43 member States of the ILO. In addition, in accordance with article 35 of the ILO Constitution, it has been made applicable to 25 non-metropolitan territories, bringing within the scope of the Convention about 54.6 per cent of the world shipping fleet in gross tonnage. It is the most important of the ILO's maritime labour instruments not only because of the breadth of the working and living conditions that it covers, but also because it contains an aspect that had had no precedent in previous international instruments, namely the "port State control" provision in Article 4, reproduced in paragraph 16 below. As a consequence, this Convention has been included as a "relevant instrument" in all but one of the existing regional port State control agreements. More detailed information is contained in Chapter VI, Jurisdiction and control, of the General Survey on labour standards on merchant ships.³
7. As far as the duties of the flag State are concerned, Article 2 of Convention No. 147 requires the parties, in particular, to have legal provisions establishing the following standards and to exercise effective jurisdiction or control over their application in ships registered in their territories:
- (a) safety standards, including standards of competency, hours of work and manning, so as to ensure the safety of life on board ship;
 - (b) appropriate social security measures; and
 - (c) shipboard conditions of employment and shipboard living arrangements corresponding to the basic standards set out in the Convention itself as well as the standards in other important maritime Conventions and in the general Conventions covering, in particular, minimum age and freedom of association and collective bargaining. These other standards are specified in the appendix to Convention No. 147, which has been complemented by the 1996 Protocol to that Convention. Parties to Convention No. 147 that have not ratified the Conventions containing the other standards are required to have provisions that are "substantially equivalent" to them. Members that have ratified the Conventions concerned are required to verify by inspection or other appropriate means compliance by ships registered in their territories.
8. Under the same Article, the flag State is to ensure that measures for the effective control of other shipboard conditions of employment and living arrangements, where it has no effective jurisdiction, are agreed between shipowners or their organizations and seafarers' organizations. They are also to ensure that there are adequate systems covering such matters as the engagement of seafarers and the investigation of complaints, for ensuring that crews are properly trained and for investigating and reporting on marine casualties.

³ ILO: *Labour standards on merchant ships*, General Survey by the Committee of Experts of the reports on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and the Merchant Shipping (Improvement of Standards) Recommendation, 1976 (No. 155), Report III (Part 4B), International Labour Conference, 77th Session, 1990.

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- 9.** The way in which the flag State is to “effectively exercise its jurisdiction and control in social matters” is set out in the Labour Inspection (Seafarers) Convention, 1996 (No. 178). Article 2 requires each ratifying Member to maintain a system of inspection of seafarers’ working and living conditions. The relevant ministers, government departments or other public authorities, termed the “central coordinating authority”, “shall coordinate inspections wholly or partly concerned with seafarers’ living and working conditions”. The coordinating authority shall “in all cases be responsible for the inspection of seafarers’ living and working conditions”. However, it “may authorize public institutions or other organizations it recognizes as competent and independent to carry out inspections of seafarers’ working and living conditions on its behalf” and shall “maintain and make publicly available a list of such institutions or organizations”.
 - 10.** Article 3 provides that the Member shall ensure that all ships registered in its territory are inspected at prescribed intervals; that measures to inspect a ship shall be taken after a Member receives a complaint or obtains evidence that the ship does not conform to national laws and regulations in respect of seafarers’ working and living conditions; and that ships shall be inspected following substantial changes in construction or accommodation.
 - 11.** Articles 4 and 5 concern the appointment of qualified inspectors in sufficient numbers to meet the requirements of the Convention, the status and conditions of inspectors, and what they should be empowered to do (including the power to detain ships). Article 6 concerns avoidance of unreasonable detention and gives shipowners or operators a right to compensation for unreasonable detention or delay. Article 7 requires national laws and regulations to provide for adequate penalties for violations of legal provisions enforceable by inspectors or for obstructing them in the performance of their duties. Such inspectors have a discretion to give warnings and advice instead of instituting or recommending proceedings.
 - 12.** Under Article 8, the central coordinating authority must maintain records of inspections of seafarers’ working and living conditions; an annual report on inspections must be published. The report must include a list of institutions and organizations authorized to carry out inspections on the authority’s behalf. Article 9 provides that inspectors shall submit a report of each inspection to the central coordinating authority (one copy in English or in the working language of the crew to be furnished to the master and another posted or sent to seafarers’ representatives), and requires inspections following a major accident within a specified period of time after the accident.
 - 13.** Convention No. 178 is accompanied by Recommendation No. 185, which provides considerable guidance on the organization of inspection and the status, duties and powers of inspectors.
 - 14.** The requirements referred to above (paragraph 12) for the maintenance of records, the publication of the list of inspectors and the submission and posting of reports on inspections, reflect the importance of transparency for the purposes of inspection. As will be seen later in the text, the enforcement aspect in instruments of other organizations – to which reference will be made – relies to a greater degree on a requirement for certification. For specific matters, there are a few ILO Conventions which require a certificate to be issued. The Officers’ Competency Certificates Convention, 1936 (No. 53), generally requires that certain categories of seafarers must hold certificates – issued or approved by the public authority of the territory where the vessel is registered – to perform certain duties and sets out the conditions for issuing of the certificate. Article 5 of the Convention provides that States which ratify it “shall ensure its due enforcement by an efficient system of inspection”; violation of the Convention can result in detention of ships registered in the Member’s territory or a report to the flag State, in the case of ships registered elsewhere.

The Medical Examination (Seafarers) Convention, 1946 (No. 73), provides, in Article 3, that:

... no person to whom this Convention applies shall be engaged to employment ... unless he produces a certificate ... signed by a medical practitioner or, in the case of a certificate solely concerning his sight, by a person authorized by the competent authority to issue such a certificate.

15. The Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), does not rely on any requirement relating to certification, but is a good example of a Convention providing for the transparency conducive to effective inspections. It requires (Article 7) the posting of a table with the shipboard working arrangements, containing for every position the schedule of service and the maximum hours of work or the minimum hours of rest required by the laws, regulations or collective agreements in force in the flag State, to be established in a standardized format in the working language or languages of the ship and in English. Under Article 8, records of seafarers' daily hours of work or of their daily hours of rest are to be maintained, and the seafarer is to receive a copy of the records pertaining to him or her, endorsed by the master, or a person authorized by the master, and by the seafarer. The competent authority must determine the procedures for keeping such records on board, including the intervals at which the information is to be recorded, and must require a copy of the relevant provisions of the national legislation and of the relevant collective agreements to be kept on board and be easily accessible to the crew. The competent authority must examine and endorse the records at appropriate intervals to monitor compliance with the provisions governing hours of work or hours of rest.

(b) Role of the port State

16. The role of the port State obviously varies in importance depending upon the quality of inspections carried out by the flag State. Thus, a provision on port State control was included, for the first time, in a Convention adopted "with regard to substandard vessels", namely the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Article 4 provides:

1. If a Member which has ratified this Convention and in whose port a ship calls in the normal course of its business or for operational reasons receives a complaint or obtains evidence that the ship does not conform to the standards of this Convention, after it has come into force, it may prepare a report addressed to the government of the country in which the ship is registered, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.
2. In taking such measures, the Member shall forthwith notify the nearest maritime, consular or diplomatic representative of the flag State and shall, if possible, have such representative present. It shall not unreasonably detain or delay the ship.
3. For the purpose of this Article, complaint means information submitted by a member of the crew, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to its crew.

(c) Role of labour-supplying States

17. Convention No. 147 also gives a role which is particularly relevant to labour-supplying States: under Article 3, a ratifying Member must advise its nationals on the possible problems of signing on a ship registered in a State which has not ratified the Convention,

until the Member is satisfied that standards equivalent to those fixed by the Convention are being applied.

The ILO's follow-up procedures

18. Under article 22 of the ILO Constitution, all Members submit reports to the International Labour Office on the measures they have taken to give effect to the Conventions that they have ratified. These reports are first transmitted to a committee of eminent experts, established in 1927, which carefully reviews progress in the Member's implementation of the Convention concerned on the basis not just of the reports themselves, but also of all relevant information, including observations from employers' and workers' organizations. In the case of problems, the Committee frequently establishes contact with the government concerned. The report of the Committee of Experts is transmitted to the annual session of the International Labour Conference, at which it is discussed at length by a special tripartite Committee on the Application of Conventions and Recommendations.
19. The ILO Constitution (articles 24 and 26) also permits formal representations as well as complaints to be lodged against a government which is alleged not to be respecting the provisions of a Convention that it has ratified. Representations (under article 24) may be made by employers' and workers' organizations. The more serious complaints procedure (under article 26), normally leading to the establishment of a Commission of Inquiry, may be made by another Member which has ratified the same Convention. The procedure may also be initiated by the Governing Body on a complaint by a delegate to the International Labour Conference or on its own motion. Another complaints procedure has developed in the Organization's practice with respect to alleged violations of freedom of association. This procedure does not depend upon ratification of the relevant Conventions.
20. A fuller description of the above procedures is given in the appendix to this paper.

Sources of inspiration from other organizations

(a) *Documentation of inspections; certification*

21. The Conventions of the IMO can indeed provide a source of inspiration (see paragraph 2 above) as far as certification provisions are concerned. The International Convention for the Safety of Life at Sea 1974 (SOLAS 74) addresses maritime safety. The main objective is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. The technical details as well as the various requirements relating to inspection and enforcement are set out in the annex to the Convention, which forms an integral part of it. A consolidated version of that annex, taking account of subsequent amendments, is provided by a Protocol to the Convention, adopted in 1988. It is used here as the basic source of reference.
22. Chapter I of the annex requires (Regulation 6 onwards) the flag State to carry out initial, periodic and special inspections and surveys to ensure that each ship registered in its territory is in conformity with the provisions of the Convention including the technical requirements set out in the annex. The inspection and survey (if positive) is followed by the issue of one or more of the certificates prescribed in the annex, which are valid for a specified period. The inspection and survey is to be carried out by officers of the flag State or by surveyors nominated for the purpose or organizations recognized by it. The latter also have the duty of checking conformity of a ship with a certificate issued with respect to it, and of taking steps to have the certificate withdrawn where any significant shortcomings are not immediately corrected. If the ship is in another State, the authorities of the port

State are to be notified of the situation. They are to provide any assistance required by the surveyors and to prevent unsafe ships from sailing. The survey and the issue of a certificate required by the Convention may also be delegated by the flag State concerned to another Contracting State.

23. Under the key provision relating to port State control (Regulation 19):

- (a) Every ship when in a port of another Contracting Government is subject to control by officers duly authorized by such Government in so far as this control is directed towards verifying that the certificates issued under [the Annex] are valid.
- (b) Such certificates, if valid, shall be accepted unless there are clear grounds for believing that the condition of the ship or of its equipment does not correspond substantially with the particulars of any of the certificates or that the ship and its equipment are not in compliance with [the regulation ensuring the maintenance of safety conditions after the survey and prohibiting unauthorized changes to the structural arrangements, machinery and other items covered by the survey].
- (c) In the circumstances given in paragraph (b) or where a certificate has expired or ceased to be valid, the officer carrying out the control shall take steps to ensure that the ship shall not sail until it can proceed to sea or leave the port for the purpose of proceeding to the appropriate repair yard without danger to the ship or persons on board.
- (d) In the event of this control giving rise to an interview of any kind, the officer carrying out the control shall forthwith inform, in writing, the Consul or, in his absence, the nearest diplomatic representative of the State whose flag the ship is entitled to fly of all circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognized organizations responsible for the issue of the certificate shall also be notified. The facts concerning the intervention shall be reported to the Organization.
- (e) The port State authority concerned shall notify all relevant information about the ship to the authorities of the next port of call, in addition to the parties mentioned in paragraphs (c) and (d) or if the ship has been allowed to proceed to the next port of call.
- (f) When exercising control under this regulation, all possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is thereby unduly detained or delayed it shall be entitled to compensation for any loss or damage suffered.

24. From the wording of the above provision and related provisions (Regulations 17 and 20) in the Convention, the certificate appears essentially as an advantage for the ship concerned, protecting it, subject to certain provisos, from a more thorough inspection in any of the Contracting States. It is clearly implied that full control will be exercised by the port State in the absence of a valid certificate. In this connection, reference should be made to the basic principle set out in Article I of the 1974 Convention as amended by the 1988 Protocol, under which “[w]ith respect to ships entitled to fly the flag of a State which is not a Party to the Convention and the present Protocol, the Parties to the present Protocol shall apply the requirements of the Convention and the present Protocol as may be necessary to ensure that no more favourable treatment is given to such ships”.

25. Chapter IX of the annex to the SOLAS Convention lays down (Regulation 3, Safety management requirements) an obligation to comply with the requirements of the ISM Code. It provides (Regulation 4, Certification) for the issue of a “Document for Compliance” to every “company” (defined in Regulation 1) which complies with the requirements of the ISM Code, as well as a “Safety Management Certificate” to every ship after verification that the company and its shipboard management operate in accordance with the approved safety-management system adopted in accordance with the provisions of the ISM Code. The Code establishes “safety management objectives” which are: to provide for safe practices in ship operation and safe working conditions; to establish safeguards against all identified risks; to continuously improve safety management skills of personnel,

including preparing for emergencies. The Code requires a “safety management system” (SMS) to be established by the company. The system should be designed to ensure compliance with all mandatory regulations. Under the Code, the company is required to establish and implement a policy for achieving the specified objectives. Procedures required by the Code are to be documented and compiled in a safety management manual, a copy of which is to be kept on board. The company is to carry out regular checks and audits of the system and periodically review the system. Administrations are to issue the Safety Management Certificate noted above and carry out periodic checks to ensure the SMS is functioning properly.

26. The IMO’s International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 (STCW 95), provides (in Article VI) for the issue, and endorsement by the Government, of certificates for masters, officers or ratings who meet the requirements for service, age, medical fitness, training, qualification and examinations in accordance with the appropriate provisions of the annex to the Convention. Article X of the Convention and Regulation I/4 relate to control by port States and contain a number of provisions that are similar to those of Regulation 19 under the SOLAS Convention referred to above.

(b) Quality assessment of certification

27. The Regulations of the STCW 95 Convention provide, in the first place (section A-I/8 on quality standards), that the parties are to specify clear objectives and quality standards covering the subject matter of the Convention, including the administration of the certification system. They must also ensure that an independent evaluation of the knowledge, understanding, skills and competence acquisition and assessment activities, and of the administration of the certification system, is conducted at intervals of not more than five years. In addition, Regulation I/7, Communication of information, provides, inter alia, that each party is to provide to the Secretary-General such information as may be required by the STCW Code on steps to be taken by the party to give the Convention “full and complete effect”. When complete information has been received and such information “confirms that full and complete effect is given to the provisions of the Convention”, the Secretary-General “shall submit a report to this effect to the Maritime Safety Committee”. On the basis of that report, the IMO’s Maritime Safety Committee identifies the parties which are considered to have demonstrated that “full and complete effect is given to the provisions of the Convention”. Other parties are then, in principle and subject to provisos, entitled to accept the certificates of those parties as being in compliance with the Convention. This identification has become widely known as producing the “STCW White List”.

28. In preparing the above report to the Maritime Safety Committee, the Secretary-General shall:

- .1 solicit and take into account the views expressed by competent persons selected from the list established [by the Secretary-General in accordance with the Regulations];
- .2 seek clarification when necessary from the Party of any matter related to the information provided ...;
- .3 identify any area in which the Party may have requested assistance to implement the Convention.

29. The party concerned must have been given an opportunity to attend the meetings of competent persons and to clarify any matter related to the information provided pursuant to Regulation I/7, paragraph 1. Furthermore, if the Secretary-General is not in a position to

submit the report confirming the “full and complete effect” referred to above, the party concerned may request the Maritime Safety Committee to take a decision to that effect.

30. In the context of the quality assessment of national certification or similar schemes, it may be useful to take account of the Universal Safety Oversight Audit Programme adopted by the International Civil Aviation Organization (ICAO). The Programme launched on 1 January 1999 supersedes a voluntary assessment programme established in 1995. Its objective is to promote global aviation safety through auditing Contracting States, on an ongoing basis, to determine the status of States’ implementation on safety oversight and relevant ICAO Standards and Recommended Practices (SARPs), associated procedures, guidance material and safety-related practices. The audit process starts six months prior to the audit, with the signing of a Memorandum of Understanding between ICAO and each State. Audits are conducted by experienced auditors selected by ICAO, who must undergo a training course as well as on-the-job training before being approved as auditors. The interim and final audit reports are confidential. However, in order to assist other States in forming an opinion on the safety status of the audited States, ICAO makes available to all Contracting States summary reports which include an abstract of the audit’s findings, the corrective actions proposed by the State, the status of implementation of ICAO annex provisions, and comments by ICAO on the overall soundness of the safety oversight system in each audited State. The audits have helped ICAO to identify safety concerns in a number of States. They have also revealed the need to provide assistance to States to resolve such concerns.

Strengths and weaknesses of ILO instruments and procedures

31. Conventions Nos. 147 and 178 and the Recommendation accompanying the latter (outlined in paragraphs 6-13 above), as well as certain provisions of other ILO standards of which examples have been given above, appear to provide flag States with a solid basis for an effective system of inspection covering the main areas of seafarers’ working and living conditions. In this connection, it would be helpful if government representatives on the High-Level Tripartite Working Group could draw attention to any difficulties encountered in practice. The system is reinforced by the port State control provision of Convention No. 147 (paragraph 16 above), which to a certain extent provides a remedy in specific cases for any shortcomings in the inspection at the flag State level. The sophisticated machinery at the international level for the examination of the country reports, complemented by the international complaints procedures, is valuable not only for encouraging and assisting Members to carry out proper inspections in accordance with the standards laid down, but also to provide to the world at large an indication of the respects in which a country’s system of inspection is substandard, and may accordingly need to be complemented by port States.
32. There are two aspects of the systems in other organizations which, at present, do not exist to any substantial degree in the ILO context and which warrant consideration with a view to seeing how far they could be imported into the new instrument. They relate to certification and quality assessment.

(a) Certification

33. One essential difference between the port State control provision of Convention No. 147 and the SOLAS Convention, reproduced respectively in paragraphs 16 and 23 above, is that the object of inspection in the case of SOLAS is, in the first instance, the certificate(s) to be produced by the visiting ship. A certificate whose reliability is generally recognized

(see paragraph 34 below) appears to be an advantage for the ship, which could thereby avoid repeated inspections of the same conditions, and would facilitate the task of the flag State and, above all, of port States. It is quite likely that certification will be of limited value or not feasible in the case of international labour standards which are less susceptible to the kind of objective verification that is possible in the realm of safety and environment protection. In this context, the port State control provision of Convention No. 147 contains an aspect that does not exist in the SOLAS provision, namely the obligation of the port State to take action upon receiving a complaint. This possibility could be reinforced if substantive provisions were drafted in ways to ensure transparency – of the kind indicated in paragraph 15 above – as to the situation on board ship and the related rights of the seafarers.

(b) Quality assessment

34. The quality assessment of the systems and procedures for inspection and certification, of the kind required by the STCW Regulations (see paragraph 27 above) would seem to be an essential element for an effective enforcement process at the national level. However, in order for the certificate to constitute an advantage outside the flag State, it must be not only reliable but also internationally recognized as reliable. If the new instrument required ratifying Members to have an effective system of quality assessment, the system would come within the purview of the ILO's supervisory system described in the appendix to this paper. This in itself might not be sufficient as there is no mechanism for directly gathering information. But if it were seen to be in the interest of flag States to have a system of inspection and control leading to the issue of certificates recognized as reliable, they might well wish to make use of a reputable audit of the kind organized by the ICAO (see paragraph 30 above), especially if this were available under the ILO's Technical Cooperation Programme. Such audit reports could then be taken into account in ILO procedures.

(c) Port State control

35. The port State control provision of Convention No. 147 (paragraph 16 above) is clearly one of the strengths of the ILO system. Its reference to “the standards of this Convention” also covers the concept of “substantial equivalence”, provided for in Article 2(a)(iii) (see paragraph 7(c) above). The concept makes it easier for many States to ratify the Convention as their national laws, regulations and collective agreements need not be exactly in line with the Conventions, or Articles of Conventions, in the appendix to Convention No. 147. On the other hand, substantial equivalence has been considered as partly responsible for difficulties arising for ratifying States, or at least the inspectors working in those States, in carrying out port State control inspections to check compliance with the Convention. This, they have said, makes port State control of certain aspects of Convention No. 147 subjective. However, it has also been suggested that the task of inspectors could be better improved by clearer wording in the provisions covering the substantive obligations concerned. A certificate showing precisely what the national law or the inspectors in the flag State considered to be “substantially equivalent” would also be of assistance. There will, of course, necessarily be areas of standards – such as those relating to “appropriate social security measures” – which are difficult or even impossible for a port State inspector to check. In fact, even the oldest port State control arrangement, the Paris Memorandum of Understanding on Port State Control, provides for different treatment of certain Conventions, or Articles of Conventions, listed in the appendix to Convention No. 147. This tends to confirm the usefulness to a certain extent of the possibility of initiating action by a complaint, referred to in paragraph 33 above.

(d) International supervisory system

36. The ILO's greatest strength in this context is undoubtedly its supervisory system, carrying the necessary institutional guarantees and authority and an important tripartite component. A system like the "panel of competent experts", under the STCW Convention referred to in paragraph 28 above could not be the basis for improvements in an ILO context. However, a principal drawback is that the supervisory and complaints system generally only applies to the ships of a Member which has decided to ratify the Conventions concerned. This is of course also true of the IMO Conventions; but the difference is that the IMO Conventions are almost universally ratified. One of the expected benefits of the proposed new instrument would be its greater attractiveness for ratification, through such measures as the modernization and rationalization of existing provisions and clear wording as well as strong enforcement provisions. A system under which certificates issued by flag States under the new instrument would have to be accepted unless there were clear grounds for not doing so might add a useful commercial incentive for ratification, especially if the ships concerned would have to bear the extra cost of thorough inspections when they were objectively justified. They would, by definition, be objectively justified, *inter alia*, when no certificate had been issued by a ratifying Member.

**Extension of port State control
under Convention No. 147**

37. In addition to possible improvements inspired by the Conventions of other organizations, there is considerable scope for strengthening Article 4 (reproduced in paragraph 16 above) of Convention No. 147. Paragraph 1 provides for two possible remedies where a port State "receives a complaint or obtains evidence that the ship does not conform to the standards of this Convention":

- it "may prepare a report addressed to the government of the country in which the ship is registered, with a copy to the Director-General of the International Labour Office"; and
- it "may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health" (which may sometimes involve detention or delay for the ship).

38. The first of the two possible remedies could be made to apply in the case of any alleged violations of the new instrument: the provision could become the basis of increasing the accountability of substandard flag States or shipowners as well as an important means of disseminating information on substandard ships. It could provide that, when addressing its report to the flag State and before sending a copy to the Director-General, the port State would request a reply from the flag State within a deadline that would be prescribed in an annex to the proposed new ILO instrument. The reply would, *inter alia*, outline any measures taken by the flag State to verify or require the correction of alleged defects. The port State's report might also be sent to the authorities of the next port of call together with information on any undertakings that the ship may have made to remedy the defects found. Once the flag State reply has been received or the deadline for it has passed, the report and the reply (if any) might be transmitted to the ILO Director-General "for appropriate action". These last words that would be added to the existing provision in Convention No. 147 could be developed in the annex to the instrument or in decisions of the ILO Governing Body or International Labour Conference. They might involve:

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- (a) transmittal of the documentation to the ILO supervisory bodies if the alleged flag State action or inaction might evidence a violation of an ILO Convention ratified by that State;
 - (b) transmittal of the documentation to the most representative international organizations of shipowners and seafarers with a view, in the case of serious or repeated violations, to a possible procedure before a specially created tripartite body for complaints that a flag State is not respecting its obligation to exercise effective jurisdiction and control; a body of this kind has in fact already been suggested (at the first meeting of the High-Level Tripartite Working Group) in the context of reviewing the operation of the instrument to ensure rapid updating;
 - (c) recording of the documentation in a database of the kind referred to in paragraph 3(c)(v) above, which might not be limited to violations, but might also provide information on viable certification procedures in flag States.

39. The second, and more far-reaching, possible remedy referred to in paragraph 37 above is at present limited to “conditions on board which are clearly hazardous to safety or health”. While there are no express constraints on port States with respect to appropriate enforcement action within their own territories, they should refrain from any action that would unreasonably interfere with free movement or trade. The protection of safety and health are clearly areas in which the port State should intervene and have been generally recognized as such in the law and practice of States and in the international community, as evidenced by the provisions on port State control in international instruments and other less formal arrangements, namely the Memoranda of Understanding on that subject. There are at least two circumstances in which similar action would appear justified in the case of violations of social rights which do not involve a clear hazard to safety and health:

- (a) in the first place, situations that could clearly lead to serious material hardship for the seafarers or their families could be placed on a par with hazards to health; such situations might involve inadequate insurance coverage or non-payment of wages;
- (b) the other possible circumstance might be serious and repeated violations that are documented of any right laid down in the new instrument; the justification for intervention in this case would rest not only on the inherent humanitarian considerations, but also on the right of the port State to protect the ships registered in its territory, and in that of other parties to the new instrument, from unfair competition by substandard ships. The possibility of documenting repeated violations of this kind would depend upon the efficacy of the systems for the exchange of information that are indicated in paragraph 38 above.

40. On the assumption that an extension of the kind just mentioned could lead to the availability of objective information concerning the ability of flag States to exercise effective jurisdiction in matters covered by the new instrument, there would also be scope for extending Article 3 of Convention No. 147, referred to in paragraph 17 above. The warning to be given to a Member’s nationals about possible problems of signing on a ship of a non-ratifying State could be extended to cover ratifying States where there were clear grounds for believing that the standards of the Convention were not being respected.

Main ingredients for possible provisions on inspection and control

41. In the light of the various considerations set out above, the proposed new instrument might contain a set of provisions on the following lines:

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- (a) provision, closely reflecting Article 2 of Convention No. 147 (see paragraph 7 above), which would set forth the basic requirement that ships registered in the territory of the ratifying Member must be subject to an effective and coordinated system of inspection and control for compliance with the standards of the new instrument;
 - (b) provision guaranteeing the competence, status and independence of inspectors (see paragraph 11 above);
 - (c) provision linking inspection with the requirement for certification, referred to under (e) below;
 - (d) maintenance of records and submission and publication of reports on inspections (see paragraph 12 above);
 - (e) provision requiring certificates in the cases and the forms prescribed in the relevant annex. A copy of the certificate(s) required would have to be posted in a prominent position on the ship. No ship could put to sea in the absence of the required certificate(s), valid for the period of the intended voyage;
 - (f) provision specifying the need to establish clear objectives and quality standards covering the administration of the inspection and certification system, with an independent evaluation, along the lines of the STCW Regulations outlined in paragraph 27 above;
 - (g) provision reflecting, in the ILO context, the “full and complete effect” requirements referred to in paragraphs 27-29 above. In its first report in accordance with article 22 of the ILO Constitution, a ratifying Member would have to provide a description of its inspection and certification system in such detail as to demonstrate that it is designed to give full and complete effect to the relevant standards of the Convention (the idea that information of this kind should be communicated already at the time of ratification (see paragraph 3(c)(iii) above) might be difficult to fit in to the ILO system). In subsequent reports under article 22, the Member would have to provide a summary of the annual reports of its inspectors as well as a complete copy of any new independent evaluation reports referred to in the preceding paragraph;
 - (h) requirement, as under the SOLAS Regulation 19(a) (see paragraph 23 above), for port State control directed towards verifying that the certificates issued under the Convention are valid. If they are, they are to be accepted unless there are clear grounds for believing that the shipboard conditions of employment and shipboard living arrangements do not correspond substantially with the particulars of any of the certificates or, in general, fail to comply with the basic standards of this Convention (based on SOLAS Regulation 19(b));
 - (i) provision for full inspection by port State inspectors where a validly issued certificate is not produced or is not acceptable, to ensure that the shipboard conditions of employment and shipboard living arrangements substantially comply with the basic standards of the Convention;
 - (j) provision for a partial inspection to the extent necessary to investigate any complaint, as is now the case under Article 4 of Convention No. 147;
 - (k) consequences of a negative finding after an inspection under (i) or (j): ship informed of the shortcomings and measures needed to rectify them; reporting to the diplomatic representatives of the flag State, with a request for a reply, and also to the authorities of the next port of call. Transmittal to the ILO Director-General, together with any reply from the flag State, for “appropriate action” where the port State considers that

the flag State is not in compliance with its obligation to effectively exercise its control (see paragraph 38 above);

- (l) circumstances in which a ship might be detained until the defects have been remedied:
 - (i) where the defects constitute a clear hazard to safety or health or could clearly result in serious material hardship for the seafarers or their families;
 - (ii) where the defects constitute a continuation of documented systematic non-compliance with the basic standards of the Convention (see paragraph 39 above);
- (m) liability of the port State to compensate for any loss or damage suffered from undue detention or delay (SOLAS Regulation 19(f) – see paragraph 23 above); and
- (n) extension of Article 3 of Convention No. 147, as suggested in paragraph 40 above.

42. In addition to general provisions on inspection and control of the kind illustrated above, there will probably be numerous provisions in different parts of the instrument for which the enforcement aspect should be strengthened. Paragraph 14 above mentioned two ILO Conventions covering certification on specific matters. A requirement for certification might also be considered in connection with provisions on, for example, accommodation, shipowners' insurance schemes, medical care and contracts of employment. Paragraph 15 referred to an ILO Convention which places emphasis on measures to document compliance. In general, the annexes to the new instrument should transform any imprecise or subjective criteria into concrete objective provisions. In other words, one of the aspects to be taken into account in the formulation of the substantive provisions in the new instrument should be that of verifiability.

Points for discussion

- 43.** The High-Level Tripartite Working Group may wish to provide guidance on:
- (a) the appropriateness and general content of the various elements suggested;
 - (b) the nature and general content of additional elements that should be included in the enforcement system; and
 - (c) other aspects of enforcement that should be explored.

Appendix

The ILO's follow-up procedures

1. There are a number of procedures providing for the follow-up of the implementation of international labour Conventions or making Members accountable for the fulfilment of their international obligations. In particular, ILO Members are required – under article 22 of the ILO Constitution – to submit periodic reports on the implementation of Conventions that they have ratified. They may also occasionally be required (under article 19) to report on the extent to which they are giving effect to non-binding instruments, namely Conventions which they have not ratified and international labour Recommendations. For particularly important Conventions, such as those dealing with basic human rights, detailed reports from ratifying countries are requested every other year, while for other Conventions, reports are normally requested only at five-yearly intervals.
2. Since 1927 the task of examining reports regularly submitted under article 22 of the Constitution has been carried out in the first instance by a Committee of Experts on the Application of Conventions and Recommendations. Then, each year, at the session of the International Labour Conference, the report of the Committee of Experts is discussed in a special tripartite Conference committee. Each report on a ratified Convention has to be supplied on the basis of a report form which is approved by the Governing Body, and which contains the substantive provisions of the Convention and a number of questions on how it is applied, both in law and in practice. The first point which the governments' reports should establish is whether the law complies with the provisions of the Convention. For a Convention that requires the establishment of administrative or other machinery, the practical arrangements made must be described, and particulars of their operation given. For a promotional Convention, the report must describe the measures taken towards achieving the goal of the Convention and overcoming any obstacles in the way of its full application. If any decisions of principle have been made by courts of law or other tribunals relating to the application of the Convention, details are required. A general description of the manner in which the Convention is applied in practice is then expected, with extracts from inspectors' reports, information about the number of violations, and so on. Finally, governments must indicate the organizations of employers and workers to which copies of its report have been sent, and whether any observations have been received from such organizations. The government's obligation to communicate copies to the recognized representative organizations of its report on the implementation of international labour standards is laid down in article 23(2) of the ILO Constitution. The government is expected to consult those organizations on questions arising out of such reports. It is required to do so if it has ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), under Article 5(1)(d).
3. The Committee of Experts referred to above consists of 20 independent persons of the highest standing, with eminent qualifications in the legal or social fields and with an intimate knowledge of labour conditions or administration. Members of the Committee are drawn from all parts of the world. They are appointed by the Governing Body of the ILO on the proposals of the Director-General, in their personal capacity, for a period of three years; their term of office is renewable for successive periods of three years. The essential task of the Committee of Experts is to provide its opinion, in complete independence as regards all member States, concerning the conformity of each Member's law and practice with the provisions of the Conventions it has ratified. The Committee also carries out general surveys on the basis of governments' reports on the situation as regards selected unratified Conventions and Recommendations.
4. In examining the effect given to ratified Conventions, the Committee of Experts is not limited to the information provided by governments. The copies of laws, regulations and other legal texts furnished to the Committee can usually be checked and completed by referring to the country's official gazettes and similar publications. Other documentation available to the Committee may include the texts of collective agreements or court decisions, the conclusions of other ILO bodies such as commissions of inquiry (see paragraph 9 below) and the Committee on Freedom of Association (see paragraph 10), and comments made by employers' or workers' organizations. Such comments may either be included by the government with its report, or addressed directly to the ILO by the organization concerned. In the latter case the Office sends a copy of the observations to the government in question, so that the Committee can also consider any comment the government may wish to add in reply. The comments by workers' and employers' organizations on the

application of ratified Conventions and, in general, on any other subject covered by governments' reports in the field of international labour standards, are of great importance. They enable workers and employers to participate fully in the supervisory system of the ILO, almost continuously and at any time, and thus to contribute to a fuller implementation of international labour standards, as well as to contribute towards improving working and living conditions.

5. If the Committee finds that a government is not fully complying with the requirements of a ratified Convention, or with its constitutional obligations regarding Conventions and Recommendations, it addresses a comment to that government, drawing attention to the shortcomings and requesting that steps be taken to eliminate them. The Committee's comment may take the form of:
 - observations, which are published in its report and which are used for the more serious or long-standing cases of failure to comply with obligations, and are also normally used when a workers' or employers' organization has sent in comments on the application of a ratified Convention which require follow up; or
 - direct requests, which are not published but are sent directly to the governments concerned, and to workers' and employers' organizations in the country concerned for information.
6. The report of the Committee of Experts is submitted to each annual session of the International Labour Conference, where it is examined and discussed by a tripartite Conference Committee on the Application of Conventions and Recommendations. Each year this Conference Committee begins its work with a general discussion, in which it reviews a number of broad issues relating to the ratification and application of ILO standards and the compliance by member States in general with their obligations under the ILO Constitution with regard to these standards. After its general discussion, the Committee turns to an examination of individual cases. Governments which have been mentioned in the Committee of Experts' report as not fully applying a ratified Convention, may be invited to make a statement to the Conference Committee. There is no formal obligation to do so, but they rarely decline. Some circulate written statements; in many cases their representative appears personally before the Committee. If the Committee is not satisfied with a written reply, it gives governments an opportunity to supply fuller information orally. Government representatives may not always find this an easy task, but they know that the Committee takes a positive attitude. Its object is not to apportion blame, but to obtain results. Government spokespersons making statements usually explain frankly their difficulties in applying a particular standard and indicate the steps they propose to take to overcome them. The spectacle of the delegate of a country being politely questioned about his or her government's application of international labour standards by a workers' or employers' representative from the other side of the world, and responding courteously and frankly in the process, often comes as something of a revelation to people attending a sitting of the Committee for the first time. The record shows that such exchanges, based on the technical findings of the Committee of Experts, help to maintain momentum towards better compliance with standards.
7. The discussions on individual cases are summarized in the annexes to the report which the Committee submits to the Conference. Their substance can be reviewed through the ILOLEX database. In addition, in the Committee's general report, the attention of the Conference is specially drawn to the most serious cases in which governments have failed to comply with their obligation to implement ratified Conventions fully. In cases in which explanations have been given on the difficulties encountered by the governments concerned, these explanations are also briefly mentioned in the general report. The discussion of the Committee's report at the Plenary of the Conference Committee provides delegates from all the three groups with an opportunity to draw further attention to particular problems. Once adopted by the Conference, the report of the Conference Committee is dispatched to governments, their special attention being drawn to points which they should take into account in the preparation of their next reports to the ILO.
8. In addition to the regular follow-up outlined above, there are procedures for complaints. Under article 24 of the ILO Constitution, employers' and workers' organizations may make "representations" to the ILO that a particular State is not respecting a Convention that it has ratified. These may be referred in the first instance to a tripartite panel for investigation. A refusal by the Government concerned to reply, or a reply deemed by the ILO's Governing Body to be unsatisfactory, may lead to a formal publication of the representation (and any reply) by order of the Governing Body under article 25 of the Constitution.
9. For serious allegations of failure to respect a ratified Convention, there is a complaints procedure under article 26 of the Constitution. Complaints may be submitted by another ratifying Member.

The procedure may also be initiated by the Governing Body on a complaint by a delegate to the Conference or on its own motion which may be examined by a Commission of Inquiry set up by the Governing Body. Members are required to cooperate in this inquiry and, subject to the right of the Member concerned to request referral to the International Court of Justice, the recommendations of the Commission of Inquiry are binding on the Member. If the Member fails to comply with the recommendations or the decision of the International Court of Justice, “the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith” (article 33 of the Constitution).

10. The actions outlined in the above procedures can be taken only if the Member has ratified the Convention concerned. There is one procedure under which a complaint can be lodged even when the Member concerned had not ratified any relevant Convention. This is a complaint that the Member is not respecting the constitutional obligation of freedom of association. It may be lodged with the Governing Body by workers’ or employers’ organizations, in particular. They are considered by the Governing Body’s Committee on Freedom of Association.

Draft II

Simplified amendment procedure for the proposed new maritime labour Convention

Background

1. At its first meeting in December 2001, the High-level Tripartite Working Group on Maritime Labour Standards discussed whether a simplified amendment procedure should be provided for to allow the annexes to the proposed new maritime labour instrument to be rapidly updated when necessary, without having to go through the lengthy process of adoption of a revised Convention by the International Labour Conference, followed by ratification in accordance with the constitutional processes of each of the parties to the Convention. As stated in the Chairperson's summary "there was full agreement on the need for simplified amendment procedures" and "several speakers favoured a tacit acceptance procedure".⁴ This paper seeks to identify the main issues that would need to be considered in the design of simplified procedures appropriate for the ILO. Some of these issues raise important questions of a constitutional nature. The Office's suggestions based on the considerations and models discussed in this paper are outlined in paragraph 22 below. While the suggestions are, in the Office's view, fully compatible with both the letter and the spirit of the ILO Constitution, they embody innovations, as far as the ILO is concerned, which are intended as an appropriate response to the specific needs of the maritime industry. As has been pointed out in the Governing Body,⁵ the solutions envisaged for this sector might not be fully applicable in other contexts.
2. Simplified amendment provisions already exist in a number of international instruments. The nature of such procedures can vary considerably. It may, for example, be sufficient for the amendment to be adopted within the organization concerned, by a specified majority, without circulation to the parties for acceptance. This is the case under the Patent Cooperation Treaty (PCT) of the World Intellectual Property Organization (WIPO), which provides (article 58) that the Regulations annexed to it may be amended by the Assembly of the Organization. Under other provisions, an amendment adopted within the Organization will enter into force for new parties to the Convention (unless decided otherwise), but not for existing parties unless their governments individually notify their express acceptance of it. A provision (Article 31(1)) of the ILO's Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), lays down this procedure for the amendment of a schedule to it. An intermediate solution is to have a "tacit acceptance" procedure under which the amendments are circulated for consideration by the parties and all parties that have not objected to them within a prescribed period are treated as if they had expressly accepted the amendments. Provisions of this kind are to be found in the World Health Regulations and in several Conventions of the IMO, for example IMO's Conventions on Hazardous and Noxious Substances (HNS Convention), Civil Liability for Oil Pollution Damage (CLC 1992) and Limitation of Liability for Maritime Claims (LLMC 1996); they may also be found in IMO's International Convention for the Safety of Life at Sea (SOLAS), International

⁴ ILO: High-level Tripartite Working Group on Maritime labour Standards: Final report, doc. TWGMLS/2001/10 (Geneva, 2002), p. 24.

⁵ See doc. GB.280/LILS/5, para. 44.

Convention for the Prevention of Pollution from Ships (MARPOL) and International Convention on Standards, Certification and Watchkeeping for Seafarers (STCW).

3. A treaty, such as an international labour Convention, can be amended especially where there are provisions in that treaty enabling its amendment or revision. Those enabling provisions must, in the case of an ILO Convention, be consistent with the ILO's Constitution. Under article 19 of the Constitution, international labour Conventions are adopted by the International Labour Conference, following procedures set out in the Constitution and in the Conference's Standing Orders, and are subject to the national ratification processes. The Conference is however free to include in a Convention different procedures for the establishment or amendment of details relating to the manner in which the obligations laid down in the Convention are to be implemented. Indeed, the Employment Injury Benefits Convention, referred to above (Article 19(7)), provides for a determination under the Convention to be made by reference to a classification adopted by the Economic and Social Council of the United Nations "or such classification as at any time further amended". In other words, the Convention refers to an instrument whose future amendment is completely outside the control of the ILO.

IMO amendment procedures

4. In the Chairperson's summary referred to in paragraph 1 above, it was indicated that "IMO Conventions should be closely reviewed as a source of inspiration" and that "modifications of IMO solutions may be suggested where appropriate". There are differences in the various rules and procedures provided for in those Conventions, reflecting their different purposes and content. The HNS Convention, CLC 1992 and LLMC 1996, on the one hand, and SOLAS, MARPOL and STCW on the other, constitute two distinct categories of Conventions similar in some ways, but different in others. One provision from each category is reproduced in the appendix to this paper: the general procedure under Article VIII of the SOLAS Convention and the special procedure, for the amendment of limits, under Article 48 of the HNS Convention. The following are the main features:

- amendments are proposed by the parties to the Convention concerned and, in the case of the HNS category of Conventions, must be supported by at least half the Contracting governments;⁶
- they are circulated to Members of the Organization and are then referred, for consideration, to a committee in which all Contracting governments are represented⁷ or to a conference of the Contracting governments;⁸
- a two-thirds majority of Contracting governments present and voting is required for the adoption of amendments;⁹
- adopted amendments are communicated to the Contracting governments either for express acceptance or, in the case of the amendment of specified provisions, for tacit

⁶ IMO: International Convention for the Safety of Life at Sea (SOLAS) 1974, Art. VIII(b)(i); IMO: Convention on Hazardous and Noxious Substances (HNS), Art. 48(2).

⁷ SOLAS, Art. VIII(b)(i)-(iii); HNS, Art. 48(2)-(4).

⁸ SOLAS, Art. VIII(a) and (c)(i).

⁹ SOLAS, Art. VIII(b)(iv) and (c)(ii); HNS, Art. 48(5).

acceptance; the latter provisions are those of the annexes (with the exception of the first) in the case of the SOLAS Convention ¹⁰ as well as to the special subject matter covered by HNS, Article 48;

- under the tacit amendment procedure, amendments are deemed to have been accepted unless the number of Contracting governments that object to them (within a certain period) exceeds a specified level; ¹¹
- amendments that are deemed to have been accepted enter into force after a specified period, for all future Contracting governments, as well as for the current parties except:
 - in the case of SOLAS, ¹² Governments that have objected to the amendments within the specified period, and have not withdrawn their objection;
 - in the case of HNS, ¹³ Governments that do not denounce the Convention within a specified period;
- parties to the SOLAS category of Conventions are also given the possibility of delaying entry into effect for their countries; one year's delay is permitted or longer in certain circumstances. ¹⁴

Normal revision procedures in the ILO

5. Through the IMO's tacit acceptance procedures indicated above, it would be normal for amendments to technical provisions of the annex to a Convention to enter into force, in principle for all contracting parties, within three-and-a-half years from the initiation of the proposal for the amendments. In the ILO, on the other hand, provided that there has been full agreement on the acceleration of normal procedures, the proposal might reach the Conference in the form of a revising Convention for discussion at a single annual session (rather than the normal two sessions) ¹⁵ within two years from the communication of the proposal to the Director-General. In the absence of special campaigns to secure ratifications, several decades might be needed for full entry into force due to the fact that in most cases even simple and uncontroversial changes need national acceptance by acts of Parliament. In a paper prepared for the first meeting of the High-Level Tripartite Working Group, the example was cited of technical changes requiring more than 30 years to enter into force for about half the number of contracting parties to the Convention concerned.
6. As indicated in the preceding paragraph, the ILO's normal practice is to adopt a new revising Convention, rather than to leave the current Convention in its place and simply amend parts of it, as is the case in other organizations, including the IMO. The ILO's much

¹⁰ SOLAS, Art. VIII(b)(vi).

¹¹ SOLAS, Art. VIII(b)(vi)(2); HNS, Art. 48(8).

¹² SOLAS, Art. VIII(b)(vii)(2).

¹³ HNS, Art. 48(10) and (11).

¹⁴ SOLAS, Art. VIII(b)(vii)(2).

¹⁵ ILO: Standing Orders of the Governing Body, Art. 10.4.

longer procedures for adoption and entry into force are inherent in the proper preparation and consideration of new standards on a tripartite basis. Before the adoption of a new standard is placed on the Conference's agenda, there is first a careful consideration by the Governing Body, generally requiring two sessions, for which the Office normally provides a report on the law and practice in the various countries related to the item under consideration.¹⁶ A report and a questionnaire is then sent to governments for their observations.¹⁷ Each government is expected to prepare its reply after consulting the most representative organizations of employers and workers in the country. A Member is in fact obliged to do so if it has ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (Article 5.1(a)). Alternatively, the question may be submitted to a preparatory technical conference for consideration. But in all cases, the draft of the instrument or instruments concerned is prepared by the Office on the basis of the replies of governments and their social partners.¹⁸ After adoption, Conventions are (in accordance with article 19, paragraph 5, of the Constitution) transmitted to Governments for consideration with a view to ratification (within one year or, in exceptional cases, 18 months at the latest from the close of the Conference). Again, governments are expected, or required (if they have ratified Convention No. 144), to consult their social partners.

7. Thus the present lengthy procedures, and the submission to national Parliaments, appear fully justified for the adoption of new standards. What may be much less justified in many cases is to follow the same procedures when a Convention (which has already been adopted by the Conference and has passed through national ratification processes) is simply being updated; and it is in this respect that a simplified amendment procedure has been proposed. In this case, it would be appropriate for the Organization to depart from its normal practice of adopting a new Convention, as it has already done in the provision cited above (see paragraph 2) of Convention No. 121, by establishing an amendment procedure along the lines of that of the IMO Conventions, for example.
8. Such procedures would, however, require some adaptation to fit into the ILO context, particularly in two respects: first, there must be provision for thorough – though not time-consuming – consideration on a tripartite basis. Second, in the IMO the decision on amendment lies exclusively with the parties to the instrument concerned; this would probably be considered inconsistent with the philosophy of the ILO, under which international labour standards are adopted and amended within the Organization; they have not been treated as the property of the parties to Conventions. At the same time, it may seem reasonable that the initiative for proposing amendments should be left with the parties, and with their social partners. The parties – again on a tripartite basis – might also be entrusted with the task of agreeing on amendments, subject to the overall approval of the Organization itself and without prejudice to the prerogative of the Conference to adopt a revising Convention (or specific amendments) in accordance with article 19 of the ILO Constitution.

¹⁶ *ibid.*, Art. 10.1 and 10.2.

¹⁷ ILO: Standing Orders of the International Labour Conference, arts. 38 and 39.

¹⁸ *ibid.*, art. 38.2 and 38.4; and art. 39.3 and 39.7.

The simplified amendment procedure in an ILO context

9. Consequently, with the necessary adaptations to fit in with the ILO's particular philosophy and tripartite structure, the IMO procedures and especially tacit acceptance could be imported into the ILO to the extent considered acceptable to its Members, particularly the governments as it is essentially governments which would be concerned by the new procedures. In this connection, the decisions of governments as to the acceptability of a tacit acceptance procedure may largely depend upon the nature of the provisions that could be amended in this way: the basic proposal jointly put forward by the Shipowners and Seafarers and endorsed by Governments at the first meeting of the High-Level Tripartite Working Group is that the new instrument should contain parts devoted to principles and rights, with detailed provisions being set out in corresponding annexes. Only the annexes could be amended by the simplified procedure. However, there could be differing interpretations or approaches as to what constitutes principles and what constitutes details. This subject is dealt with in a separate paper prepared for this second meeting of the High-Level Tripartite Working Group.

Amendment of the parts

10. The following paragraphs will explore the possible content of the articles in the new instrument covering amendment. The articles might first deal with the manner of amending the mandatory provisions of the instrument, particularly those in its main parts, which would not be covered by the tacit acceptance procedure. Since the idea is to consolidate all existing standards as far as appropriate and possibly into a single framework instrument, it would seem contradictory for the Conference to revise such an instrument by adopting another one (see paragraph 6 above). In addition to providing for a special procedure for the amendment of annexes, the new instrument should therefore establish a general procedure under which amendments (rather than a whole new Convention) would, in accordance with normal procedures, be adopted by the Conference and, where applicable (see below), transmitted to Members for ratification or acceptance. This would simplify and rationalize matters with respect to form and avoid the need to have provisions on the denunciation and closure of the instrument in the case of a future revision.

Amendment of the annexes

11. It is suggested that, for the annexes, it should still be within the Governing Body's discretion, in appropriate cases, to follow the more formal amendment procedure outlined in the preceding paragraph (there is a similar discretion in the case of the SOLAS Convention).¹⁹ However the normal procedure would be through tacit acceptance.

Initiation of proposals for amendment

12. The first stage in such a procedure would be the submission of a proposal for particular amendments. If the IMO solution placed in a tripartite context were adopted, proposals could emanate from Members that had ratified the instrument or from the representatives of the Shipowners or Seafarers. But there should perhaps be a requirement for support from the governments of other ratifying Members or from a group. An automatic right to have a proposal considered in accordance with the amendment procedure could cause

¹⁹ SOLAS, Art. VIII(c), especially subpara. (iii).

unnecessary expense. There would also be a risk of inconsistency and inconvenience to governments and shipowners (despite provisions preventing retroactivity or allowing delays in implementation) if there were a continual stream of disparate amendments. If the idea of a standing committee referred to in paragraph 15 below were accepted, it would seem reasonable for the new instrument to require the support of at least half of the ratifying Members or half of any of the other two groups which would be represented on the Committee.

Circulation of proposals

13. The proposed amendments would then be circulated to the Members of the Organization for their observations after national tripartite consultations of the kind that take place at present with respect to proposed new instruments (see paragraph 6 above). The amount of time needed for these consultations, and the kind of information to be provided to governments by the Office, would vary greatly – basically depending upon whether the proposal related to an isolated amendment to meet a specific and perhaps urgent development or to a series of amendments resulting from a periodic review of the instrument. A flexible solution would be for the ILO's Governing Body to decide upon the necessary arrangements, including the fixing of the deadline for the receipt of observations from governments.

Consideration and adoption by an ILO body

14. At the end of the deadline, the Office would prepare a report on the basis of the replies received for submission to the ILO tripartite body or bodies in charge of considering and adopting amendment proposals. Perhaps the principal issue that needs to be considered is to determine which body that would be. The only appropriate forum in place at present is the International Labour Conference itself. However, to have the whole procedure take place this would be time-consuming (see paragraph 5 above) and costly as Members would presumably wish to have the question dealt with at a maritime session at which they would normally be represented by delegates and advisers from the maritime or transport departments of government and the most representative organizations of Shipowners and Seafarers. The Governing Body of course has the necessary tripartite structure but is hardly a forum for discussing more detailed provisions of a technical nature. The Shipowners and Seafarers have their own forum, the Joint Maritime Commission, which is however not open to government representatives (although it has the power to set up tripartite subcommittees).
15. Indeed, one of the conclusions in this context summarized by the Chairperson at the first meeting of the High-Level Tripartite Working Group (see paragraph 1 above) was that “there should be a specific maritime tripartite body charged with continuously reviewing the operation of the instrument to ensure rapid updating”. A committee of this kind could be set up by the ILO's Governing Body and given the task not only of carrying out the continuous review of the operation of the new instrument with a view to updating, but also of considering and agreeing on amendments proposed in the framework of the tacit acceptance procedure. Such a committee would, in addition, facilitate the formulation and endorsement of the initial proposals (see paragraph 12 above) and advise the Governing Body on appropriate arrangements for their consideration (see paragraph 13). There are functions in other areas that could also be entrusted to it, such as dealing with certain questions related to implementation, a subject which is discussed in another paper prepared for the second meeting of the High-Level Tripartite Working Group. Given the overall aim of a tacit acceptance procedure and the advantages to be derived from its inclusion in the new instrument, the need to institutionalize a new body consisting of governments and representatives from Shipowners and Seafarers would be compensated for by the creation

of a flexible and generally acceptable instrument. The idea would, in fact, not be to have a completely new institution, but rather to establish a tripartite forum consisting of the government representatives of the parties together with the members of the JMC and taking place just before or after JMC meetings.

16. Accordingly, if, as suggested in paragraph 8 above, it were decided to introduce the IMO practice of giving the parties to the Convention concerned the power to decide upon amendments – but subject to the overall approval of the Organization – the instrument could establish a procedure on the following lines: it would, in the first place, provide for amendments to be agreed, by a two-thirds majority, in a committee established by the Governing Body and consisting of the government representatives of the parties to the instrument (as well as those of Members that have just ratified the instrument) and representatives of the Shipowners and Seafarers appointed by the Governing Body, who would in practice be the members of the JMC. In line with the procedure for Conference committees, the voting could be weighted to ensure that the three groups had equal voting power. A consequence would, however, be that an amendment might be adopted without any vote in favour from any of the governments, which had actually ratified the instrument being amended. A requirement for a majority higher than two-thirds might therefore be provided for; or the 2-1-1 composition of the Conference plenary and the Governing Body could be reflected in the Committee. An alternative might be to provide for the 1-1-1 composition with a stipulation that at least a majority of the governments represented in the Committee must have voted in favour. The IMO Conventions also have a requirement for the presence of at least one-third²⁰ or half²¹ of the parties to the Convention concerned.

Submission to the Conference for approval

17. The amendments agreed in the Committee could then be submitted, through the Governing Body, to the International Labour Conference for approval by the customary two-thirds majority. The Conference would be the appropriate forum in this respect. As the body which adopted the instrument itself and the guardian of the ILO's social values, it alone would have the authority to give the confirmation that the amendments were in line with the principles laid down in the instrument and with relevant constitutional requirements (see, in particular, paragraph 19 below). In this connection, a maritime session of the Conference would not appear necessary and the discussions could be relatively short, since the Conference would not be entrusted with the negotiation of the amendments, but simply with providing or withholding the Organization's approval. It should, in fact, be possible for the questions to be directly handled in a plenary sitting of the Conference as is permitted in the case of proposals for the abrogation or withdrawal of instruments.²² If approval were not obtained, the amendments could be referred back to the parties for reconsideration.

Submission for tacit acceptance

18. If approved by the Conference, the amendments would be submitted to the Members that had ratified the instrument, with a view to their (tripartite) consideration. They might also be submitted to the other Members for information. The ratifying Members would be

²⁰ SOLAS, Art. VIII(b)(iv).

²¹ HNS, Art. 48(5).

²² ILO: Standing Orders of the Conference, art. 45bis.

informed that they would be deemed to have accepted the amendments unless they notified the Director-General of their disagreement within the prescribed period. The period needed will obviously vary depending upon such factors as the complexity and urgency of the amendments. The instrument could prescribe the normal period of perhaps two years and allow it to be varied by the Conference by a two-thirds majority, subject to an appropriate minimum, for example “at least one year”.²³

Entry into effect

19. At the end of the prescribed period, the amendments would enter into effect unless the number of ratifying Members which had notified their disagreement exceeded one-third of the total number of ratifying Members. The figure of one-third would correspond to the two-thirds of express ratifications that are customarily required to bring international labour Conventions into effect. Six months, (for example, provided for in the SOLAS Convention) after the deemed acceptance, the amendments would enter into force for Members that had not objected to them and it would be the instrument, as amended, that would be open to further ratifications. An issue to be considered – although hopefully an academic one – concerns how the amendments would affect ratifying Members that had notified their disagreement and decided not to withdraw it when they saw that the overwhelming majority of the relevant governments were in favour. Under the HNS Convention²⁴ and similar ones, the objecting Member is still bound unless it actually denounces the instrument concerned before a prescribed date. While such a solution is understandable in view of the importance of the provision concerned, such an extreme measure would clearly not be justified in the case of many amendments that might be made to the new instrument. It would also be difficult to reconcile this approach with the ILO’s Constitution and traditions. While the importance of achieving a level playing field is recognized (third preambular paragraph of the Constitution), the principle that ILO Members are only bound by the obligations that they have freely accepted (Constitution, article 19(5)(e)) has always been fully respected. In addition, the Constitution recognizes that some countries may not yet be in a position to attain the minimum standards laid down for other countries. Indeed, under paragraph 3 of article 19 of the Constitution, in framing standards of general application, the Conference is required to have due regard to the special situations of countries with substantially different industrial conditions.
20. On the other hand, the SOLAS solution of allowing Members to delay the entry into effect of amendments²⁵ would seem to fit in well with the ILO context. Indeed, a possibility for Members to phase in amendments in this way could be turned into an incentive for them to withdraw any objection made and, in general, tend to increase the attractiveness of the new instrument: this could be done by a provision that would require all parties, including port States, to exempt the Member concerned from implementing the amended provision during the period permitted by the instrument.

Amendment of non-mandatory provisions

21. Only amendments of the provisions of a mandatory nature would require acceptance by the parties. As international labour Recommendations are valid for all ILO Members,

²³ SOLAS, Art. VIII(b)(vi)(2).

²⁴ HNS, Art. 48(10).

²⁵ SOLAS, Art. VIII(b)(vii)(2).

provisions having the force of Recommendations which are included in the new instrument could, as now, come into effect after adoption by the International Labour Conference. It is understood that the new instrument might also include non-mandatory texts having the force of guidelines. Such texts could themselves specify how they might be amended.

Elements for articles in the new instrument

22. In the light of the various considerations set out above, the proposed new instrument might provide for amendment procedures with the following elements:

Article AA

Committee on maritime labour standards

1. Continuous review of the operation of the instrument, to ensure its rapid updating, in a committee established by the Governing Body with special competence in the area of maritime labour standards (see paragraph 15 above).

2. Tripartite composition of the Committee: ratifying Governments and representatives of Shipowners and Seafarers appointed by the Governing Body (see paragraph 16).

3. Respective voting power of the Government, Shipowner and Seafarer groups in the Committee: 1-1-1 composition? 2-1-1? (see paragraph 16).

4. Participation without vote of the Government representatives of non-ratifying Members and of observers from other organizations or entities.

...

Article XX

Amendment of mandatory provisions

1. Possibility of amendments to the parts and annexes being adopted and communicated to Members for ratification, in accordance with the rules and procedures for the adoption of international labour Conventions, as set out in the Constitution and the relevant Standing Orders of the Conference and the Governing Body (see paragraph 10).

2. Continued application of the parts and annexes, in their actual form and content for those Members which had ratified the Convention prior to entry into force of the amendments and have not ratified the amendments (see, for example, Convention No. 180, Article 23(2)).

Article YY

Amendment of annexes

1. Possibility (unless provided otherwise in the relevant annex) of amending the annexes through the tacit acceptance procedure.

2. Right to propose amendments: the Government of any Member that had ratified the instrument and any representative of the Shipowners or Seafarers appointed to the Committee on maritime labour standards, provided the proposal is supported by at least half the group concerned (see paragraph 12).

3. Circulation of proposals to all ILO Members for their observations and suggestions (see paragraph 13).

4. Consideration of the amendments by the committee on maritime labour standards with a view to adoption (see paragraph 14). Adoption requiring two-thirds majority or higher, plus presence of one-half/one-third the number of ratifying Members plus a simple majority of ratifying Members present and voting (see paragraph 16)?

5. Submission of adopted amendments to the International Labour Conference for approval, by a two-thirds majority of the delegates or members present and voting. Referral back to the Committee (with reasons) if the amendments are not approved (see paragraph 17).

6. Notification of approved amendments to the Governments of all Members that had ratified the instrument, with a copy to the other Members of the Organization (see paragraph 18 above).

7. Deemed acceptance unless, at the end of a period of two years after notification (or other period decided by the Conference, which must be at least one year), more than one-third of the parties have notified the Director-General of their disagreement (see paragraph 19).

8. Entry into force of amendments deemed to have been accepted, six months after the date of the deemed acceptance, with respect to all ratifying Members, except those which have notified their disagreement with the amendment and have not withdrawn the disagreement, possibility, before the date set for entry into force, for any ratifying Member to exempt itself for a certain period from giving effect to the amendments (see paragraph 19).

Article ZZ

Amendment of non-mandatory provisions

1. Amendments to [identification of provisions having the force of international labour Recommendations] in accordance with the rules and procedures for the adoption of international labour Recommendations, as set out in the Constitution and the relevant Standing Orders of the Conference and the Governing Body.

2. Amendments to [identification of provisions having the force of guidelines] in accordance with the procedure set out in those provisions.

[See paragraph 21.]

Point for discussion

23. The High-Level Tripartite Working Group may wish to give its views on the extent to which a simplified amendment procedure, along the lines set out above, appears appropriate and adequate and, above all, acceptable to governments. It may also wish to consider the various options indicated as well as additional ones.

Appendix

IMO examples of simplified amendment procedures

International Convention for the Safety of Life at Sea (SOLAS), 1974

Article VIII

Amendments

- (a) The present Convention may be amended by either of the procedures specified in the following paragraphs.
- (b) Amendments after consideration within the Organization:
 - (i) Any amendment proposed by a Contracting Government shall be submitted to the Secretary-General of the Organization, who shall then circulate it to all Members of the Organization and all Contracting Governments at least six months prior to its consideration.
 - (ii) Any amendment proposed and circulated as above shall be referred to the Maritime Safety Committee of the Organization for consideration.
 - (iii) Contracting Governments of States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Maritime Safety Committee for the consideration and adoption of amendments.
 - (iv) Amendments shall be adopted by a two-thirds majority of the Contracting Governments present and voting in the Maritime Safety Committee expanded as provided for in subparagraph (iii) of this paragraph (hereinafter referred to as "the expanded Maritime Safety Committee") on condition that at least one-third of the Contracting Governments shall be present at the time of voting.
 - (v) Amendments adopted in accordance with subparagraph (iv) of this paragraph shall be communicated by the Secretary-General of the Organization to all Contracting Governments for acceptance.
 - (vi)
 - (1) An amendment to an Article of the Convention or to Chapter I of the annex shall be deemed to have been accepted on the date on which it is accepted by two-thirds of the Contracting Governments.
 - (2) An amendment to the annex other than Chapter I shall be deemed to have been accepted:
 - (aa) at the end of two years from the date on which it is communicated to the Contracting Governments for acceptance; or
 - (bb) at the end of a different period, which shall not be less than one year, if so determined at the time of its adoption by a two-thirds majority of the Contracting Governments present and voting in the expanded Maritime Safety Committee.

However, if within the specified period either more than one-third of Contracting Governments, or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, notify the Secretary-General of the Organization that they object to the amendment, it shall be deemed not to have been accepted.

- (vii) (1) An amendment to an Article of the Convention or to Chapter I of the annex shall enter into force with respect to those Contracting Governments which have

accepted it, six months after the date on which it is deemed to have been accepted, and with respect to each Contracting Government which accepts it after that date, six months after the date of that Government's acceptance.

- (2) An amendment to the annex other than Chapter I shall enter into force with respect to all Contracting Governments, except those which have objected to the amendment under subparagraph (vi)(2) of this paragraph and which have not withdrawn such objections, six months after the date on which it is deemed to have been accepted. However, before the date set for entry into force, any Contracting Government may give notice to the Secretary-General of the Organization that it exempts itself from giving effect to that amendment for a period not longer than one year from the date of its entry into force, or for such longer period as may be determined by a two-thirds majority of the Contracting Governments present and voting in the expanded Maritime Safety Committee at the time of the adoption of the amendment.
- (c) Amendment by a Conference:
- (i) Upon the request of a Contracting Government concurred in by at least one-third of the Contracting Governments, the Organization shall convene a Conference of Contracting Governments to consider amendments to the present Convention.
- (ii) Every amendment adopted by such a Conference by a two-thirds majority of the Contracting Governments present and voting shall be communicated by the Secretary-General of the Organization to all Contracting Governments for acceptance.
- (iii) Unless the Conference decides otherwise, the amendment shall be deemed to have been accepted and shall enter into force in accordance with the procedures specified in subparagraphs (b)(vi) and (b)(vii) respectively of this Article, provided that references in these paragraphs to the expanded Maritime Safety Committee shall be taken to mean references to the Conference.
- (d) (i) A Contracting Government which has accepted an amendment to the annex which has entered into force shall not be obliged to extend the benefit of the present Convention in respect of certificates issued to a ship entitled to fly the flag of a State the Government of which, pursuant to the provisions of subparagraph (b)(vi)(2) of this Article, has objected to the amendment and has not withdrawn such an objection, but only to the extent that such certificates relate to matters covered by the amendment in question.
- (ii) A Contracting Government which has accepted an amendment to the annex which has entered into force shall extend the benefit of the present Convention in respect of certificates issued to a ship entitled to fly the flag of a State the Government of which, pursuant to the provisions of subparagraph (b)(vii)(2) of this Article, has notified the Secretary-General of the Organization that it exempts itself from giving effect to the amendment.
- (e) Unless expressly provided otherwise, any amendment to the present Convention made under this Article, which relates to the structure of a ship, shall apply only to ships the keels of which are laid or which are at a similar stage of construction, on or after the date on which the amendment enters into force.
- (f) Any declaration of acceptance of, or objection to, an amendment or any notice given under subparagraph (b)(vii)(2) of this Article shall be submitted in writing to the Secretary-General of the Organization, who shall inform all Contracting Governments of any such submission and the date of its receipt.
- (g) The Secretary-General of the Organization shall inform all Contracting Governments of any amendments which enter into force under this Article, together with the date on which each such amendment enters into force.

**Convention on Liability and Compensation for Damage
in connection with the carriage of Hazardous and
Noxious Substances by Sea (HNS), 1996**

Article 48

Amendment of limits

- (1) Without prejudice to the provisions of Article 47, the special procedure in this Article shall apply solely for the purposes of amending the limits set out in Article 9, paragraph 1, and Article 14, paragraph 5.
- (2) Upon the request of at least one-half, but in no case less than six, of the State Parties, any proposal to amend the limits specified in Article 9, paragraph 1, and Article 14, paragraph 5, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.
- (3) Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.
- (4) All Contracting States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
- (5) Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided in paragraph 4, on condition that at least one-half of the Contracting States shall be present at the time of voting.
- (6) When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits established in article 9, paragraph 1, and those in article 14, paragraph 5.
- (7)
 - (a) No amendment of the limits under this Article may be considered less than five years from the date this Convention was opened for signature nor less than five years from the date of entry into force of a previous amendment under this Article.
 - (b) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention increased by 6 per cent per year calculated on a compound basis from the date on which this Convention was opened for signature.
 - (c) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention multiplied by three.
- (8) Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of 18 months after the date of notification, unless within that period no less than one-fourth of the States which were Contracting States at the time of adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.
- (9) An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force 18 months after its acceptance.
- (10) All Contracting States shall be bound by the amendment, unless they denounce this Convention in accordance with Article 49, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
- (11) When an amendment has been adopted but the 18-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In

the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Convention enters into force for that State, if later.