

Final report

Introduction

1. The Subgroup of the High-level Tripartite Working Group on Maritime Labour Standards met at the International Labour Office from 24 to 28 June 2002. This Meeting was derived from a proposal made unanimously by the Joint Maritime Commission at its 29th Session (January 2001) calling for a single, coherent international maritime labour standard incorporating, as far as possible, the substance of all the various international maritime labour standards that are sufficiently up to date. The Governing Body established this Subgroup to facilitate the work of the High-level Tripartite Working Group to assist with the work of developing this new instrument.

Composition of the Working Group

2. The Subgroup's composition had been finally decided by the ILO Governing Body in March 2002 on the basis of a recommendation made by the High-level Tripartite Working Group at its first meeting (17-21 December 2001). The Chairperson was Ms. Birgit Sølling Olsen (Government, Denmark) and the Vice-Chairperson was Mr. Edmund T. Sommer, Jr. (Government, United States). The spokespersons for the Shipowners' and the Seafarers' groups were Mr. Dierk Lindemann and Mr. Brian Orrell, respectively. The Government group nominated Mr. Douglas Bell (Bahamas) as its spokesperson.

Opening and general remarks

3. The Chairperson opened the Meeting by summing up the task of the Subgroup as identified by the Governing Body, i.e. mainly to prepare documents for the meeting of the High-level Tripartite Working Group. She recalled the discussions of the High-level Tripartite Working Group on the terms of reference of the Subgroup. Accordingly, the Subgroup would not be making any decisions but rather give guidance for the finalization of the papers to be submitted to the High-level Tripartite Working Group. However, the views of the participants would be reflected in a report including minority views, if any.
4. The Secretary-General introduced the documents prepared by the Office. She explained that some of the documents were intended for submission to the High-level Tripartite Working Group in October 2002 (STWGMLS/2002/1, 3 and 5). The Subgroup was invited to make proposals for their improvement. One of the other papers (STWGMLS/2002/2) was intended for the Subgroup to give guidance to the Office for the drafting of a preliminary draft instrument which would be submitted to the High-level Tripartite

Working Group in October. The others were intended to be reference documents (STGWMLS/2002/4 and 6) which could be useful throughout the process of preparation of the new instrument.

5. The Shipowner spokesperson indicated that this Subgroup had a technical rather than political purpose. He said that there had been no change in the commitment of his group to the adoption of the consolidated instrument. He was aware that the Subgroup was not a forum for decision but that it should facilitate the work of the High-level Tripartite Working Group.
6. The Seafarer spokesperson commended the wide participation of governments. He reiterated his group's commitment to a Convention enshrining the rights of seafarers which would not be subject to flexibility. This Convention should contain clear enforcement procedures and amendment mechanisms which would make it a living instrument. He was eager to listen to the positions of the governments on these issues. He stressed the objective of wide ratification and, in this context, looked forward to hearing the views of governments on what they could or could not do.
7. The representative of the Government of France wished that progress could be made regarding the elaboration of the future instrument, in particular regarding its structure, the articulation of its control measures and the amendment procedures. Regarding the first item, it was important to get an agreement on the chapter headings and the general principles. The control measures should address the roles of the flag State, the port State, as well as the labour-supplying State. These measures should be so that they would enable the new instrument to become a relevant instrument of the various port State control agreements.
8. The representative of the Government of Liberia also suggested that more burden should be placed on the labour-supplying States, which should enforce the future instrument, in cooperation with the flag States. To be efficient, the procedures should be as simple as possible, whilst the certificates should be kept at a minimum number. Liberia did not see the ILO Committee of Experts as necessarily being the most appropriate body to tackle an efficient and workable system for receiving complaints in this field. Liberia rather saw the possibility of a permanent maritime monitoring body. He supported maintaining the JMC until a new procedure has been developed. Whilst Liberia saw that every aspect of the new instrument should be acceptable to all, he foresaw the necessity of a transition period. Liberia also favoured an audit system, along the lines of the audit system of the STCW95, or of the ISO. Flag States should be given the possibility to audit the organizations that acted on their behalf.
9. The representative of the Government of the United Kingdom saw three major issues in the coming debate: enforcement; the amendment procedure; and the structure of the instrument. She remarked that lessons could be drawn from the way that the IMO Conventions were enforced and amended.
10. The representative of the Government of Greece assumed that the new instrument would only be based on existing instruments, and wondered if a Protocol to Convention No. 108 that is expected to be adopted in 2003 would be counted into this category

Discussion of enforcement and simplified amendment procedure (document STGWMLS/2002/1)

11. The representative of the Government of Denmark felt that the most important issue at the current Meeting would be "enforcement". As a consequence, it was imperative to develop

adequate principles as soon as possible. He also remarked that the enforcement of the new instrument would be the task of the labour-supplying States, as well as of the flag States and port States.

12. The representative of the Government of Norway also agreed that the task of enforcement should be placed on all parties, including the Shipowners. He remarked that the efficiency of enforcement would only be achieved through inspections, certification and audits in a quality assurance scheme. The main goal must be a living and effective instrument implemented in the daily activities on board.
13. The representative of the Government of the Philippines remarked that STGWMLS/2002/4 highlighted that there were contradictions in the definitions in the various instruments. The same mistakes should not be repeated in this new instrument. Quoting the Norwegian Government representative, he expressed support for three aspects of shipboard operations: safety; protection of the environment; and decent working and living conditions. This last point should come first as being more important. He also agreed that labour-supplying States should be empowered to implement aspects of working and living conditions.
14. The representative of the Government of Cyprus agreed on the importance of the enforcement aspect of the future instrument, and also on the empowerment of labour-supplying States. He criticized the resolutions adopted by the IMO and the ILO on the abandonment of seafarers as being impossible to implement on the insurance requirements.
15. The representative of the Government of Japan also insisted on the necessity to dispose of effective enforcement means. He suggested that, since Convention No. 147 is a key instrument for the maritime industry, it would be interesting to have a document describing its implementation within the various port state control agreements.
16. The representative of the Government of the Netherlands, having noted with interest that all the existing maritime labour instruments would be included within the future instrument, reminded the Meeting that enforcement was the key to the success of this future Convention. As such, port States, flag States and labour-supplying States should all have a share in the enforcement procedures. He also remarked that the Netherlands was very supportive of an appropriate amendment procedure, considering also that everything touching the setting up of a level playing field should be made compulsory.
17. The representative of the Government of Germany offered comments on the fact that even though the maritime industry is but a small field of activity, the ILO had devoted a lot of resources to it during these last few years. He pointed out the need to get a proper consultative document from the present session. He expressed the belief that the Committee of Experts was the appropriate body to deal with complaints, and that there was no need to create another one. He finally declared that he favoured the cooperation of the ILO with other international organizations, as long as it would keep to its priorities.
18. The representative of the Government of Nigeria noted the importance of enforcement and having a simplified amendment procedure in the new instrument. He proposed that the following four items be considered: a provision for minimum standards that each signatory must strive to attain; a period of time wherein each State should ratify and implement the instrument; assistance to developing countries to integrate the new instrument into national legislation; and a provision for amendments to be included in due course.
19. The representative of the Government of Norway presented his country's paper that was submitted to the Subgroup. He agreed with the proposal that ships registered in the territory of a ratifying Member must be subjected to an effective and coordinated system of inspection and control for compliance with the standards of the new instrument as this was

the only way to ensure international compliance and a level playing field to prevent poor working and living conditions from being a financial advantage. However, Norway favoured enforcement through a quality assurance system such as the ISM Code, as this had several advantages, one being that it would not require an extra certificate. Norway was against a separate certificate but favoured a single system with three pillars: safety; pollution prevention; and working and living conditions. In addition, he stated that Norway would have no problem with the provisions guaranteeing the competence, status and independence of inspectors. However, he added that a single certification system provided that management should have an all-encompassing policy for their ships and all seafarers on those ships.

20. He further pointed out that the new instrument might have some areas that do not fit well within the aim of ISM and PSC. Therefore, he proposed that the PSC should focus on on-board working and living conditions and leave the rest to the flag States to enforce. He concluded that the industry was developing a certification fatigue which could negatively impact on the effectiveness of the Convention.
21. The Shipowner spokesperson noted that proper enforcement of the standards set by the new Convention was regarded by them as one of the most important issues to be incorporated. Regarding this, he added that he was pleased to hear unanimity on the Government side. Currently, he said, only Conventions Nos. 147 and 178 address enforcement. He stressed the need to have a very strong chapter on enforcement and that good material for this was already in Convention No. 178. He also pointed out the need for a capable inspection team to issue certificates. In closing he said that although Norway preferred the ISM model, there were other good methods out there and that there should be a mechanism to allow for national variations in practices.
22. The Seafarers' representative noted that the flag State should be responsible for enforcement. However, there was a need to agree which standards could also be enforced by port state control and under which conditions vessels should be subject to detention, including non-compliance with ILO core labour standards. He stressed that there was a need for clear and unequivocal standards that were not open to national interpretation. He said it was clear that Convention No. 179 did not go far enough and that there might be a need for a control and certification system for manning agencies similar to that found in SCTW95. He also noted that the paper mentioned that flag States should be required to have in place a system of labour inspections which could result in the issue of a certificate. The Seafarers' group could support this. He pointed out that there were usually no representative social partners in flag-of-convenience flag States, making a tripartite coordinating committee impractical. A link with the ISM Code, as proposed by the Norwegians, deserved careful consideration. However, there could be implications resulting from mixing ILO and IMO standards and in particular, he had some reservations as the ISM could not be said to be successful. He cited the "Ocean Glory" which had an ISM certificate and 35 defects.
23. On behalf of the Government group, the representative of the Government of the Bahamas said that governments could generally agree on a few issues. Firstly, that there was a need to improve the quality of enforcement whilst adopting a Convention which was enforceable. Governments had reviewed the description in document STWGMLS/2002/1 of the role of flag, port and labour-supplying States. In doing so, they had also reviewed paragraph 7 of the document, which set out the provisions in Article 2 of Convention No. 147 concerning the duties of flag States. They generally agreed that safety standards, as set out in Article 2(a), were primarily flag State matters and that shipboard conditions of employment and shipboard living arrangements, as Article 2(c), were primarily flag State or port State matters. However, the views of governments varied as to the responsibility for "appropriate social security measures", as covered by Article 2(b), with some Government

members indicating that social security was a responsibility of labour-supplying States. The governments had also touched upon the issues of involvement of social partners in enforcement, the possible use of the ISM Code, or at least procedures similar to those in the ISM Code, for ensuring compliance, and the possibility of a certificate or certificates covering certain aspects of living and working conditions.

- 24.** The Chairperson noted that Convention No. 147 had been ratified by 43 States and the requirements of Article 2 should therefore already be widely applied. She suggested that the Subgroup might wish to comment on the “main ingredients for possible provisions on inspection and control” as found in paragraph 41 of document STWGMLS/2002/1. In doing so, she noted that the role of flag States was covered by points (a) through (g). She noted that the ingredients might relate to the need for certificates (in particular in points (b) through (e)) and to the provisions of the Labour Inspection (Seafarers) Convention, 1996 (No. 178). If quality assurance systems were used, they must follow clear standards. It was encouraging that the Office had looked at procedures adopted by ICAO. The ISM Code had been mentioned. She called upon individual governments to express their views on these matters.
- 25.** The representative of the Government of Cyprus focused on the issue of social security. The requirement for flag States to have legal provisions concerning social security covering all seafarers working on their ships as provided in Article 2(b) of Convention No. 147, was often unfair. Firstly, a seafarer might work for a few years on a ship registered in one State followed by a few years on a ship registered in yet another State and so forth. In each case, he might be making social security contributions, but he would never receive benefits. Secondly, if he was a foreign national, he would be paying into a system other than that of his home country and would not receive any benefits. Thirdly, if he was an older seafarer and was already entitled to full benefits, he would be paying into the system but would gain no further benefits.
- 26.** The Seafarer spokesperson reminded the Subgroup of article 94 of the United Nations Convention on the Law of the Sea (UNCLOS), which provided, inter alia, that “Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.” Social matters, he said, included social security. All seafarers should be covered by social security. The issue of payments into different social security systems might be dealt with by reciprocal agreements between States, as was the case among many European countries. As concerns payments after retirement age was reached, many countries required continued payment to support the collective interest. Finally, he noted that Article 2(b) of Convention No. 147 already required flag States to have legal provisions concerning social security, and if States did not do so they were in breach of the Convention. He did not believe that many States were properly applying the instrument. He wanted to hear how these States were enforcing the provisions of the Convention.
- 27.** The Shipowner spokesperson recalled that this issue of social security had been debated at the 1986 PTMC and 1987 Maritime Conference. The issue was quite complex and might cover both flag and labour-supplying state responsibilities. He suggested that this issue, because of its complexity and thus difficulty, be discussed at a later stage.
- 28.** The representative of the Government of Liberia noted that to properly debate “social security”, it would be necessary to define it. Some issues, such as health care, involved both treatment of the seafarer on board ship and when he returned home and thus involved both flag and labour supply countries enforcement.
- 29.** The Seafarer spokesperson suggested that, in preparing for the meeting of the High-level Tripartite Working Group, the Office should examine other ILO non-maritime instruments

related to social security to see what could be learned from them. In particular, he drew attention to the similar social security problems of migrant workers. The Seafarer spokesperson requested the Office to provide guidance on the various definitions of social security.

- 30.** The representative of the Government of the United States informed the group of his initial reactions to paragraph 41 of the document (STWGMLS/2002/1), after having recalled that, from an enforcement point of view, action should primarily come from the flag State, or from the labour-supplying State. It was, unfortunately, not always the case. Taking subparagraph by subparagraph, the following comments were made:
- (a) full agreement;
 - (b) concerns expressed about the term “guaranteeing”;
 - (c) and (e) certificates provide prima facie impressions, but they may constitute a double-edged sword, as they may limit the efficiency of the PSC process;
 - (d) may put an unnecessary burden on administrations;
 - (f) is more linked to the ISM aspects;
 - (g) the STCW white list system at the IMO did not bring the full results expected. The ILO should carefully consider any similar exercise regarding such independent evaluation.
- 31.** The representative of the Government of China noted that many principles contained in paragraph 41 referred to by the previous speaker were inspired by Convention No. 147 and some IMO Conventions. Though he accepted this in principle, he was of the opinion that if some IMO-type mechanisms were to be introduced, they would not necessarily be successful, since it was comparing technical matters against social ones. The representative of the Government of China also emphasized that the port state control measures should only focus on objective matters in relation to working and living conditions on board ships. In this regard, he endorsed the content of paragraph 38 of the Norwegian document.
- 32.** The representative of the Government of Canada referred to UNCLOS as the mother Convention. In this respect, he was of the opinion that the role of a flag State should be seen as defined by UNCLOS. Convention No. 147 should also be used to provide guidance. Finally, he declared his support for the comments made by the United States regarding paragraph 41.
- 33.** The representative of the Government of Denmark reminded the Meeting that his country recognized full responsibility for a seafarer as long as he was on board a Danish-flagged ship. Once ashore, the seafarer was still partially covered by Danish legislation regarding hospitalization, for instance. But in the long term, only a collective agreement could fully ensure the seafarer’s working and living conditions.
- 34.** The representative of the Government of the Netherlands declared that, in the case of his country, all Dutch seafarers on board Dutch-flagged vessels were covered by the Dutch legislation and foreign seafarers on contract with the Shipowner by a special provision in the Code of Commerce.
- 35.** The representative of the Government of Liberia declared that there was a need for a requirement of the flag State to ensure that crews on board its ships would be covered by the social security aspects of the new instrument. His country would agree to requirements

providing, for instance, that Shipowners would have to pay social security costs for seafarers on board their ships, provided that this would be applied across the board to all vessels in all registers. In other words, he said he was looking for a strong Convention, with the proviso that it would not discourage ratification.

- 36.** The Seafarer spokesperson recognized that the responsibilities of flag States under Convention No. 147 were complex. In the United Kingdom, for instance, no provisions existed regarding social security for non-nationals. This should change in the future. On page 11 of the office document, paragraphs 38-39, the issue was how to enforce new rights, if these were breached. It was recognized as an issue that seafarers might encounter problems when trying to complain to the flag State. Would the new instrument provide the seafarers with an accessible procedure, different from those envisaged in port state control? A comparable point was made on page 14 of document STWGMLS/2002/1 on the forcible detention of a ship where defects constituted a continuation of documented systematic non-compliance with the basic standards of the Convention. He questioned the practical implementation of such a practice and whether inspectors could be properly trained to cope with such regulations
- 37.** The secretary of the Seafarers' group pointed out that what his colleague said was not controversial. He noted that particularly for this instrument, the ILO complaint system needed to be built up with specific maritime expertise and should be able to quickly resolve persistent failures by a Member. He specifically referred to articles 24-26 of the ILO Constitution which dealt with the relevant follow-up procedures.
- 38.** The representative of the Government of Bahamas stressed that the primary difficulty of many countries was legislating for foreign seafarers on board their ships. He noted that most countries had no problems dealing with their own nationals on their ships. There was a need, he said, to determine who was responsible for the seafarer in his home country. As concerns port state control, he said that clear enforceable provisions were needed to facilitate the work of the inspectors.
- 39.** The representative of the Government of Liberia agreed with the representative from the Bahamas on this point. He added that the ILO complaint procedure process was too time-consuming. He pointed out that there was a need to resolve complaints more efficiently, especially for those who persistently disregard enforcing international standards.
- 40.** The representative of the Government of the Netherlands noted that his country did not legislate to protect Dutch seafarers on board foreign ships and that these seafarers could remain part of the normal social security system on a voluntary basis. He noted that his country was not enthusiastic about more certificates and that legislation should be clear for enforcement by port state control inspectors.
- 41.** The representative of the Government of France encouragingly noted his country's current process towards ratifying Convention No. 178. He further added that confidentiality and the consequences to a seafarer making a complaint were something that should be addressed.
- 42.** The Chairperson stated in this regard that although the ILO was set to adopt a new instrument, every member State was encouraged to ratify existing Conventions.
- 43.** The Seafarer spokesperson said that not only should we be concerned with complaints but that there should be a mechanism in place to resolve the complaints. He raised the idea of having an easy guide to show where to file what type of complaints. In addition, he pointed out that with certification there is room for abuse like the fraudulent ISM certificates.

However, he said that they could agree to some sort of document of compliance stating that minimum standards were complied with.

44. The representative of the Government of Canada said that the Office documents were somewhat confusing concerning how a seafarer with problems might have those problems addressed without having to contact the ILO. He reminded the Subgroup that procedures for filing complaints already existed with the regional port state control agreements, in particular within the Paris Memorandum of Understanding on Port State Control. Such complaints resulted in contacts between port States and flag States but did not require the involvement of the IMO or the ILO. The system, he said, was effective but could be improved upon. Furthermore, it was important to make use of the complaint machinery of the ILO as set out in articles 24 through 26 of the Constitution.
45. The representative of the Government of Denmark said that a certification system for conditions on board was needed. However, to be effective there must also be an auditing system. He was pleased that the Office had included a description of the ICAO auditing system in its report.
46. The representative of the Government of the Netherlands said that complaints should normally first go to the employer. If not dealt with at this level, the complaint would be directed to the next level. The flag State, he said, should become involved only after the seafarer has tried all other avenues to resolve the problem.
47. The representative of the Government of the United Kingdom supported the comments of the Bahamas concerning the situation of non-nationals on national ships. She could, however, be more positive on the concept of certificate concerning living and working conditions. This could be useful as all States are already accustomed to using certificates. She also supported the idea of linking enforcement of standards concerning living and working conditions to the ISM process. This might also be linked to the requirements of ILO Convention No. 178.
48. The representative of the Government of the Philippines noted that, as a representative of a major labour-supplying State, he felt that primary responsibility for enforcement of labour standards rested with the flag State. The port State also carried some responsibility once a ship entered its territorial waters. He pointed to the complaint procedures of Convention No. 147 (as found in paragraph 16(3) on page 5 of STWGMLS/2002/1). Under the Philippine Migrant Workers' Act, a seafarer could file a complaint with the manning agency which was jointly and severally liable for violations of the labour contract.
49. The representative of the Government of Cyprus said that, from his experience, very few seafarers took their complaints first to the flag State. Usually, when a flag State finds out about a complaint, it is too late. It was important that flag States should be advised appropriately and promptly. He further added that there were several cases where seafarers had been detained on a ship or in a foreign port by port state control authorities because the shipowner or the charterer had not paid port dues or made other payments. Moreover, they were refused repatriation even when the owner effectively abandoned the vessel. In other words, they were treated as hostages. Such matters had not been covered by the Office paper and should be brought to the attention of the High-level Tripartite Working Group.
50. The representative of the Government of Germany described certain aspects of the ILO's complaint procedures as set out in articles 24 to 26 of the Constitution. These procedures, he said, were not intended to be used by individuals. However, the procedures set out in paragraph 16 of the Office paper (taken from Article 4 of Convention No. 147) could be included in the new Convention.

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- 51.** The Shipowner spokesperson, responding to the intervention by the representative of the Government of Germany, said that in this discussion the focus should be on the “micro” level not the “macro” level. The aim is to rectify conditions on vessels. The Shipowner spokesperson agreed with his Seafarer colleague on this issue. As far as certificates are concerned, he noted a majority in support but was concerned that ships should not be overloaded with a multiplicity of such certificates. Shipowners supported the link to quality assurance systems which already existed. He called upon Government representatives to obtain political support for these concepts in advance of the discussion at the High-level Tripartite Working Group in October.
 - 52.** The Seafarer spokesperson said that his group was particularly concerned with complaints for breaches of fundamental rights. He noted the information on ILO procedures provided by the representative of the Government of Germany and said that there should have been greater use of such procedures – but that they took too long. A unique solution was needed for the shipping industry. There was a need to look at port state control of wages, contracts of employment, etc.
 - 53.** The spokesperson of the Government group reported that whereas his group had examined the roles of the various parties involved in the implementation of the future Convention, and particularly its enforcement, they recognized that the primary tool would be the enactment of appropriate legislation. They also saw the necessity to initiate in case of a dispute on board a dialogue between the Seafarers and the Shipowners themselves, before passing an issue up to the flag-state level. Such a mechanism should be provided for within the Convention itself. Another point envisaged had been the necessary approval of a contract by a government, ideally the labour-supplying State, making it a trilateral contract. It was also recognized that inspections would constitute an important part of enforcement. Since many of the issues inspected could appear to be of a rather subjective nature, appropriate training should be given to inspectors in this respect. Some governments suggested a specific ILO certificate, whereas others preferred to address this issue through the ISM Code. Though an extensive discussion did not take place regarding this issue, the ISM solution seemed to be preferred.
 - 54.** The Seafarer spokesperson expressed reservations on the possible trilateral contracts, since he could envisage some problems linked to freedom of association and the lack of representative social partners in some flag States. On the issue of certification, an ISM-type of certificate seemed possible, though, in his opinion, a press release of the Paris MOU published today raised some doubts on the merits of this system.
 - 55.** The representative of the Government of Canada supported the idea that there should be a difference between compliance, through audits, client education, etc., and pure enforcement, which is linked to penalties. Canada has an Internal Resolution System (IRS), whereby a dialogue has to take place before an issue is brought to the enforcement stage. Though the delegate recognized that it might be more difficult to implement this in shipping, he thought it had some merits. As a consequence, ways to enable a seafarer to dialogue with his captain or the Shipowner should be identified. The flag state authorities should only intervene after other ways of dialogue have been explored. Some kind of obligation in this respect should appear in the future Convention.
 - 56.** The Seafarer spokesperson remarked that such valuable dispositions already existed in some countries. However, it is a fact that amongst multinational crews, complaints lodging procedures, even when they officially existed, were rarely used, if at all. The Shipowner spokesperson indicated that his group was favourable to the introduction of a complaint procedure, which would allow some complaints to be settled before being brought to a higher level.

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- 57.** The representative of the Government of Greece saw problems in the involvement of governments in contracts of employment. He said he supported the concept of certification, as the majority of the group did, but the contents and conditions of validity of a certificate would have to be assessed carefully. He suggested that a model certificate should be attached to the new instrument, in a non-mandatory part of it. Regarding the notion of keeping records referred to in paragraph 41(d) of the Office document, the representative of the Government of Greece indicated that the publication of these records should not be made mandatory.
 - 58.** The Chairperson, responding to the intervention by the representative of the Government of Greece, asked the group whether it supported the idea of including a model format or formats for a certificate in the non-mandatory part of the new instrument.
 - 59.** The Shipowner spokesperson noted that there appeared to be a majority support for a system of certification. He proposed that before the High-level Tripartite Working Group meets in October, a small group could meet to identify what aspects of living and working conditions on board could be covered by a certificate. The group might also develop a model certificate form.
 - 60.** The Seafarer spokesperson supported the idea of a certification system. A model certificate, he said, would be useful in that a uniform appearance would be better for port state control. Guidance was needed from governments on this matter to ensure the proposals by the social partners were not too ambitious. Furthermore, he noted that the Shipowners had said that the certificate would cover “on-board” conditions. This might be too narrow, as it was necessary to control such matters as contracts of employment and recruitment practices which might not be considered by some as coming under the heading of “on-board” conditions.
 - 61.** It was agreed that a small group of two Government, two Shipowners’ and two Seafarers’ representatives would be established to consider these issues. The group would report back to the Meeting at a later time. It would look at certification rather broadly, and including other issues such as contracts of employment.
 - 62.** A representative of the Government of the United States set out views on the issues of auditing and port state control. As concerned auditing, he observed that during the discussion three different concepts of auditing had been discussed. One concept was that found in the quality assessment of national certification as provided in the Universal Safety Oversight Audit Programme adopted by the International Civil Aviation Organization (ICAO). The United States had supported the development of this system and had proposed the use of such an approach by the IMO. However, he noted that, in ICAO the system had first been voluntary and only later had become mandatory. He suggested that the ILO watch developments in the IMO before pursuing a mandatory approach. Another concept was found in the quality standards provisions of the STCW95 Convention leading to inclusion of a State on what is commonly known as the STCW “White List”. His experience with this approach led him to believe that it might not be productive for the ILO. While it could be modified to give “teeth” to the ILO Convention, it might also discourage widespread ratification. The third concept was found in the International Safety Management (ISM) Code requirements found in Chapter IX of the annex to the SOLAS Convention. The ISM process had promise. He agreed with the views expressed by Norway, except that he felt that the procedures to be followed should not be left to each State as this might lead to inconsistency. He also expressed concern over the possible role of classification societies. He suggested that, as concerns use of an ISM approach, the ILO and the IMO must work together closely. Port state control, he said, was an absolutely crucial element. Convention No. 147 was rather limiting as it provided only for reporting of deficiencies and the possibility of detention when conditions were found to be

hazardous to the safety and health of the crew. In his country, additional workload was required of port state control officers in order to take action under Convention No. 147. This tended to discourage such action. By comparison, the provisions of regulation 19 of Chapter 1 of the SOLAS Convention were unambiguous and self-executing, as they provided, inter alia, that “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”. Introducing similar provision in the new ILO Convention would improve it and thereby enhance the conditions of seafarers worldwide. This said, certain safeguarding clauses would also be needed to avoid abuse and provide balance.

- 63.** The representative of the Government of Norway said that in his country 80 per cent of all accidents had a human cause, yet 80 per cent of all inspections dealt with technical matters. It was important that the Convention clearly identify what was to be inspected internationally. On-board inspections would only reveal conditions at a given point in time. The new system should be working to enforce Conventions all the time, 24 hours per day, seven days per week. The system should ensure that Shipowners are responsible and that flag State ensures that the Shipowners have a system in place which ensures compliance with laws and regulations and have policies which are being implemented. The internal resolution system should be part of the quality assurance system. He said it was important to have requirements for port state control directed towards verifying that a certificate issued under the Convention was valid. Certificates should be accepted unless there were clear grounds for believing that the shipboard conditions of employment and shipboard living arrangements did not correspond substantially with the particulars of any of the certificates or, in general, failed to comply with the basic standards of the Convention. Such a proposal was based on SOLAS regulation 19(a) and sought to develop the existing process in Convention No. 147. Finally, in his opinion, the standards covered by social security, pensions, recruitment and the like were not suitable for port state control. Ways should be found to isolate shipboard conditions in order to make it clear to port state memoranda which standards are subject to port state control and which were not.
- 64.** The representative of the Government of the Philippines noted that his country, like Canada, had an internal resolutions system. This was a required part of the seafarer’s contract of employment. Seafarers were not allowed to leave to join foreign ships unless the POEA approved their contracts. Part of a contract included grievance machinery which provided for a system where a seafarer could request the captain to consider a complaint. Manning agencies were made joint and severally liable with the Shipowner for the contract. Seafarers could ask to be repatriated and could file a complaint against the manning agency. Such cases were considered by the National Labour Relations Commission under the Department of Labor. He also drew attention to the Consensual Statement of the Meeting of Experts on Working and Living Conditions of Seafarers on board Ships Registered in International Registers. He read this Statement, and asked whether there was a connection between that meeting, held in May 2002, and the current Meeting.
- 65.** The Subgroup agreed that there were fundamental principles in the Consensual Statement, which also have been reflected in the Office document, which were relevant to the debate. It was agreed to circulate the Consensual Statement to participants in order to draw attention to these principles.
- 66.** The representative of the Government of France pointed out that certification was a logical aspect to include in the instrument. However, he said that the proper training of inspectors was vital. He envisaged common courses for the system so that there was a common culture of ILO standards. He requested information before the meeting in October of the High-level Tripartite Working Group to understand what the consequences might be of

using the ISM system. He stated that a foreign seafarer should be able to approach a person in port with a complaint and that the complaint should be regarded by the inspectorate with the same confidentiality as that of a national seafarer. In closing, he said that port state control enforcement procedures should be strengthened and they should allow for a rapid resolution of problems to avoid abandonment.

- 67.** The representative of the Government of Brazil expressed consent with previous speakers in that dialogue was important, enforcement of Convention No. 147 was weak, and the training of inspectors was vital. She discussed examples of partnerships with the Maritime Authority in Brazil that worked well, but that inspectors needed the skills to assist in negotiations to resolve issues.
- 68.** The representative of Cyprus agreed with the views expressed by the representatives of Norway and the United States. He pointed out that through his personal experience in the case of Cyprus, the ISM Code had delivered more than he had expected. He explained that the Code is an extremely effective and dynamic instrument in enforcing standards, provided the flag State gives to it appropriate interpretations. Cyprus did not hesitate to withdraw Companies' Documents of Compliance (DOCs) once major non-conformities were noted, ranging from non-compliance of vessels with the applicable safety standards to non-payment of seafarers' wages. He clarified that Cyprus requires, through ISM audits, verification of compliance with applicable standards, including ILO standards (e.g. verification of hours of work and rest, verification of procedures followed by companies for the employment of seafarers, verification of procedures followed by companies relevant to the authenticity of seafarers' certificates of competency and of training, registration of seafarers, etc.). So what is required is an internationally agreed interpretation of the Code to give it teeth globally. An audit exercise, similar to the pattern of the STCW Convention, may address institutional compliance of flag States but it will not resolve the core problem of continuous failures. He also stated that in addition to addressing the need of appropriate training of port state control officers for labour matters, a mechanism for monitoring their activities is necessary, given the fact that subjectivity in the course of performing their duties cannot, otherwise, be avoided.
- 69.** The representative of the Government of the Netherlands indicated that flag state inspectors should have authority to impose sanctions, including detentions. He noted that it would be useful to expand on and explain the definition of "clearly hazardous" in Convention No. 147, since most inspectors have a technical background and were not trained in labour standards. He also pointed out that it would be effective for port state control inspectors to have the authority to detain vessels until flag States have adequately responded to complaints. He believed that these measures would make flag States more responsive as their ships would more often be delayed, which would impact on their ability to attract tonnage. The representative informed the Meeting of a draft law in their Parliament that would deny the right of a ship to fly the Dutch flag if it was not in compliance with existing legislation.
- 70.** The representative of the Government of Denmark pointed out that some areas of inspection do not fall under the responsibility of port state control and were an issue for the social partners. In addition, he expressed concern over enforcement of the instrument being conducted by people who lack the knowledge and experience of living and working conditions on board ships.
- 71.** The Seafarer spokesperson noting the helpful discussions relating to this ISM Code, requested the IMO to prepare a paper which could be submitted to the High-level Tripartite Working Group and which would point out the strengths and weaknesses of a linkage between the consolidated Convention and the ISM Code.

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72. The Subgroup agreed that such an information could be useful.
73. The IMO representative indicated his intention to submit the required information for the High-level Tripartite Working Group meeting in October 2002.
74. The Chairperson of the Subgroup announced, after extensive consultations with the social partners and Government representatives, that a working group on certification that had been envisaged earlier would not need to be convened. It was felt that it would be premature to start work on the contents of inspections before some degree of agreement was reached on basic principles of enforcement in the High-level Tripartite Working Group.
75. The representative of the Government of the United Kingdom remarked that a better enforcement of standards of working and living conditions would imply a cultural change among inspectors, and that appropriate training programmes should be developed for them. On the certification issue, the United Kingdom was supportive of the idea, but expressed the view that it was too early to give a definite opinion on this matter before a thorough discussion of the structure and contents of the consolidated instrument.
76. The representative of the Government of Greece referred to the port state control issue and noted that the earlier proposal by the United States was good as they used the terms of the SOLAS Convention. He pointed out that it was good to be precise as to the nature of inspections and added that regulation I/4 of the STCW95 Convention concerning “Control Procedures” would be a useful guide for the port state control regime within the new instrument.
77. The representative of the Government of the Bahamas observed that the increase in detentions for ISM Code matters which had been observed and reported in the Paris MOU press release might not be as negative as it looked, and might not necessarily indicate an increase of related deficiencies but rather reflect the increasing confidence of inspectors to act on the perceived problems on vessels in new areas of operation requiring inspection. In fact, it seemed that their superiors were less eager to detain such vessels.
78. The representative of the Government of Norway remarked that the flag State is always ultimately responsible for the implementation of a regulation, and it is never forced to delegate its authority to a classification society or other organization.
79. The Subgroup agreed on a number of points raised in the discussion that would have to be inserted in the revised document (STWGMLS/2002/1) to be considered by the High-level Tripartite Working Group in October:
- information regarding the inspections of working and living conditions under Convention No. 147 in the various MOUs to be collected by the Office;
 - development of clear guidelines for inspectors;
 - the training of inspectors;
 - an appropriate method to solve disputes at an early stage (i.e. on board) should be found before referral to the Shipowner and eventually the flag State;
 - need to ensure that seafarers do not risk dismissal for complaining;
 - a model form for a certificate should be developed, if the principle is accepted;

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- IMO to provide a paper on the advantages and disadvantages of including the implementation of ILO standards in the ISM Code;
 - increasing port state control provisions to the level of SOLAS requirements.
- 80.** The Seafarer spokesperson agreed on these remarks. He also alluded to the situation of masters on board, who are both Shipowners’ representatives as well as crew members. He requested the development of clear guidelines for inspectors. He felt that the Consensual Statement of the Meeting of Experts (May 2002) referred to by the representative of the Government of the Philippines should be submitted to the High-level Tripartite Working Group. He also suggested that a “no more favourable treatment” clause should be included but was of the view that it might be premature to consider it at this stage.
- 81.** The representative of the Government of the Bahamas had some reservations about the reinforcement of the port state control provisions unless the Convention was precise in its requirements. He felt that inspectors could be over-zealous in the subjective interpretations of the Convention leading to unjustified detentions.
- 82.** The representative of the Government of the United States expanded on his earlier comments relating to the enforcement provisions in SOLAS. Although he felt enforcement should be more robust, he expressed concerns over how the port state control would address social issues that might call for the detention of a ship. These issues, he said, must be clear and precise to be done objectively. In addition, he noted that he was not in favour of the “three strikes and you’re out” rule as suggested by Norway. He indicated that port states and PSC MOUs had their own provisions on how to deal with offenders and that they should be able to continue to do so. Therefore, he urged that there should not be a provision on repeat offenders.
- 83.** The Chairperson of the Subgroup summed up the debate up to this point:
- ILO Convention No. 147 is the most important maritime instrument and should be preserved as much as possible;
 - member States should reflect on the difficulties they encounter in ratifying Conventions at the present time;
 - the group would get a clearer picture when it sees a draft of the future instrument; and
 - when preparing for the High-level Tripartite Working Group participants should also reflect on why IMO instruments had been more widely ratified.
- 84.** The Subgroup agreed to the first part of STWGMLS/2002/1 on enforcement that the document would be an excellent basis for discussion in the High-level Tripartite Working Group and could be complemented by references to the Subgroup’s discussions primarily on the following points:
- that the document reflected a need for having adequate training of port state control officers as well as flag state inspectors on maritime labour standards and clear guidelines for inspectors;
 - that there was a need for considering an internal resolution system to ensure measures had been taken on board to settle disputes or complaints before the issue was presented to the flag state administration or the port state inspector; within such a procedure, there would also be a need to consider how to protect the crew or the crew member who would lodge such a complaint;

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- that the document should contain information on port state control procedures on enforcement of ILO standards;
 - the possible procedures for complaints before a specially created tripartite body, which is at present only referred to in paragraph 38(b) of the draft document should also be translated as one of the main ingredients for possible provisions set out in paragraph 41.

Discussion of document STWGMLS/2002/3 on the impact of the new proposed Convention on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

85. The Chairperson, introducing the document, noted that it had been intended for discussion only by the Subgroup. It could, however, be sent onward to the High-level Tripartite Working Group, if the Subgroup so wanted. The document explained how to preserve the capital of Convention No. 147 when preparing a new Convention. One of the suggestions was whether to provide a grace period for transition, by States which had ratified Convention No. 147, from that instrument to the new Convention. She noted that the Government group had discussed this matter, and some governments had called for an extension of the suggested grace period from one year to two years. She asked the Government members to provide ideas on how to ensure a smooth transition from Convention No. 147 as one of the most important ILO instrument to the new Convention and also give guidance as to whether or not document STWGMLS/2002/3 should be sent onward to the High-level Group.
86. The spokesperson of Shipowners' group attached great importance to this subject. The Joint Maritime Commission had discussed the importance of not losing the capital of Convention No. 147. The new framework Convention would eventually replace Convention No. 147 and a good transition was important.
87. The secretary of the Shipowners' group reported that his organization had had internal discussions on this issue. There were very complex technical and legal issues. To assist in making progress on this topic, he set out certain assumptions which should be considered and either confirmed or corrected. The first assumption was that, once the new Convention was adopted in 2005, Conventions, including Nos. 147, 180 and 22, would be closed to ratification and only the new Convention would be open to ratification. The second assumption was that the provisions of Convention No. 147 would be scattered among the various parts of the new framework Convention. The third assumption was that, in the various "families" of provisions (e.g. medical examination), a State would be required to ratify all provisions and not be able to pick and choose among provisions on a particular subject. In the latter case, this could lead to States seeing provisions in the new Convention which they had had trouble with in the existing instruments. He said it was important that encouragement be given to States to ratify the new Convention. The Shipowners were disappointed that the Office document had not suggested sufficient means of encouraging ratification. Perhaps one method of doing so would be to include the whole of Convention No. 147 as a separate part, and States could ratify the new framework Convention if they accepted this part. Thus, the 43 States which had already ratified Convention No. 147 could make an easy transition to the new instrument.
88. The Seafarers generally agreed with the issues raised by the Shipowners. They, too, wondered whether a two-year transition period would be sufficient incentive for ratification of the new instrument. The challenge was to identify what were the difficulties in ratifying the existing ILO Conventions. Was it due to basic rights or to do with details?

The High-level Group had agreed to attempt to separate principles from details. If this could be done well, States should not have difficulty ratifying the mandatory part of the new Convention. One country had already pointed out the difficulty enforcing social and labour rights. This problem must be overcome by making those parts clear. The Seafarers did not support having a special and separate part including the existing provisions of Convention No. 147. What was needed was for the governments which had not ratified Convention No. 147 to explain why they had not done so.

- 89.** The Secretary-General noted that, when preparing the document, the Office had explored the possibility of including a separate part containing the whole of Convention No. 147. However, it had not included in this option in the document because, once the transition period was completed, the text of Convention No. 147 would disappear. Otherwise, there would be duplication in the provisions of the new Convention. At some point the Office might be able to provide a table which would show how the provisions of Convention No. 147 were reflected in the new Convention to ensure all provisions were accounted for and none were needlessly lost.
- 90.** The spokesperson of the Government group, reporting on his group's discussion of these issues, noted that most of the governments which had expressed views on this subject were in favour of provisions which would encourage States to ratify the new Convention. They had said that an extended transition period might be helpful for some countries. They also stressed the need for States which had not yet ratified Convention No. 147 to do so in order to prepare the way for ratification of the new Convention. More ideas were needed on incentives for ratification. Finally, some governments had pointed to possible problems in regional port state control arrangements if some States had moved to the new Convention while others had not.
- 91.** The spokesperson of the Government group added that incentives could be used to encourage the ratification of the new Convention. The introduction of a period of grace might help, though law and practice in any given country may have to be brought into line with the Convention at one time or another. A need to continue to promote new ratifications for the existing Conventions had been identified. He also remarked that the existence of a transition period might in fact render inspections more difficult for PSC and MOU inspectors, since all countries would not have ratified the same instruments at the same time.
- 92.** The Chairperson of the Subgroup recognized this difficulty, since one could not enforce a Convention that one had not ratified. Based on the discussion, she asked the secretariat to submit information on the practices of the different regional PSC arrangements and on the enforcement of ILO standards.
- 93.** The representative of the Government of the United States remarked that his country required that law and practice should be brought up to level before any ratification and, consequently, a period of grace would not bring any advantage.
- 94.** The representative of the Government of Denmark assumed that the ratification process would be made easier if one recognized that it represented a new era that would challenge and commit member States. He suggested that there was a need to know why countries had not ratified particular Conventions. That kind of information would prove useful to decide whether an extended transitional period was necessary. He also pointed out that, in his country, compliance with a Convention came before ratification.
- 95.** The representative of the Government of Japan stated that the extension of a period of grace would not be an advantage for his country, and neither would a reduction in reporting requirements. He also pointed out that Japan, being a strong supporter of the

Tokyo MOU, where only a minority of member States have ratified Convention No. 147, would see a problem in the MOU members' coordination for the PSC implementation of a new Convention when only a minority number of MOU members will be parties to it.

- 96.** The representative of the Government of Norway expressed his support for Convention No. 147 to be maintained even after the entry into force of the new instrument. Convention No. 147 should not necessarily be closed in the foreseeable future, so that nothing of its positive points would be lost. He also suggested that there was a need for explanations from governments about the reasons why they had not ratified certain Conventions.
- 97.** The Chairperson of the Subgroup recognized this request as essential. She also encouraged governments to look for other incentives in order to ensure widespread ratification of the new instrument.
- 98.** The representative of the Government of Liberia said that his country did not favour the ratification of parts of the future Convention, as opposed to the instrument as a whole. The use and duration of a transition period was for governments to decide.
- 99.** The spokesperson of the Seafarers' group said that there was little point in asking governments why they had not ratified a Convention when it was adopted, sometimes a long time ago. What was important was to know why they could not ratify it now. He was also of the opinion that details should not be a stumbling block, since most of the time they would be in a non-mandatory part of the Convention, and that guidance about them would be provided. The real issue would be the identification of seafarers' rights and basic principles. The group should try to be inventive, be it to develop appropriate mechanisms of entry into force, or about the transition period, which could, for instance, come before – and not after – ratification.
- 100.** The representative of the Government of the United Kingdom remarked that the best possible incentive would be a clear and workable instrument, well-balanced between mandatory and non-mandatory parts. The transition would also be easier in that case.
- 101.** The representative of the Government of the Republic of Korea stated that the two major difficulties his Government had encountered regarding the ratification of Convention No. 147:
- (a) some non-maritime Conventions appear in the Convention itself (namely Conventions Nos. 87 and 98). Since some workers in the Republic of Korea are excluded from the scope of these instruments, it prevented the ratification of the present Convention;
 - (b) the scope of application is too wide. In the future instrument, some exceptions (i.e. tonnage, size, etc.) should be introduced.
- 102.** The representative of the Government of Cyprus agreed with the Seafarers and the United Kingdom in that simplicity was an important element of the new instrument. He made a request for the secretariat to codify the difficulties that Members were having in ratifying Conventions.
- 103.** The representative of the United Arab Emirates reported that his country had not ratified any maritime Conventions since they had to study the implications for law and practice prior to committing as this made for easy implementation. He noted that incentives for the new instrument were important and could be in various forms, such as regional training and technical cooperation. He urged that Convention No. 147 be left open for ratification by others as it could be helpful to those Members who could not fully commit to the new Convention.

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104. The Secretary-General, intervening to answer some questions, stated that the Office could codify the reasons for non ratification of certain Conventions. The relevant information was submitted to the Office as Australia and the United States had already done. As regards technical assistance, she noted that the Office could respond to the extent that resources were available and specifically pointed out that informal interpretations could be given by the International Labour Standards Department to assist the process of ratification.
 105. The representative of the Government of Greece reminded the meeting of the relevance of the 1996 Protocol whenever Convention No. 147 was mentioned.
 106. The spokesperson of the Seafarers' group requested that document STWGMLS/2002/3 should not be brought forward to the High-level Tripartite Working Group. He pointed out that the debate on Convention No. 147 had been helpful to look at the past but he stressed the importance of looking forward.
 107. The Subgroup decided that there was no need to submit the document to the High-level Tripartite Working Group as the discussion of the Subgroup would be brought to its attention.

Simplified amendment procedure

108. The Chairperson of the High-level Tripartite Working Group thanked the Seafarers' spokesperson for reiterating the need to look at the future. Account should be taken of the present situation including the existing rules but it was even more important to look to the future to establish the new instrument. He repeated the Seafarers' request to identify the reasons why Conventions were not being ratified today since the reasons of 40 years ago might not be valid anymore. He urged the group to develop a new instrument that would be dynamic and adaptable enough to permit changes in technology and living conditions. He stated that the new dynamic instrument needed tools to keep it that way.
109. The Chairperson of the Subgroup pointed out that, during the High-level Tripartite Working Group in December, there was full agreement that there should be simplified amendment procedures to ensure that the new Convention would be updated and relevant.
110. The Secretary-General reminded the meeting that to create new rules one must carefully respect the existing rules and reiterated that the consolidated Convention needed tools to make it a dynamic instrument. She stressed that the proposed simplified amendment procedure could only apply to the detailed provisions in the annexes to the new Convention. An important concern she noted, was to obtain information from governments on what should be considered details, not requiring submission to national parliaments. She also pointed out that the simplified amendment procedure relating to the annexes could be optional. An annex, she said, could provide that certain provisions could only be amended by the normal procedures requiring explicit ratification, or the relevant body in the ILO could decide to follow the normal procedures.
111. The Chairperson called upon the Governments to explain what would be the basis for determining whether an amendment required parliamentary action or could be implemented without requiring parliamentary action. She also asked the Office to explain its proposed tacit acceptance procedures.
112. The Secretary-General said that the Office had sought to carefully respect existing rules in order to create new ones. In fact, it was going far beyond the existing requirements for the preparation of new Conventions. In 2005, the final result, including simplified amendment

procedures, would be submitted to the ILC for adoption as a Convention. The next step would be the communication of the new Convention to the ILO member States for ratification, in accordance with constitutional processes. After the number of ratifications required by the Convention is attained, the new Convention, with its procedures for amendment, will enter into force.

113. The procedures set out in the Office document were not exactly new to the ILO. The 90th Session of the International Labour Conference had, in June 2002, adopted a Recommendation concerning the list of occupational diseases and the recording and notification of occupational accidents and diseases which included a provision calling for a list of occupational diseases attached to the Recommendation to be regularly reviewed and updated through tripartite meetings of experts convened by the Governing Body of the International Labour Office. It should be stressed that the proposed simplified amendment procedure would only apply to the detailed provisions in the annexes to the new Convention, in other words solely to the manner of implementing the basic principles set out in the Parts of the Convention. A major concern would therefore be to get information from Governments on what should be considered details, not requiring submission to national parliaments. This is why she had referred earlier to the hypothetical example given in Appendix B of document STWGMLS/2002/2.

114. She said that the simplified amendment procedure relating to annexes would be optional. An annex could provide that certain provisions could only be amended by the normal procedures requiring explicit ratification. The relevant body in the ILO could also decide to follow the normal procedures, rather than the simplified procedure.

115. The procedures proposed and major innovations included:

- (1) the proposal of an amendment to an annex would be limited to the social partners and Government members that had ratified the Convention (innovation for the ILO);
- (2) it would be circulated to all ILO Members for comments (normal procedure);
- (3) adoption of the amendment by a proposed tripartite committee with a maritime composition: social partners plus ratifying governments (innovation), with a requirement for a two-thirds majority;
- (4) submission to the ILC for approval, because the Organization as a whole must ensure that the Convention is in line with its general principles and philosophy (normal procedure) except that there would be no right for the ILC to amend. If it has problems it must refer the question back to the tripartite maritime committee (innovation);
- (5) submission to ratifying Members for their consideration;
- (6) general acceptance, unless governments of parties say “no”, within a prescribed period, normally two years (innovation);
- (7) entry into force at end of period unless one-third of the parties have objected (innovation); and
- (8) after entry into force, amendments would be binding on all ratifying Members except for those that have objected (innovation).

116. The Chairperson said that it seemed that this proposals should be taken to the High-level Tripartite Working Group. The procedure was important to keep the Convention alive and

relevant over time. She requested comments on the procedures, on the creation of a new tripartite body, on how States would undertake ratification of the Convention, on the proposal for voting within the proposed tripartite committee, and other aspects of the Office proposal.

- 117.** The Shipowners consented to the Office proposal for a tacit acceptance procedure as set out in the paper and presented by the Secretary-General. The developments concerning the Recommendation concerning the list of occupational diseases was very interesting. They suggested that this be included in the report to the High-level Tripartite Working Group to show that such innovations were possible within the ILO.
- 118.** The Secretary of the Shipowners' group said that, while the suggestion for the tripartite maritime committee was useful, Shipowners continued to attach great importance to the Joint Maritime Commission and did not want the proposed Tripartite Maritime Committee to take over its functions. He cautioned that a proposal for annual meetings of the tripartite committee might not be accepted by the Governing Body due to the cost implications.
- 119.** The Seafarers said that there was a need for such a simplified procedure as without it there could be no new framework Convention. The Office report had been excellent, and they did not have much to add to it. Governments, he said, should carefully address the main issues set out in paragraph 16 of the report. Like the Shipowners, they wanted the Joint Maritime Commission to be retained. The Tripartite Maritime Committee could meet annually, if needed, or less often.
- 120.** The spokesperson of the Government group indicated that a need for simple procedures had been made clear. Among the issues raised were the following:
- The tacit amendment procedure should only apply to technical parts.
 - The amendment procedure should have a tripartite structure.
 - There could be difficulties regarding the amendment of maritime labour laws, if these were not in line with other labour laws in that country.
- 121.** The representative of the Government of Japan declared that regarding paragraph 8 of the document, requesting member States to provide the Office with their appropriate national legislation, his Government had initiated a research on the incompatibilities between ILO Conventions and national legislation. The results of the study would be sent to the Office as soon as they had been translated. In Japan, as in most countries, ratifications of a Convention have to pass through Parliament, after tripartite consideration. However, implicit ratification of amendments to a Convention which requires only revision to administrative orders needs only tripartite consultation without parliamentary procedures. Japan was of the opinion that limiting the contents of the annexes to those that would not have to pass through the Parliament would simplify matters considerably.
- 122.** The representative of the Government of Denmark remarked that his Government was generally in agreement with the Office proposals. It should be possible to set up a procedure showing that a wide agreement and a clear majority existed in matters considered. He also expressed the opinion that only the social partners, together with the governments having ratified the new Convention, should be able to vote on amendments. He also thought that the International Labour Conference should have the ultimate power to accept amendments, or to send them back to the committee established by the Governing Body for this purpose. A member State should also have the option to accept an amendment after a certain period, or to reject it.

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123. The Subgroup decided not to discuss voting procedures so that Government delegations could consult with their administrations on this item. The Subgroup further decided that the second part of document STWGMLS/2002/1 could also be brought forward to the High-level Tripartite Working Group and, as it would facilitate the discussion, the document should be divided into two separate documents – one on the enforcement issue and one on the simplified amendment procedure.

The structure of the new instrument: Allocation between principles and details (STWGMLS/2002/2)

124. The Chairperson noted that the Subgroup had received the working document on the structure of the new instrument. It contained an example of how the structure of the new instrument could be divided into mandatory Articles (principles/rights), detailed provisions of a more technical nature which could be amended by a simplified procedure, and a non-mandatory part (Recommendation, guidelines). She further noted that the Office had produced a resource document (STWGMLS/2002/6) which contained a compilation of the relevant provisions of maritime labour Conventions and Recommendations and related texts. The Subgroup had also received in tabular form a description of the new Convention, including the “families”.
125. The spokesperson of the Government group requested that a common terminology be adopted for this document as well as for the table document submitted by the Shipowners’ group.
126. The Shipowners’ spokesperson said that his group supported the contents of the Office document. The terminology used should be made uniform and the table added. In the hypothetical example provided of the instrument, only one article should be considered as “principles”.
127. The representative of the Government of the Netherlands suggested that in the proposed framework Convention the regulation concerning employment conditions might be divided up into chapters.
128. The Chairperson of the High-level Tripartite Working Group said that, in order to make progress, it would be necessary to combine ideas. The Seafarers wanted a Convention which set out the rights of all seafarers. As the High-level Tripartite Working Group had said, such rights should be easily accessible and understandable. One level of the framework Convention could define the rights and the next level would indicate the method of applying them. The table which had been circulated was acceptable, but once drafting began it might not be the ideal solution. Thus, the secretariat should be given the flexibility to change it, if needed. From the point of view of the Chairperson, he would have no problems if there were several options to choose from in October.
129. The representative of the Government of Norway said that there should be no limits on the number of regulations. It was up to each State to determine where text belonged in that States’ own legislation. His country would have liked to see a separate part setting out those shipboard living and working conditions which could be inspected. Norway also felt that “manning” can be problematic. The issues of training and certification of seafarers which are found in ILO Conventions should be handled in the IMO. Special care must be taken in this process so as not to develop a vacuum in international legislation on these matters.
130. The representative of the Government of Greece supported the view of Norway as concerned the issue of manning. However, he noted that certain training matters covered in

ILO Conventions, such as certification of ships' cooks, were not dealt with in the STCW Convention.

- 131.** The secretary of the Seafarers' group said that consideration should be given to the integration of the ILO training and certification instruments into the STCW95 Convention. What was important was that there would be no vacuum on training issues. Perhaps there was a need to include certain principles concerning training and certification in the new Convention in view of the role the ILO is afforded in the Articles of the IMO STCW95 Convention. However, specific provisions, such as the training requirements for able seafarers and ships' cooks might better be incorporated in the STCW Convention.
- 132.** The observer from the International Maritime Organization said that he saw no reason why such issues as training of able seamen and ships' cooks could not be brought into the STCW Convention. He noted, however, that the existing ILO requirements were not very detailed, and that if such matters were included in the STCW Convention, it would be necessary to develop detailed provisions on the competencies required.
- 133.** The representative of the Government of the Philippines suggested that the Parts could be divided into three main groups: pre-employment, employment and post-employment.
- 134.** The Subgroup agreed that the consolidated Convention should consist of the following four levels:
- Articles of the Convention;
 - regulations covering the basic rights and principles in each "family" of subjects;
 - rules setting out the details for the implementation of the regulations;
 - non-mandatory Recommendations.

The Subgroup requested the Office to prepare a preliminary draft of such a Convention, leaving out definitions and scope of application, which were to be the subject of a separate paper, and only providing a sketch of the possible recommendations, which would include the details of rules that could appropriately be in this non-mandatory section.

- 135.** The Seafarer spokesperson recommended that the Office produce the structure, the rights, rules and regulations and the flow of them. He suggested this draft prepared by the Office be submitted to the High-level Tripartite Working Group in October. As well, he requested that all of the rights and rules attached to them be mandatory as a whole package without options. The Seafarers had an open mind as to whether or not the simplified amendment procedure should be applicable to rights.
- 136.** The Government spokesperson suggested a comparison between this proposed structure of the new Convention and the MARPOL Convention. In that Convention some sections were compulsory and others optional. He noted that something similar could be adopted with a view to facilitating the rapid ratification of the new Convention. The Government group discussed the Korean proposal to use a Convention structure similar to that used in the IMO MARPOL Convention. Following that structure, the Articles and regulations would be incorporated in the Convention and the rules and recommendations would be in annexes, some of which would be compulsory for all parties to the Convention, others would be optional. The proposal received a large measure of support. It was considered that such a structure could be helpful to facilitate the rapid ratification of the Convention.

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- 137.** The Shipowner spokesperson pointed out that, after private consultations with the seafarers, there was sufficient common ground on what could be families, rules, etc. However, it was difficult to finalize a proposal at this Meeting. He suggested that a proposal for the structure of the new Convention be developed by the Office based on the views expressed.
- 138.** The representative of the Government of Norway stated that there was a need to consider the relevance of including provisions on training and certification of seafarers, bearing in mind the STCW Convention.
- 139.** The spokesperson for the Seafarers' group concurred in principle with this view. However, there might be a need to consider whether the same applied to ships' cooks. He proposed that the IMO could be requested to submit a paper to the High-level Group on this issue.
- 140.** The Subgroup decided to make such a request.
- 141.** The Subgroup agreed that the Office would prepare a text which would be as complete as feasible, including the recommendation level. The Office draft need not be an exhaustive one at this stage but would be a best effort taking account of the views expressed by the Subgroup. The Office would collaborate closely with the Shipowners' and Seafarers' secretariats as well as the secretary of the Government group. The Seafarers' and Shipowners' secretariats would work together in order to clear up possible confusions.
- 142.** The Seafarer spokesperson then stressed that the contents of the ILO Declaration on Fundamental Principles and Rights at Work should be embodied into the future instruments. He thought this was particularly important and read a statement:
- The importance of these fundamental labour standards was illustrated by a recent case in which the Greek Government has broken a legally organized trade union strike by Greek seafarers through the issuing of a civil mobilization order. This draconian order, which came from the Prime Minister, was in breach of core labour standards, and in particular freedom of association, to which Greece is a party. It also constituted a violation of the ILO Convention on the abolition of forced labour and the relevant provisions of the Greek Constitution. The Seafarers' group denounced the actions of the Greek Government and notes that the Pan-Hellenic Seamen's Federation (PNO) will be initiating a number of actions to uphold trade union and individual workers' rights, and states that the PNO can rely on the support and solidarity of the global union movement.
- 143.** The representative of the Government of Greece stated that, even though he did not see the relevance of the statement read by the Seafarer spokesperson, he replied that Greece is a country with many islands, largely populated, in particular at this season, where many tourists coexist with local people. The decision taken by the Government of Greece to issue a civil mobilization order for the seafarers had been taken within the remit of the Greek Constitution, and only after four continuous days of strike had taken place. This was a national situation of emergency as many islands were short of food, medicines and other supplies. This decision had been taken in full compliance with the laws of Greece, including the various treaties and Conventions ratified by his country.
- 144.** The Chairperson drew attention to the document concerning the essential elements of decent work (STWGMLS/2002/5). Following brief general discussion, it was agreed that it should also be submitted as a resource document to the High-level Tripartite Working Group.
- 145.** The spokesperson of the Seafarers' group said that the document was important because it drew attention to the principles contained in the ILO Declaration on Fundamental

Principles and Rights at Work and would be a reference document for the High-level Tripartite Working Group.

146. The Chairperson then turned to the document “Duplicative or contradictory texts in the existing maritime instruments” (STWGMLS/2002/4). This document was useful as it indicated where provisions of existing ILO maritime labour standards were duplicative. She called upon the meeting to give their indications on the part concerning definitions and scope of application.
147. The spokesperson of the Seafarers’ group felt that the work was very useful. They noted, however, that it may be necessary to leave some definitions to the different Parts of the Convention. Experience in the IMO had shown that general definitions applicable to the whole of a Convention sometimes created difficulties in the future. Bearing this in mind, he proposed that the Office be tasked to prepare a separate paper on the issue of definitions and scope of application. Such a document might also draw upon terminology used in other ILO instruments.
148. The spokesperson of the Shipowners’ group agreed that the paper was comprehensive and useful. They also supported the proposal by the Seafarers for a separate document concerning definitions. This would have the added advantage of separating this contentious issue from the drafting of the other provisions. Eventually, a drafting group might be established to link scope and definitions to the rest of the text of the draft proposed Convention and Recommendation.
149. The Chairperson of the Government group said that his group had not discussed the idea of a separate paper on definitions. However, they had discussed the need to take a new look at definitions bearing in mind the changes which had occurred in the industry, particularly as concerned passenger ships and offshore support vessels. They had discussed the possibility of using the concept of “normal place of work is at sea” to define seafarers in the proposed new instruments. Other instruments, such as the UNCLOS must be kept in mind so that conflicts did not arise.
150. The spokesperson of the Seafarers’ group commented that a paper simply listing existing definitions might not be sufficient. It would be necessary to place the definitions in the context of the subject area concerned. They also reminded the meeting that many of the definitions had been adopted as recently as the Maritime Conference in 1996 and were probably still useful.
151. The representative of the Government of Cyprus pointed out that the definition of seafarers deserved a discussion with the social partners. He used examples of research vessels and cruise ships where workers were not considered seafarers but they were also not passengers. Some cruise entertainment personnel, he noted, were used to receive and liaise with passengers, and would be looked upon by passengers to provide guidance in the case of an emergency. However, he said, the STCW Convention did not require training certification for this type of staff. He noted that no matter what capacity they may serve, if someone was employed on a ship for a period of time, they should be protected.
152. The spokesperson of the Seafarers’ group reminded the meeting that Convention No. 180, Seafarers’ Hours of Work and Manning of Ships Convention, 1996, defined seafarers as “any person defined as such by national laws or regulations or collective agreements who is employed or engaged in any capacity on board a seagoing ship to which this Convention applies”. He pointed out that there were staff on board ships who were part of muster stations that worked as hairdressers or held other customer service jobs on the ship. He asked whether or not repair crews or riding gangs should be considered seafarers. They should be covered by something, possibly the flag States’ shore-side legislation or other

ILO Conventions not covering seafarers. He added that it might be easier for administrative purposes and clarity that the definition should cover more people as it might be difficult to identify which other persons serving on board ship were actually covered. He closed by pointing out that the Seafarers were open to discussion on this.

- 153.** The spokesperson of the Shipowners' group concurred with some of the Seafarers' comments but said that definitions should be looked into.
- 154.** The representative of the Government of France stated that, irrespective of the definition of "seafarer", there should be no gaps in coverage of conditions of employment. He added that inspectors should be capable of covering all forms of working conditions on board and must be competent on the laws or regulations which are relevant for persons aboard ships.
- 155.** The representative of the Government of the United Kingdom recalled that to assist with the definition of "seafarer" when implementing ILO Convention No. 180, the United Kingdom uses, as a rule of thumb, the concept of "normal place of work". To ensure no gaps, a person whose normal place of work is at sea is covered by maritime regulation, and a person whose normal place of work is on land, is covered by shore-side legislation. She added that there were still borderline cases.
- 156.** The representative of the Government of the Netherlands asked how ship dentists or medical staff should be considered since he was not aware of any unions for them.
- 157.** The spokesperson of the Seafarers' group stressed that there were a number of ways to look at the situation and that there would always be exceptions. He noted that a ship was a ship and the staff had a responsibility for that ship. A person working on a ship had responsibilities and was working as part of that ship. He cautioned that in some cases the structure on board did not have clear lines of accountability and responsibility and this had created dangerous situations. He said that many ship dentists and doctors were members of ships' officers' unions.
- 158.** The representative of the Government of Canada stated that their definition and interpretation of a seafarer is in line with the ILO Convention and what the Seafarer spokesperson said, a ship was a ship and the approach was driven by the command and control structure. However, there is a need to expand or have categories of seafarers to better define the reality of today's shipping and labour practices in the world. We certainly need to explore the possibility of having categories of seafarers for the passengers industry and exploration and exploitation of oil and gas in the offshore zone. This ongoing problem with the definition of seafarer will have to be sorted out sooner than later.
- 159.** The Chairperson concluded that it was too early to make a definite recommendation on the definitions and the scope of application, bearing in mind that these issues were interlinked. The Subgroup decided that the document was a useful tool for the High-level Tripartite Working Group.
- 160.** The spokesperson of the Government group reported that the group considered that:
- fishing vessels should be excluded;
 - purely inland voyages should be excluded; and
 - all international voyages should be covered.

Views differed concerning domestic voyages where national law should be taken into consideration. It was also felt that some of the families identified in the table presentation

of the instrument might have specific scope of application, e.g. tonnage for accommodation.

- 161.** The representative of the Government of Brazil observed that many recent ILO maritime Conventions shall apply to fishing or to the offshore industry after consulting the representative organizations involved. The delegate expressed her opinion that the new Convention mention that the national laws or regulations shall determine some issues in order to attract more ratifications. She also remarked in this respect that Convention No. 147 provides some latitude in its scope of application.
- 162.** The spokesperson of the Seafarers' group recognized that domestic voyages might constitute a problem for some member States. These governments could contact the Office for guidance. Some particular concerns might perhaps be taken into account in the new Convention. However, the Convention should not be diluted simply to attract more ratifications. The issue of domestic trade should be carefully considered, since cabotage, for instance, certainly influenced the legislation of certain countries.
- 163.** The spokesperson of the Shipowners' group stated that his group had not discussed fully possible exclusions in the scope of the Convention. However, he had no doubt that domestic trades needed to be considered. He also advised the meeting that, his association did not represent employers in the fishing industry, so it would be appropriate for the Office to consult with them at the appropriate moment.
- 164.** The spokesperson of the Government group reported that several countries had announced that they would communicate their problems on ratifications of current Conventions to the Office. He also advised the meeting that a number of Government representatives had expressed the opinion that, as a whole, the existing Conventions were too detailed, which might cause ratification problems.
- 165.** The spokesperson of the Seafarers' group, coming back briefly on the definitions issue, suggested that the Office should consider definitions and relevant provision taken from other (non-maritime) existing Conventions, for comparison.
- 166.** Responding to the request for information on the ILO's recent decision concerning fishing, the Secretary-General of the Subgroup explained that, at its 283rd Session, the Governing Body of the International Labour Office decided to place on the agenda of the 92nd (June 2004) Session of the International Labour Conference an item concerning a comprehensive standard (a Convention supplemented by a Recommendation) for the fishing sector. This meant that the regular session of the Conference would have a first discussion of this issue in 2004 and second (and final) discussion in 2005. Thus, the development of a comprehensive fishing Convention and Recommendation would be running in parallel to the development of the consolidated framework Convention for seafarers.
- 167.** The Governing Body had at an earlier session approved the recommendations of the ILO's Tripartite Meeting on Safety and Health in the Fishing Industry (December 1999) and of the Working Party on Policy regarding the Revision of Standards of the Committee on Legal Issues and International Labour Standards on action to be taken concerning the revision of seven ILO standards which deal specifically with the fishing sector.
- 168.** In keeping with the Standing Orders of the International Labour Conference, the Office was preparing a report on law and practice in ILO member States concerning living and working conditions in the fishing sector. The report was an essential component in the preparation of the new instruments.

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- 169.** To obtain the information required, the Office was conducting a preliminary survey of law and practice in member States. In mid-June 2002 a letter and survey form were sent to roughly 70 member States with major fishing fleets, large numbers of fishermen or where fishing plays an important part in the economy.
- 170.** The first part of the survey focused on the subject matter covered by the seven existing ILO standards concerning fishing; the second part included other subjects which might also be taken into account in a comprehensive standard on living and working conditions in the fishing sector. The Secretary-General reminded the delegates that they may be involved in responding to the survey form. In order to prepare the law and practice report in time to meet deadlines set out in the Standing Orders of the ILC for transmission to member States, the Office needed to receive this information during the course of this summer, preferably by the end of July.
- 171.** The secretary of the Seafarers' group agreed that the fishing industry needed a completely separate Convention, and that its preparation would certainly involve some cross-fertilization with the consolidated Convention covering seafarers.

Concluding remarks

- 172.** The Chairperson, in a concluding statement, stressed that the draft Convention would have to be prepared in a very short period of time, so it was necessary to make timely decisions on many outstanding issues. The Subgroup had made substantial progress by facilitating this decision process. She believed the new instrument should ensure the essential rights of the seafarer and an even playing field for Shipowners. The next meeting of the High-level Working Group should look further into a number of points which have been emphasized, namely:
- (a) how can the Convention have port state control with more “teeth” in it;
 - (b) how some kind of certification of maritime labour standards either based on the ISM Code or another type can be part of enforcement;
 - (c) how should the structure of the new instrument be to ensure widespread ratification; and
 - (d) should present Conventions on seafarers' training and certification be included in the new Convention or included in the STCW?

Consideration and adoption of the draft report

- 173.** At its eighth sitting, the Subgroup adopted the present report.

Geneva, 28 June 2002.

(Signed) Ms. B. Sjølling Olsen,
Chairperson.

List of participants
Liste des participants
Lista de participantes

Government representatives
Représentants des gouvernements
Representantes de los gobiernos

ALGERIA ALGÉRIE ARGELIA

- M. Abdelkrim Rezal, Sous-directeur de la navigation maritime, ministère des Transports, Direction de la marine marchande, Alger
- M. Abdallah Hafsi, administrateur principal des affaires maritimes, Administration maritime locale, Commandement des forces navales, Amirauté, Alger

BAHAMAS

- Captain Douglas Bell, Deputy Director (Maritime Affairs), Bahamas Maritime Authority, London

BELGIUM BELGIQUE BÉLGICA

- M. Léo Huylebroeck, conseiller, ministère des Communications, Administration de la marine, Bruxelles

BRAZIL BRÉSIL BRASIL

- Ms. Vera Albuquerque, Labour Inspector, Ministry of Labour and Employment, Rio de Janeiro

BULGARIA BULGARIE

- Ms. Iliana Hristova, Senior Expert, Bulgarian Maritime Administration, Ministry of Transport and Communications, Sofia

CANADA CANADÁ

- Mr. Donald Roussel, Manager, Marine Occupational Safety and Health, Transport Canada, Ottawa

CHINA CHINE

- Mr. Zhang Xiaojie, Director, Department of International Cooperation MOC, Beijing
Advisers/Conseillers techniques/Consejeros técnicos
- Mr. Xu Yi, Consultant, Department of Personnel and Labour, Beijing
- Mr. Zhuo Li, Department of Seafarers, Maritime Safety Administration of PRC, Beijing

CYPRUS CHYPRE CHIPRE

- Captain Andreas A. Constantinou, Senior Marine Surveyor, Department of Merchant Shipping, Ministry of Communications and Works, Lemesos
Adviser/Conseiller technique/Consejero técnico
- Mr. Chryso Demetriou, Merchant Shipping Officer A, Department of Merchant Shipping, Ministry of Communications and Works, Lemesos

DENMARK DANEMARK DINAMARCA

Ms. Birgit Sjølling Olsen, Director of Shipping Policy, Danish Maritime Authority, Copenhagen

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Frantz Miller, Head of Centre for Seafarers and Fishermen, Education and Register of Shipping, Danish Maritime Authority, Copenhagen

Mr. Philippe Bauchy, Special Adviser, Centre for Seafarers and Fishermen, Education and Register of Shipping, Danish Maritime Authority, Copenhagen

ESTONIA ESTONIE

Ms. Hene Leht, Third Secretary, Permanent Mission of the Republic of Estonia in Geneva

FRANCE FRANCIA

M. Jean-Marc Schindler, administrateur en chef des affaires maritimes, chargé de mission au ministère des Affaires étrangères, Direction des affaires économiques et financières, Paris

Advisers/Conseillers techniques/Consejeros técnicos

M. Alain Moussat, directeur du travail, chef du bureau de l'Inspection du travail maritime, Direction des affaires maritimes et des gens de mer, ministère de l'Équipement, des Transports et du Logement, Paris

M. Xavier Marill, administrateur des affaires maritimes, adjoint au chef du bureau de l'Inspection du travail maritime, Direction des affaires maritimes et des gens de mer, ministère de l'Équipement, des Transports et du Logement, Paris

GERMANY ALLEMAGNE ALEMANIA

Mr. Ralf Dembkowsky, Referent, Bundesministerium für Arbeit und Sozialordnung, Berlin

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Valentin Klotz, Social Counsellor, Permanent Mission of Germany in Geneva

Mr. Peter Paeffgen, Transport Attaché, Permanent Mission of Germany in Geneva

GREECE GRÈCE GRECIA

Mr. George Boumpopoulos, Head of Seamen's Labour Relations, Commander H.C.G., Ministry of Mercantile Marine, Seamen's Labour Division, Piraeus

INDONESIA INDONÉSIE

Mr. Ade Padmo Sarwono, First Secretary, Permanent Mission of the Republic of Indonesia in Geneva

ITALY ITALIE ITALIA

Sr. Luigi Trento, Direzione Generale della Tutela delle Condizioni di Lavoro, Divisione IIa – Affari Internazionali, Ministero del Lavoro e delle Politiche Sociali, Roma

Advisers/Conseillers techniques/Consejeros técnicos

Sra. Angela Finamore, Funzionario, Direzione Generale per la Navigazione, Ministero delle Infrastrutture e dei Trasporti, Roma

Sra Cinzia Voso, Direzione Generale per la Navigazione e il Trasporto Marittimo, Ministero delle Infrastrutture e dei Trasporti, Roma

JAPAN JAPON JAPÓN

Mr. Takeshi Nishikawa, Director, Labour Standards Division, Seafarers' Department, Maritime Bureau, Ministry of Land, Infrastructure and Transport, Tokyo

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Shinobu Nogawa, Professor of Tokyo Gakugei University, Legal Adviser to Ministry of Land, Infrastructure and Transport, Tokyo

Mr. Ichiro Takahashi, First Secretary, Permanent Mission of Japan in Geneva

REPUBLIC OF KOREA RÉPUBLIQUE DE CORÉE REPÚBLICA DE COREA

Mr. Sung-Ki Yi, Labour Attaché, Permanent Mission of the Republic of Korea in Geneva

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Chung Do Nam, Professor, Korea Maritime University, Busan

Mr. Yeong Woo Jeon, Chief of Planning and Information Team, Doctor of Laws, Korea Institute of Maritime and Fisheries Technology, Busan

LIBERIA LIBÉRIA

Mr. Christian Herbert, Minister of Labour, Ministry of Labour, Monrovia

Adviser/Conseiller technique/Consejero técnico

Mr. Jeremy M.S. Smith, Maritime Policy Adviser, Liberian International Ship and Corporate Registry, New York

LITHUANIA LITUANIE LITUANIA

Mr. Evaldas Zacharevicius, Head of Ships' Registrations and Seafarers' Certification Office, Maritime Safety Administration, Klaipeda

MALAYSIA MALAISIE MALASIA

Mr. Md. Yunus Razzaly, Principal Assistant Secretary, Ministry of Human Resources, Labour Policy Division, Putrajaya

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Khairudin Abbas, Principal Assistant Director, Marine Department of Malaysia, Port Klang

Ms Sharifah Fuziah, Counsellor, Labour Affairs, Permanent Mission of Malaysia to the UN and other international organizations in Geneva

MAURITIUS MAURICE MAURICIO

Mr. Bipin Rudhee, First Secretary, Permanent Mission of Mauritius in Geneva

MEXICO MEXIQUE MÉXICO

Sra. Lourdes Sosa-Marquez, Permanent Mission of Mexico in Geneva

NETHERLANDS PAYS-BAS PAÍSES BAJOS

Mr. Rob de Bruijn, Senior Policy Adviser, Directorate for Transport and Infrastructure, Ministry of Transport and Waterworks, Maritime Division, The Hague

Adviser/Conseiller technique/Consejero técnico

Ms. Ingeborg Van Gasteren, Senior Policy Adviser, Ministry of Transport, Public Works and Water Management, Division for Maritime Transport, The Hague

NIGERIA NIGÉRIA

Mr. Wali Mansoor Kurawa, Director, Maritime Services, Federal Ministry of Transport, Abuja

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Ahmed Tijjani Ramalan, Executive Chairman, Joint Dock Labour Industrial Council, Lagos

Mr. O. Clement Illoh, Chief Labour Officer, Inspectorate Department, Federal Ministry of Labour and Productivity, Abuja

Mr. Rabiu Diori Abubakar, Managing Director, National Inland Water Ways, Lokota

Mr. Abdullah Ahmad, Permanent Mission of Nigeria in Geneva

NORWAY NORVÈGE NORUEGA

Mr. Georg T. Smefjell, Assistant Director-General, Norwegian Maritime Directorate, Oslo

Adviser/Conseiller technique/Consejero técnico

Mr. Haakon Storhaug, Adviser, Norwegian Maritime Directorate, Oslo

PHILIPPINES FILIPINAS

Mr. Roy Señeres, Chairman and Presiding Commissioner, National Labor Relations Commission, Las Piñas

POLAND POLOGNE POLONIA

Ms. Teresa Wrzesniewska, Department of Maritime and Inland Waters Administration, Ministry of Infrastructure, Warsaw

PORTUGAL

Sr. António Caneco Pereira, Chefe do Departamento do Pessoal do Mar, Instituto Marítimo Portuário, Lisboa

RUSSIAN FEDERATION FÉDÉRATION DE RUSSIE FEDERACIÓN DE RUSIA

Mr. Alexander Frolov, Deputy Head, Department for Navigation Policy and Regulation, Marine Fleet's Production Activities, Ministry of Transport, Moscow

SRI LANKA

Mr. Upali S. Athukorala, Assistant Secretary (Foreign Relations), Foreign Relations Division, Ministry of Employment and Labour, Labour Secretariat, Colombo

SWEDEN SUÈDE SUECIA

Mr. Rolf Gotare, Principal Administration Officer, Swedish Maritime Administration, Norrköping

THAILAND THAÏLANDE TAILANDIA

Mr. Kamjorn Nakchuen, Minister Counsellor, Permanent Mission of Thailand in Geneva

Adviser/Conseiller technique/Consejero técnico

Mr. Nikorndev Balankura, First Secretary, Permanent Mission of Thailand in Geneva

TOGO

M. Biossey Kokou Tozoun, ministre de la Fonction publique et du Travail, ministère de la Fonction publique et du Travail et de l'Emploi, Lomé

Advisers/Conseillers techniques/Consejeros técnicos

M. Tékpoh Akouete, directeur général du travail et des lois sociales, Lomé

M. Katari Foli-Bazi, expert maritime, directeur de l'Administration générale du port autonome de Lomé, Lomé

TUNISIA TUNISIE TÚNEZ

M. Karem Mansour, directeur des gens de mer, Office de la marine marchande et des ports, ministère du Transport, La Goulette

TURKEY TURQUIE TURQUÍA

Mr. Okay Kilic, Maritime Expert, Undersecretariat for Maritime Affairs, Ankara

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Bahtiyar Genel, Director of Section, Undersecretariat for Maritime Affairs, Ankara

Mr. Murat Yildiz, Maritime Expert, Undersecretariat for Maritime Affairs, Ankara

UNITED ARAB EMIRATES EMIRATS ARABES UNIS EMIRATOS ARABES UNIDOS

Mr. Omar Mohamad Bamatraf, Director of Inspection Department, Ministry of Labour and Social Affairs, Abu Dhabi

Adviser/Conseiller technique/Consejero técnico

Mr. Yousif Gaafar Sirag El Nour, Labour Expert, Ministry of Labour and Social Affairs, Abu Dhabi

UNITED KINGDOM ROYAUME-UNI REINO UNIDO

Mr. Chris Ellis, International Shipping Policy 1B, Department of Transport Local Government and the Regions, London

Adviser/Conseilles technique/Consejero técnico

Ms. Mary Martyn, Head of Seafarer Health and Safety, Maritime Coastguard Agency, Southampton

UNITED STATES ETATS-UNIS ESTADOS UNIDOS

Mr. Edmund T. Sommer, Chief, Division of General and International Law, US Maritime Administration, Washington, DC

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Joseph J. Angelo, Director of Standards, United States Coast Guard, Washington

Mr. Christopher Krusa, Maritime Training Specialist, Maritime Administration, Washington

Mr. Robert S. Hagen, Labor Attaché, United States Permanent Mission in Geneva

Shipowners' representatives Représentants des armateurs Representantes de los armadores

Captain Koichi Akatsuka, General Manager, Japanese Shipowners' Association, London

Mr. Joe Cox, President, Chamber of Shipping of America, Washington, DC

Mr. David Dearsley (Secretary of the Shipowners' group), Deputy Secretary-General, International Shipping Federation, London

Mr. George Koltsidopoulos, Adviser, Union of Greek Shipowners, Piraeus

Mr. Dierk Lindemann, Managing Director, German Shipowners' Association, Hamburg

Mr. John Lusted, Deputy Director-General, United Kingdom Chamber of Shipping, London

Ms. Edith Midelfart, Attorney-at-law, Norwegian Shipowners' Association, Oslo

Mr. Lachlan Payne, Chief Executive, Australian Shipowners' Association, Port Melbourne

Mr. Carlos Salinas, Chairman and President, Filipino Shipowners' Association, Manila

Seafarers' representatives Représentants des gens de mer Representantes de la gente de mar

Sr. Severino Almeida, Presidente Confederação Nacional dos Trabalhadores em Transportes Aquaviário e Aéreo, na Pesca e nos Portos (CONTTMAF), Rio de Janeiro

Mr. Abdulrahman Chande, General Secretary, Tanzania Seamen's Union (TASU), Zanzibar

Mr. Pdraig Crumlin, National Secretary, Maritime Union of Australia (MUA), Sydney

Mr. Yuji Iijima, Director of International Affairs Department, All-Japan Seamen's Union (JSU), Tokyo

Mr. O. Irabor, President, Maritime Workers Union of Nigeria, Lagos

Mr. Jose Raul V. Lamug, Assistant to the President, Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP), Manila

Mr. Brian Orrell, General Secretary, NUMAST, London

Mr. Agapios Tselentis, Director, International Department, Pan-Hellenic Seamen's Federation (PNO), Piraeus

Mr. Arie Leenderf Verhoef, Consultant, Federatie van Werknemers in de Zeevaart (FWZ), Gorinchem

Mr. Jon Whitlow, Secretary of the Seafarers' group to the Joint Maritime Commission, Acting Secretary,
Seafarers' Section, International Transport Workers' Federation (ITF), London

Representatives of the United Nations, specialized agencies
and other official international organizations

Représentants des Nations Unies, des institutions spécialisées
et d'autres organisations internationales officielles

Representantes de las Naciones Unidas, de los organismos especializados
y de otras organizaciones internacionales oficiales

European Union (EU)

Union européenne

Unión Europea

Ms. Christina Vartsos Tzannetakis, Official Administrator, Brussels

M^{me} Paloma Alavret Hidalgo, administrateur JAI. AI, Bruxelles

International Maritime Organization (IMO)

Organisation maritime internationale

Organización Marítima Internacional

Mr. Andrew Winbow, Head, STCW and Human Element Section, Maritime Safety Division, International
Maritime Organization, London

Representatives of non-governmental international organizations

Représentants d'organisations internationales non gouvernementales

Representantes de organizaciones internacionales no gubernamentales

International Confederation of Free Trade Unions (ICFTU)

Confédération internationale des syndicats libres

Confederación Internacional de Organizaciones Sindicales Libres

Ms. Anna Biondi, Assistant Director, ICFTU, Geneva

International Organisation of Employers

Organisation internationale des employeurs (OIE)

Organización Internacional de Empleadores

Mr. George James, Adviser, OIE, Geneva