

Tripartite Subgroup of the High-level Tripartite Working Group on Maritime Labour StandardsGeneva
3-7 February 2003

Final report

Introduction

1. The Subgroup of the High-level Tripartite Working Group on Maritime Labour Standards met at the International Labour Office from 3 to 7 February 2003. The subjects to be discussed at this meeting were 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.
2. This was the second session of the Subgroup, and it followed on the second session of the High-level Tripartite Working Group held in October 2002.

Composition of the Working Group

3. 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. Mr. Douglas Bell (Government, Bahamas) was the spokesperson of the Government group.

Opening and general comments

4. The meeting was opened by Ms. Sally Paxton, Executive Director, Social Dialogue Sector. She said that the higher number of participants than before demonstrated an interest and promised an expertise that were essential at that critical moment in the preparation of the consolidated Convention on maritime labour standards. The preliminary draft, she said, embodied direction, advice and ideas in the areas of structure, amendment procedure and enforcement by the Subgroup and the High-level Group. It represented an excellent basis for the envisaged innovating Convention and demonstrated the efficacy of the partnership that had been established between the Office and the constituents. She asked the participants to guide the Office with the same kind of expertise for the rest of the substantive part of the Convention, which was to cover the actual consolidation of existing maritime labour standards. She emphasized that the raw material in the preliminary draft needed to be transformed into simple, clear and – above all – universally acceptable provisions, which still embody the strength of the present standards. The Office, she said,

counted on the Subgroup's advice and ideas on the approach to be adopted, in each of the particular "families" concerned, in order to prepare a new text that can achieve this ambitious objective.

5. The Secretary-General (Ms. Cleopatra Doumbia-Henry) introduced the documents (STWGMLS/2003/1 and its annex) prepared by the Office. She said that, though the Articles and Title 5 (enforcement) greatly benefited from advice already given to the Office, they still needed considerable discussion. She hoped that the Subgroup would be able to provide the Office with the substantial help on the main subject of concern for the Office. Achieving a universally ratified Convention, without significantly diluting the strength of existing standards, was the major concern of the Office. The text at present consisted of the relevant standards of existing maritime labour Conventions, which have received varying degrees of ratifications. The expertise of the Subgroup was needed to arrive at the appropriate innovative solution. The Office was seeking guidance on the approach to be adopted in the drafting of Titles 1-4 of the new Convention in general and, above all, for Title 4 on social security.
6. The Office, she said, would also be consulting the Subgroup with respect to the preparation of the new instrument on seafarers' identity documents. The consultations should enable interested Members to see if they could find solutions to the differences shown in the replies to the questionnaire sent to governments. Finally, she indicated that the Governing Body had requested the Office to prepare a progress report on the key features of the proposed consolidated Convention and invited the Subgroup to discuss on a draft prepared by the Office.
7. In a joint submission to the meeting (STWGMLS/2003), the Shipowners' and Seafarers' groups, while commending the Office for preparing such a comprehensive and detailed preliminary draft for a Convention, expressed serious concerns on a number of aspects concerning the work expected of the Subgroup and the means of refining and finalizing the texts of the Convention during the coming months. Due to the late circulation of the draft texts, many Government representatives were unlikely to have had sufficient time to carry out adequate consultations with their colleagues in other departments. The two groups also regretted that the preliminary draft had not made suggestions on a redistribution of provisions between the mandatory Part A of the Code and the non-mandatory Part B. They noted that the Office had not had time to propose the necessary simplification of existing provisions. They put forward proposals for streamlining discussions and ensuring that the outcome was fully in line with the objective of achieving a simple, up-to-date, clear and, most importantly, enforceable new Convention. They attached to their submission, the following papers which the High-level Group at its last meeting had not had time to discuss. One was a joint paper suggesting the principles to be embodied in the consolidated Convention (see Annex 1). The others were separate group papers on enforcement; a joint version of these two papers was submitted to the present meeting of the Subgroup (see Annex 2).
8. The Seafarer spokesperson said that the work on the preparation of the Convention had reached a critical point. His group wanted informal and honest discussions, carried out in a positive and pragmatic manner. While congratulating the Office for its work, he expressed concern over the delay in the translation of documents. The Seafarers were concerned that the current draft placed too much emphasis on the International Safety Management (ISM) Code approach, but they appreciated that the MARPOL approach (i.e. providing States with the possibility to not accept certain titles) had not been pursued. They were concerned, however, that the paper continued to allow for different levels of ratification and thus to allow some countries to have lower standards. The text provided by the Office was not yet simple, clear and unambiguous, and allowed for too much flexibility. The Seafarers also had concerns about provisions which would permit the delegation of certain

functions to outside organizations (e.g. classification societies), the desire to exclude various aspects and restrictions with regard to amendments. Though much good work had been done, it was important to address the need for widespread ratification, speedy amendment procedures and adequate enforcement provisions.

9. A representative of the Government of Denmark valued the work of the Office and reiterated the need for the new Convention to be clear, simple, easy to ratify and implement, and which focused on the target of assuring decent living and working conditions for seafarers. He expressed deep concern towards Title 4 regarding social security, noting that only two countries had ratified Convention No. 165, one of which was not even a seafaring nation. Clarification was needed on Title 2 concerning wages and hours of work. Furthermore, the seafarers' hours of work and the manning of ships provided the States with the alternative of regulating either seafarers' hours of work or their rest, the draft only reflected regulation of hours of work.
10. A representative of the Government of France acknowledged the work performed by the Office and insisted on the need for documents to be translated into the official languages in adequate time so that they could carry out discussions with other departments which were impacted on by the new instrument. The Convention needed to have clear definitions as regards the scope of persons covered. In this regard, he specifically mentioned that paragraph 31(g) was confusing, and suggested that it might have been an issue of translation. There was a lack of clarity concerning gross tonnage.
11. The representative of the Government of Norway appreciated the documents prepared by the Office. He noted that there was a need not only to consolidate provisions but to update them. He was surprised at the objections to the ISM Code approach. He pointed out the need for an efficient and simply enforced certification and quality assurance system. The Governments of the United Kingdom and Norway had submitted proposals concerning these issues. The best means to deal with the issue was to merge those proposals into a package and deliver it to the High-level Working Group. Not enough consideration was awarded to quality assurance.
12. The representative of the Government of Greece thanked the Office for the draft text, but indicated the nightmare envisioned by the department of social security in his country. He proposed the insertion of a "no more favourable treatment" clause that would act as a filter. There was a need for clear provisions.
13. The representative of the Government of Nigeria thanked the Office for its work. A simpler, unambiguous text was needed. However, this should not suppress the main spirit of other Conventions, in particular Conventions Nos. 179 and 147. Further, he requested that consideration be given to supporting developing countries in the implementation process of the new instrument, especially those which are the primary suppliers of labour.
14. Referring to the joint submission by the Shipowners' and Seafarers' groups (see paragraph 7 above), the Shipowner spokesperson said the document was not a criticism of the work of the Office, but simply a text to help move the work forward. Very little time was left to prepare the new instrument and that they were willing to help move it along, as it was not an easy task to consolidate more than 69 ILO Conventions and Recommendations. The new instrument should encompass the existing Conventions and Recommendations and provide a needed update. It now was recognized that there was a need to be more daring. He expressed concern for the extremely low ratification numbers of some Conventions, and said it was important to look at why countries had not ratified them. Although social security was a basic element of work, Convention No. 165 was a nightmare and did not work. In closing, he stressed the importance of maximizing the little time left, and added that the Shipowners desired to help expedite the process.

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15. The Seafarer spokesperson reiterated the points made by the Shipowner spokesperson in the joint submission. His group had hoped that the Office text would have better addressed what should have been in Code A and Code B. This would have allowed the social partners to provide their views so that at the High-level Tripartite Working Group the governments could then respond. In the submission, it was suggested that the ILO engage a consultant to assist the Office during the little time that remained. The spokesperson concluded by offering assistance to help move the process forward.
 16. The representative of the Government of the Bahamas, speaking on behalf of the Government group, said that his group appreciated the work done by the Office and gave a summary of his group's discussion of the Articles and Title 5 of the draft text proposed by the Office.
 17. Regarding Article I, his group had concentrated upon the definitions of the terms seafarer, master, officers, crew and ratings. It had been agreed that the term "seafarer" should cover every person employed on board, whilst "crew" would imply officers, ratings, and other personnel to be defined. A need to define "employer and shipowner" had also been recognized, together with the possible consideration of other types of vessels. As concerned the scope of application, due attention was paid to non-international voyages occurring not necessarily always into territorial waters.
 18. As concerned Article II, it was felt that the concepts of security and health should be included in the Article.
 19. Regarding Article III, it had been remarked that the expressions "flag State" and "State of registry", though sometimes used concurrently, were not the same thing, notably when one considered the possibilities of bareboat chartering offered by certain member States. The notion of "flag State" was considered as the appropriate term when addressing the future Convention. It was also remarked that, in matters related to social security, responsibilities could be either borne by flag States, or by labour-supplying countries, but no conclusion had been reached on this item.
 20. When considering Article IV, the Government group had discussed the notion of substantial equivalence and of "no more favourable treatment". It was suggested that this last concept, if emphasized, could contribute to the removal of subjective approaches by inspectors. It was also recognized that this Article should be clarified.
 21. In Article V, it was felt that mentioning the necessity of the ratification of other (non-ILO) Conventions as a prerequisite to the ratification of the future instrument was not indispensable, but that if it were to be kept, then the addition of the STCW Convention would be appropriate.
 22. Regarding the conditions of entry into force of the future instrument, some countries suggested that the only appropriate criterion was the number of ratifying countries, whilst others thought that tonnage or the number of seafarers in a country were also important. No definite conclusions were reached on this issue.
 23. Concerning Title 5, it was felt that some provisions would be better placed under "implementation" than under "enforcement". It was also remarked that flag States would encounter difficulties in the monitoring of provisions that were more directly in the remit of the labour-supplying countries. Noting that nothing appeared in the text regarding abandonment, it was recalled that a close cooperation with the IMO was of utmost importance in this respect. Finally, since some countries delegated some of their functions to classification societies, there was a need for a clear text, which would ensure a uniform interpretation and implementation in practice.

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24. The Seafarer spokesperson expressed the strong concerns of his group over the treatment of the Captain of the PRESTIGE. He read out the following statement and asked that it be included in the text of the report:

The Seafarers' group has previously stressed the decent work deficit in the sector and that it is caused by the deregulation which has been brought about by the flagging out process. The 29th Session of the ILO Joint Maritime Commission adopted a *Resolution concerning action against seafarers in the event of maritime accidents* which noted with deep concern the lengthy and unreasonable imprisonment of seafarers. We are gravely concerned about the continued detention of Captain Mangouras, formerly Master of the Bahamas-registered PRESTIGE, who currently languishes in a Spanish jail due to the imposition of unreasonably high bail demand by the local Spanish courts.

While there have been many statements expressing outrage at the situation, little has been done in practice to address it. The shipowner has not discharged its obligations to Captain Mangouras by posting a bond nor has the flag State taken the actions we would have expected under the duties and obligations of the flag State, by lodging an application for the release of Captain Mangouras at the International Tribunal of the Law of the Sea, under Article 292 of UNCLOS (Prompt release of vessels and crews).

The many pious words and statements made by those who owe a duty to the Master are no substitute for action. Rhetoric comes easy and costs nothing, yet when it comes to taking action which would alleviate the imprisonment of Captain Mangouras all we have seen is inaction and buck passing. The continued imprisonment of Captain Mangouras is outrageous and this deplorable situation demonstrates the substantial decent work deficit in the shipping industry and the dysfunctionalities inherent in the present system.

25. In reply to this statement, the Shipowner spokesperson said that, while his group might not want to associate itself with the precise formulation of the Seafarers' statement, it certainly wished to fully associate itself with their strong expression of concern. He noted that the ISF had brought its concerns about this situation to the attention of the Spanish authorities last year.
26. The representative of the Government of Greece thanked the ISF and ITF for their statements. Both members of his delegation had visited Captain Mangouras in jail in Spain, and they were certain that he would appreciate the statements of support. Greece, he said, had been pushing for a full investigation of this case so as to ensure that such incidents would not happen again. His country hoped that Captain Mangouras would be allowed to contribute to the investigation, since he was the most knowledgeable person involved.
27. The representative of the Government of Bahamas said that his country deeply deplored the treatment of Captain Mangouras. The Captain had acted bravely and properly, and such treatment could only serve to deter other masters from doing so. Officials from Bahamas had visited Captain Mangouras, who was being held in the conditions of a common criminal and was only allowed to appear in court solely to submit letters in his defence. The Government of Bahamas had taken diplomatic action – at the highest level – to obtain his release. Referring to the statement by the Seafarers, he said that consideration was given to pursuing the matter under the provisions of UNCLOS.
28. The representative of the Government of Cyprus said that his delegation had repeatedly pointed out that this matter was in the competency of the ILO, as it was a violation of seafarers' rights. This was not the first time such an incident had taken place.
29. As many speakers had referred to actions taken by the Spanish authorities, the Chairperson pointed out for the record that the Government of Spain was not represented at the present meeting.

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30. The Secretary-General said that the Office had taken certain actions to draw public attention to the JMC resolution noted by the Seafarers and its relevance to this situation of Captain Mangouras. Existing ILO maritime labour standards, and the draft text before the Subgroup, did not include provisions on this issue. The Subgroup therefore might wish to give consideration to addressing the issue in the new Convention.

Amendment (Articles XI, XII, XIII)

31. The Shipowner spokesperson expressed his support for Article XI as drafted. The Convention should be kept under permanent review and he approved the suggested composition of the Tripartite Maritime Committee, the provision for equal voting power and the possibility for non-ratifying governments to attend without vote and for other organizations to be observers.
32. The Seafarer spokesperson also agreed with the text of Article XI. However, he queried the words “unless otherwise provided” in paragraph 3.
33. The Secretary-General explained that this referred to Article XIII, paragraphs 4(c) and 5 which also dealt with voting strength.
34. In a discussion on the voting strength of the three groups, reference was made to practice in other bodies of the ILO. Several governments, including Bahamas, Cyprus, Namibia, Netherlands and Norway, insisted that the relative power of the groups should be 2:1:1. The Shipowners and the Seafarers preferred the standard ILO practice in Conference committees where relative power was 1:1:1. The Office explained that the situation envisaged in Article XI was somewhat different as, in this case, the texts adopted by the Tripartite Maritime Committee could not be amended by the Conference but could only be accepted or rejected.
35. The Shipowner and Seafarer spokespersons accepted the 2:1:1 formula. Both discussed briefly the possibility that one or more of the groups might unreasonably impose on the other or others an undesired amendment. They indicated that consideration should be given to ways of avoiding such a situation.
36. The representative of the Government of Greece, referring to Article XI, paragraph 4, suggested the Tripartite Maritime Committee should also be able to invite attendance by organizations which it believed could assist in its work.
37. The Secretary-General of the meeting explained that the Committee would be set up by the Governing Body, and that it was mere standard ILO procedures that invitations would be made by the Governing Body. However, a lot of flexibility existed, since the officers of the Governing Body have a delegation to deal with these issues when the Governing Body is not in session. International organizations, such as the IMO, have a permanent invitation to ILO meetings.
38. The representative of the Government of the Republic of Korea suggested that new texts would be needed on the application of amendments to the Convention to existing ships.
39. The Seafarer spokesperson requested clarification on the recurring expression “except when provided otherwise”. He also indicated that it was not appropriate that amendments could be proposed by individuals from either group of the social partners, since proposals should be made at group level. Clarification was also requested on the last sentence of Article XIII, paragraph 2, where the same group logic should apply.

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40. The Shipowner spokesperson considered for his part that the idea of the support of at least half the membership of a group was a safeguard, and that it provided no difference of treatment with the Government group.
 41. With respect to the expression “except when provided otherwise”, in the context of the simplified amendment procedure under Article XIII, the Secretary-General of the meeting recalled that this would be the normal procedure for the amendment of the Code. The opening text in Title 5 was an example of a provision requiring the explicit amendment procedure for a certain part of the Code.
 42. The representative of the Government of the Bahamas expressed difficulties with Article XIII, paragraph 8, where it is stipulated that if a party (government) expresses disagreement with an amendment, this amendment does not apply to it. This would cause considerable confusion to port state control, in particular if the “no more favourable treatment” clause were to be applied. This kind of flexibility was not, in his opinion, a sound way forward.
 43. The representative of the Government of the United Kingdom agreed with what was said by the Bahamas, since such procedure would be comparable to pick and choose. The representative of the Government of the United Kingdom also requested from the Office some information on the possible size of the future tripartite Committee.
 44. The Secretary-General of the meeting replied that the decision would be left to the Governing Body, particularly when it would prove necessary to adjust the number of shipowners and seafarers to match the number of governments. All governments having ratified the Convention would become members of the Committee. Those which had not have ratified could be observers.
 45. The representative of the Government of Namibia alluded to Article XIII, paragraphs 7, 8 and further, whereby it is said that an amendment should be approved by a two-thirds majority, whereas it also stipulates that one-third of the Committee can undo the amendment. Some explanations were needed. He also expressed his agreement with the opinion of the Government of the Bahamas.
 46. The Secretary-General of the meeting explained that the system described had been designed along the lines of the IMO/STCW Convention, where two-thirds of the voting parties have to be in favour of an amendment to see it adopted. The issue of opting out was, however, still open.
 47. A representative of the Government of the United States indicated that the difference between the IMO objection by one-third of its Members and this draft as regards Article XIII was that, in the IMO, one-third must represent more than 50 per cent of the world’s gross tonnage. He expressed concern over how governments might not be able to ratify a new amendment since their own legislative system might not permit it to do so. He added that port state control and the “no more favourable treatment” clause were pressure on States to accept amendments.
 48. The representative of the Government of Greece expressed confusion over the ratification of a new amendment. A country that had not ratified the original Convention would be bound to accept an amendment whilst an original ratifying Member can choose not to ratify it.
 49. The secretariat clarified the issue by explaining that a new Member would be making the decision to ratify the entire package, including the new amendment, whereas the old Member did not sign up for the amendment in their ratification, and therefore had the

opportunity to abstain from it. However, it was noted that standards may be imposed via port state control.

50. The Seafarer spokesperson expressed his desire to see the percentage of tonnage mentioned in Article XII fixed at a high level. Regarding Code B, he stated that it was guidance and there was little to say about it, but indicated that it should take effect immediately upon adoption.

Definitions and scope of application (Article I)

51. The Shipowner spokesperson pointed out the need for clarity regarding definitions and was curious as to what the exact definition of a Member was.
52. The secretariat pointed out the need for substantive discussions on definitions and indicated that this section was not substantial since it was not appropriate at this stage. Answering the question concerning the definition of a Member, the secretariat stated that this was an ILO drafting technique and a Member was identified by the first line of Article II that reads “Each Member which ratifies this Convention ...”.
53. The Shipowner spokesperson suggested the need for a definition of “Member” in Article I and that “mobile offshore units” replace “oil rigs and drilling platforms” in paragraph 2, subparagraph (g). The speaker also suggested that “vessels that do not navigate outside its territorial waters” in paragraph 4 was too restrictive and should be replaced with “vessels which are not engaged in international trade”. There was also need to define other persons on board not necessarily engaged in the safety and operation of the ship.
54. The Seafarer spokesperson said that, in general, they had no problem with Article I, though it was perhaps too detailed. If definitions were to be included in Articles they had to be “evergreen”, or valid over time. In its text, the Office had referred to definitions used in existing Conventions. However, the exemption of pilots in paragraph 1, subparagraph (c), did not apply in Conventions Nos. 22 and 23, as indicated. It was perhaps necessary to look again at all definitions. The Seafarers could agree with the Shipowners about the need for a definition of others on board as distinct from seafarers, but had no comment on the suggestion to replace “oil rigs and drilling platforms” with “offshore mobile units” as they were not convinced that such definitions should be in the Article. The wording in paragraph 4 required some innovative thinking, as the exclusion of ships not engaged in international trade would leave many groups uncovered, such as those supplying offshore industries and such a blanket exclusion would be unacceptable. The requirement for consultation in the text at the end of paragraph 3 raised questions as to how genuine the consultation was to be. Some States held consultations but then ignored the views put forward. There were also States where there were no representative social partners and therefore no meaningful social dialogue. There was a need to include provisions which would address these situations.
55. The spokesperson of the Government group suggested that, whenever a term was used within an Article, its definition should appear in that Article. If the term was not used in an Article then the definition could be given in the Regulations or the Code. A definition of “seafarer” must be agreed upon at an early stage, and a definition of “employer” was also requested. The general view of the Government group was that the term “seafarer” included the master, officers and ratings, but a new term was needed for other personnel on board. The speaker suggested that the Office should provide a set of definitions from which to proceed.

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56. The Shipowner spokesperson reported that the definition of “employer” had been discussed among his group. He referred to the definition of “employer” in Conventions Nos. 179 and 180, which included employers on a vessel. The definition of “shipowner” must embrace that of “employer”, otherwise the text would become awkward.
 57. The Shipowners’ secretary referred to Chapter VI, section A-VI/I, of the IMO STCW Convention, which made a clear distinction between the crew and other personnel on board in relation to safety training. While all on board had to have basic training, the crew were required to have more advanced training. This kind of distinction could be desirable in the definition adopted by the meeting.
 58. The Seafarer spokesperson acknowledged the distinction between “crew” (master, officers and ratings) and other personnel. The key issue was to ensure that everyone on the vessel was included in the Convention, and that they be treated on a similar basis. There were many ILO Conventions with definitions of “employer” and the Office should look at these. Consideration should also be given to the situation where there may be an employer on board who is not from the flag State and how this can be addressed, given that UNCLOS establishes onerous obligations on the flag State, including the enforcement of administrative, social and labour aspects.
 59. The Chairperson of the meeting noted concern among some governments. It might be difficult to agree to a single definition of seafarers and governments would appreciate some assistance.
 60. The representative of the Government of Cyprus emphasized the necessity of providing a precise definition of seafarers, as some provisions applied to seafarers and others to all personnel on board. He agreed with the approach proposed and suggested that the distinction between seafarer and other personnel should be decided on functional grounds. Two criteria were suggested for inclusion as seafarers: (i) whether the personnel were involved in taking orders from the captain, for example in ensuring the safety of the vessel and its passengers (even if this was only a part of their duties); and (ii) whether they were included in collective bargaining agreements. Each provision of the Convention would have to state clearly whether it was to be applied to seafarers or to all personnel.
 61. The representative of the Government of the Republic of Korea pointed out that in several places the text of the Convention made a distinction between shipowner and employer, for example in paragraphs 3 and 9 on page 45 of the English version. Some provisions of the text applied to all personnel and others to only some personnel. Precise definitions were therefore essential. But before defining other terms it was necessary to first agree to a definition of a vessel. Only then would it be possible to define the employers and employees working on the vessel. Some employees would be seafarers but others working on the vessel, such as temporary workers, pilots, etc., may not be considered as seafarers. In the Republic of Korea, hotel personnel working on a vessel were regarded as seafarers but this was not necessarily the case in other countries.
 62. The representative of the Government of India suggested that seafarers should include only those associated with the operation of the vessel. Vessels operating inside territorial waters should be excluded from the Convention and subject to national legislation.
 63. The representative of the Government of the Netherlands commented on paragraph 4 and was concerned about coverage of research vessels, tugboats and other vessels not involved in international trade.
 64. The representative of the Government of the Philippines appreciated the flexibility provided in paragraph 4 with regard to the coverage of domestic vessels, provided that they

are covered by national laws. Concerning paragraph 2, she expressed a desire for increased flexibility and noted that a Member should be governed by its own national laws and regulations. As regards paragraph 4, she proposed a full stop after the word regulations, and to delete the remaining part of the sentence commencing with the word embodying.

65. The representative of the Government of Namibia expressed concern over where the definitions were placed in the Convention since some definitions placed in the Articles were considered to be evergreen, and others should be shifted to different sections where appropriate. Further he noted that when considering a definition for the articles, thought should be given as to whether it may change through the tacit amendment procedures. He also mentioned the need to consider such vessels as those which are anchored offshore, in particular diamond mining vessels in his country.
66. Several Government representatives associated themselves with the definition of a seafarer and the comments provided by the representative of the Government of Cyprus.
67. The representative of the Government of Canada supported the definition suggested by the representative of the Government of Cyprus. Further he noted that the text in paragraphs 2-4 provided the necessary latitude to include or exclude international trade and expressed concern for covering such vessels, like offshore supply vessels, that are engaged for a long duration.
68. The representative of the Government of the United Kingdom suggested that at this stage, it might be in the best interest of the meeting to establish a definition of a seafarer.
69. The Seafarer spokesperson expressed concern over the issue of the definition of a seafarer. He recalled previous meetings and Conventions where definitions were agreed upon. The spokesperson identified that in this profession, anyone on a ship (catering crews, engineers, riding gangs, etc. ...) considered themselves a seafarer. He asked the meeting whether or not there should be different living and working standards for people on board ships? As regards the definition of employers, he pointed out that what was previously used in other Conventions were sufficient.
70. The Chairperson suggested that a small drafting committee establish the definition of a seafarer which consisted of representatives of the Governments of Cyprus, the United Kingdom and the Netherlands which volunteered and would be joined by a representative of the Shipowners and Seafarers. He also reminded the meeting that this was not a decision-taking body, but their aim was to provide recommendations and proposals. He then suggested the meeting address Article 2.
71. The spokesperson for the Shipowners questioned how Article 2 would shift the content of the new instrument since all member States were obliged to follow the ILO's Declaration on the Fundamental Principles and Rights at Work and its Follow-up. He suggested that there might not be a reason to rewrite it, and therefore asked if it could be referred to somewhere in the Preamble.
72. The secretariat replied that the Declaration itself was in the form of a non-binding document, but was a formal statement of the International Labour Conference recognizing the binding obligations on fundamental principles and rights that each Member assumed when it joined the ILO and accepted its Constitution. The effect of proposed Article 2, paragraph 1, would be to place this recognition of binding obligations in a legally binding document.
73. The Shipowner spokesperson suggested that the High-level Tripartite Working Group would need to look again at the text in paragraph 4 concerning possible exclusion from the

scope of its application “vessels which did not navigate outside its territorial waters, providing that the seafarers on those vessels are covered by national laws and regulations”. It was important to take into account the past comments of the representative of the Government of the Philippines.

74. A representative of the Office, in response to a question, clarified that the reference to rights in paragraph 4, referred to the fundamental principles and rights listed in Article II, paragraph 1, and not to the remaining part of Article II.
75. Referring to the Consensual Statement of the Meeting of Experts on Working and Living Conditions on Board Ships in International Registers (May 2002), the Seafarer spokesperson said that his group appreciated the reference in Article II to fundamental rights and principles at work. He also said that consideration must be given to the consequences of retaining the text in paragraph 4 providing for the possibility of excluding from the scope of the Convention vessels which did not navigate outside territorial waters, and they reserved their position on this issue.
76. The spokesperson of the Government group, supported by the Seafarers, said that governments wished to expand the concepts contained in Article II, paragraph 2(a), to include “security” and “health” in addition to safety.
77. The representative of the Government of Indonesia called for greater clarity in the text of Article II, paragraph 4. She also supported the proposal by the representative of the Government of the Philippines to eliminate the last part of the text in Article II, paragraph 4 (i.e. “... embodying the rights set out in Article II of this Convention”).

Definition of “seafarer”

78. The representative of the Government of the United Kingdom presented the working paper of a small tripartite drafting group established to provide recommendations on the definitions of “seafarer” and “employer” (see Annex 5). The proposed new definition of “seafarer” in Article I(1)(f) would be: “the term ‘seafarer’ means any person who is employed or is engaged or works in any capacity on board a vessel to which this Convention applies”. The definition would be followed by a provision reading: “except where expressly provided otherwise, this Convention applies to all seafarers”.
79. Further, sections 1(c), (d) and(e) setting out categories of seafarers would be removed from the Articles and were to be inserted where necessary to clarify the application of provisions in Code A. Section 3 should be deleted. It was agreed that the four categories of seafarers (masters, officers, ratings, other personnel) would require further defining to clarify the application of some parts of the Code. Regarding the definition of “employer”, the current definition of “shipowner”, consistent with ILO and IMO Conventions, should be retained and the term “employer” be defined in the specific parts of the Code where it was used and should not be defined in the Articles.
80. The Shipowner spokesperson said that his group had problems with the all-encompassing definition of “seafarer” provided in the report of the drafting group, which would seem to indicate that persons such as harbour pilots who were briefly on the vessel would also be seafarers.
81. The Seafarer spokesperson, on the other hand, said that his group firmly supported the definition, as it was universal, familiar and long lasting. In particular, they liked the clause providing that “Except where expressly provided otherwise this Convention applies to all seafarers”. This would permit different definitions in the parts of the Convention, as

required. It also meant that it should be possible to remove the expression “except where expressly provided” from other parts of the Convention. He suggested that the Office should try making this change throughout the Convention to assess the implications of such changes. His group did not wish to reopen the debate on definitions during the meeting.

82. The Chairperson of the Government group said that his group had discussed the drafting group report. There had been some questions, but these had been answered satisfactorily by the Office, which had said that difficult cases could be left to national laws. The definition of seafarer should not be reopened during the present meeting, but should be left for possible further discussion by the high-level group.
83. After hearing the above views, the Shipowner spokesperson said his group maintained its position and would reserve their views on the text until the high-level group meeting.
84. It was agreed that the drafting group’s definition would be used as a working definition.

Fundamental principles and rights (Articles II and III)

85. The Seafarer spokesperson questioned the amount of detail in Article III. He noted that the text generally reflected text from Convention No. 147, but that there were some differences for which his group wished an explanation (e.g. the use of the term “foreign country of domicile”). They were pleased with the reference, in Article III, paragraph 1(b), to “fundamental rights and principles”. However, they found Article III, paragraph 2(a) and (b), a bit confusing, as some responsibilities belonged with flag States, some with labour-supplying States and others with port States. They referred to the clear duties of flag States under UNCLOS Article 94 concerning control of social matters on board ships which should be addressed in the draft text.
86. The Shipowner spokesperson also noted that much of the text of Article III reflected the provisions of Convention No. 147. However, he wondered how a Member would “exercise control over contracts” as provided in paragraph 2(a). In particular, he wondered how this could be done over individual contracts.
87. In reply to the questions raised, the Secretary-General confirmed that much of the text was drawn from Convention No. 147. This was the main intention of the Article. Of course, it might be possible to move some of the detail to the parts of the Code, in particular bearing in mind that much of Convention No. 147 was also reflected in Article II. Generally, paragraph 1 concerned flag state responsibilities and paragraph 2 concerned labour-supplying State responsibilities. She agreed that a State might have some difficulty exercising *control* over contracts but that it would of course have *jurisdiction* over contracts.
88. A representative of the Office, responding to concerns raised on the provisions concerning social security, explained that Article III, paragraph 1(a)(ii), would give the flag State responsibility for social security measures, except in cases where these were taken care of by the labour-supplying State concerned.
89. The Seafarer spokesperson reiterated the duties of flag States (UNCLOS Article 94) concerning social matters, indicating that this included social security matters. States which have ratified Convention No. 147 need to ensure social security arrangements for seafarers on their ships.

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90. The Chairperson of the Subgroup asked the spokesperson of the Government group to brief the meeting on the discussions that had taken place in his group, with regard to Article II of the draft text of the new Convention.
 91. The spokesperson of the Government group reported that his group favoured the inclusion of provisions regarding security and health, which should be emphasized together with safety. He also reported that his group accepted paragraph 1 of Article II as it is, which might also be placed in the Preamble.
 92. The Chairperson of the meeting mentioned that Article III contained important elements regarding jurisdiction. She invited the Government group and social partners to discuss this Article further.
 93. The spokesperson of the Government group reported that his group agreed that the terms “State of registry” and “flag State” were not interchangeable, and that flag State was the most appropriate term. Reference was made to discussions that had previously taken place on this same subject in relation to Convention No. 180 and UNCLOS. His group also noted that a number of problems appeared concerning the division of responsibility between the flag State and the country with labour-supplying responsibilities on social security. Further clarification would be needed on this issue. He indicated that a paper on responsibilities of flag State, port State and labour-supplying State, which had been prepared by his group during the High-level Tripartite Working Group meeting held in October 2002 could help to clarify the responsibilities.
 94. The Seafarer spokesperson stressed that it was essential that the new instrument used the terminology found in UNCLOS. He pointed out that the Article currently being examined was perhaps too detailed and that it could be reworked for the July 2003 meeting of the High-level Tripartite Working Group.
 95. The Shipowner spokesperson expressed that his group was also in favour of a more concise drafting regarding Article III, paragraph 1(a), as well as for paragraph 2(b). He confirmed that the expression “flag State” is the one that should be used.
 96. The representative of the Government of Norway pointed out that Article III defined the boundaries of the new Convention and that the contents of the titles should correspond to those boundaries. He took the example of internal grievance procedures, which his delegation wished to see included, but that he hesitated to see covered by the text in its present form.
 97. A representative of the Office mentioned that great importance had been given to Convention No. 147 when defining the boundaries of the future instrument. In Article III, paragraph 2(b), these complaint procedures were to be seen in the context of the labour-supplying State. A major input made by the High-level Tripartite Working Group had been the concept of a proper complaint procedure on board ship.
 98. The representative of the Government of France commented about paragraph 1(a), subparagraphs (ii) and (iii). He insisted that if the labour-supplying State did not cover social security for seafarers, the flag State should cover it. He also remarked that it would be difficult to assess the levels of the coverage of social security between flag State and labour-supplying State. He indicated that a minimum standard of social security should be provided in the Code.

Regulations and Parts A and B of the Code (Article IV)

99. The Chairperson of the Subgroup mentioned that Article IV contained many aspects including the principle of substantial equivalence and no more favourable treatment and invited the group to discuss those issues.
100. The Seafarer spokesperson advised that the Seafarers' group had some difficulties with the wording of Article IV. Taking into account that the future instrument should be ratified by a majority of member States there was a need for some flexibility. But too much flexibility would create problems, noticeably at various levels regarding, for instance, enforcement, minimum rights, or interpretation. He felt that paragraphs 1, 2, 4 and 7 were not problematic. The word "demonstrated" in paragraph 3(a) was important, and needed to be clarified. However, the flexibility provided in paragraph 3(b) which would allow the imposition of lower standards was unacceptable. Such flexibility would create a de facto "pick and choose" option and there was no elaboration of what these "initial lower" levels were, and how they would be defined. The same applied to the idea of the "shortest possible time".
101. A representative of the Office explained that the provisions found in the draft text regarding flexibility had precisely been included in order to avoid a "pick and choose" approach. Paragraph 3(b) was meant to enable the temporary compliance with lower standards. However, the option to start off with the lower standard and progressively move to the full standard would be available only when it was expressly permitted in the Code.
102. The Seafarer spokesperson reiterated that his group was in favour of a ratifiable Convention but not one that would enable a number of member States to continue to apply lower standards and recalled that one of the aims was to establish a level playing field.
103. The spokesperson of the Government group mentioned that precision was important, in order to avoid a subjective approach from PSC officials performing inspections. More generally there was a need to clarify the provisions contained in Articles III and IV.
104. The representative of the Government of Liberia indicated that he shared some of the Seafarers' preoccupations. Mentioning, for instance, paragraph 3(a), he indicated that he would much prefer a committee composed of maritime experts to a more generalist committee. On the issue of lower standards, he suggested that a detailed text should be drafted as soon as possible, in order to avoid possible problems.
105. The representative of the Government of Namibia also said that he appreciated the need for flexibility. He however requested clarification on paragraph 3(a), regarding the authority to which the demonstration alluded to in the text should be made. On paragraph 3(b), he felt the need to elaborate. He wanted to know to what extent "lower standards" were considered as acceptable. Would it mean, for instance, that the content of the core ILO Conventions could be partially or fully disregarded? He finally remarked that some assistance from the Office to developing countries would certainly be necessary with respect to the application of the Convention.
106. A representative of the Office responded to the question and noted that the burden of proof was with the Member. The Member must justify to a competent authority, in this case either a port state inspector or through the reporting process required under article 22, that it was complying through a substantial equivalent.
107. The representative of the Government of Norway pointed out that paragraphs 3(a) and 3(b) might lead to a contradiction by permitting substantial equivalence in subparagraph (a),

whilst the Member must meet standards in (b). Regarding paragraph 7, the wording might discourage Members to ratify the new Convention and only meet it through substantial equivalence.

- 108.** The representative of the Government of Greece was satisfied with the comments made by the spokesperson of the Government group and stated that substantial equivalence helped with the adoption and enforcement of Convention No. 147. He added that the no more favourable treatment clause required clarification to minimize the subjectivity of inspectors and requested that the meeting consider the Article in the STCW Convention on procedures.
- 109.** The representative of the Government of the United States gave reasons why substantial equivalence was crucial to Convention No. 147 and why it was fundamental to retain it in the new instrument. The wording from Convention No. 147 “in the opinion of the Member” and “to satisfy itself” should remain, as opposed to utilizing the word “demonstrated” as used in paragraph 3(a). He expressed some concern regarding the plurality of the text “implementing the rights and principles” in paragraph 3.
- 110.** In paragraph 7, he suggested that the words “or those” should be added between the expressions “each Member shall apply standards” and “that are substantially equivalent”. He also suggested for consistency moving the no more favourable treatment clause, which was essential, to Title 5, paragraph 2.
- 111.** The representative of the Government of the Republic of Korea proposed the use of an optional approach comparable to MARPOL, and added that this would help to achieve widespread ratification.
- 112.** The representative of the Government of Cyprus explained that leaving substantial equivalence decisions to port state inspectors would create a nightmare. He suggested that the words “lower standard” in 3(b) could be reworded to read “temporary non-full compliance”. A timetable would be required from the member State, to determine when they would be in full compliance.
- 113.** The representative of the Government of the United Kingdom was supportive of the no more favourable treatment clause and agreed with the representative of the Government of the United States to place it in Title 5, since it concerned enforcement. She expressed concern regarding the use of the term “lower standard”, pointing out that it might enable the existence of a second-class Convention within the overall instrument.
- 114.** The representative of the Government of Japan was of the view that substantial equivalence was extremely important for widespread ratification. He felt that implementation would be similar to Convention No. 147. He expressed concern over the phrase “other implementing measure” in paragraph 4, and that collective agreements should be clearly mentioned. He also suggested that paragraph 7 should remain as is.
- 115.** A representative of the Office from the Labour Standards Department described the existing supervisory machinery with respect to the provisions of Convention No. 147. He said that under article 22 of the ILO Constitution, each Member makes a report to the Office on the measures which it has taken to give effect to the provisions of Conventions to which it is party. The report forms are approved by the Governing Body and the one used for Convention No. 147 asks questions concerning substantial equivalence. The government reports are examined by specialist lawyers in the Office, and their analyses are submitted to the Committee of Experts on the Application of Conventions and Recommendations for their consideration. The Committee itself is comprised of independent persons from all regions of the world, appointed by the Governing Body for

their legal experience and standing acquired in academic, judicial and diplomatic spheres. In assessing whether a State is fulfilling its obligations under ratified Conventions, under Convention No. 147 the Committee takes into account questions of substantial equivalence.

- 116.** The representative of the Government of the United States pointed to Article II(a)(iii) of ILO Convention No. 147, in particular the words “in the opinion of the Member” and those which followed “satisfy itself that the provisions of such laws and regulations are substantially equivalent to the Conventions or Articles of Conventions referred to in the appendix to this Convention, as well as Article IV of the draft text. He did not see why the text provided in Article IV, paragraph 3(b), was needed.
- 117.** The representative of the Government of Germany supported this view. He proposed to follow the wording of Convention No. 147 strictly. With regard to Article IV, paragraph 3(b), he called for a specification of what is meant by “an initial lower standard”.
- 118.** The representative of the Government of Malta also felt that 3(b) presented fundamental problems and preferred reference to a commitment period within which a ratifying member State undertakes to achieve the set of standards in the Convention.
- 119.** The representative of the Government of India stated that port state control officers should not be involved in the interpretation of the Convention as concerns “substantial equivalence”.
- 120.** The representative of the Government of France supported the statement made by the representative of the Government of Japan, in particular regarding the reference to collective agreements in paragraph 4.
- 121.** The Shipowner spokesperson, having heard the view of Governments, said that, while recognizing that the Office had prepared a text that had generally reflected the discussions in the High-level Tripartite Working Group, his group had some concerns. They, like the Governments, had concern over the text concerning substantial equivalence and preferred the existing text of Convention No. 147 under which a Member must “satisfy itself” about substantial equivalence, rather than “demonstrate” it. Regarding the text in 3(b) providing that a State may “implement an initial lower standard”, they believed that such a discussion was rather academic until the new draft text of the Regulations, Code, Part A, and Code, Part B, were prepared and discussed. Furthermore, Convention No. 147, when adopted, had been the first international instrument to reflect the concept of port state control. Subsequent developments might mean that the “no more favourable treatment” text could replace the port state control clause in Convention No. 147. Nevertheless, there remained the problem of how port state control authorities dealt with the concept of substantial equivalence.
- 122.** The Legal Adviser explained the obligations of Members as regards the application of Article 2(a) of Convention No. 147, i.e. to adopt legislation and to satisfy itself that this legislation was substantially equivalent to the international labour Convention referred to in the appendix of that Convention. In addition, the Members had to submit reports on application of the Convention in accordance with article 22 of the Constitution. These reports were examined by the Committee of Experts on the Application of Conventions and Recommendations which, therefore, monitored the compliance with the obligation of Article 2(a) under which the Member satisfies itself that its legislation was substantially equivalent to the instruments referred to in the appendix. In general, the Committee of Experts accepted the indications provided for by the governments on the issue of

“substantial equivalence” unless they were queried by organizations of shipowners or seafarers.

- 123.** The Seafarer spokesperson said that, contrary to the views of the Governments, his group was optimistic about Article IV, paragraph 3(a). It was important not to leave it to States alone to decide what is “substantially equivalent”, and the concept of having to demonstrate such compliance to an external group was important.
- 124.** The representative of the Government of the United States, after hearing the explanation by the Legal Adviser, said that the existing text from Convention No. 147, coupled with the general ILO supervisory procedures, was sufficient and should be kept – therefore, there was no need to use the word “demonstrated” in Article IV, paragraph 3(a).

Article V

- 125.** It was generally agreed by the Governments, Shipowners and Seafarers that the draft text of Article V, which provided that the Convention would be open to Members that had ratified several IMO Conventions, might discourage ratification and should be deleted. This said, if, for some reason such a provision was found necessary, it should include, among the Conventions listed, the IMO’s STCW 1978 Convention, as amended. Following a suggestion by the representative of the Government of France, it was generally agreed that it would be useful to list such instruments in the Preamble.

Entry into force and denunciation (Articles V, VI and VII)

- 126.** The Government spokesperson said that his group had not reached a common view as concerns the entry into force requirements of Article VI, though some Government representatives had suggested taking into account the number of seafarers or ships of the ratifying States.
- 127.** The Seafarer spokesperson noted that the draft entry into force provisions included a third dimension based on the number of seafarers within ratifying States. This was a significant change from past practice and would require careful consideration. However, he concluded that on balance it would be better not to follow such an approach.
- 128.** The representative of the Government of the Republic of Korea drew attention to the entry into force requirements of the SOLAS and STCW Conventions, each of which required ratification by at least 25 States with a collective tonnage equal to 50 per cent of world tonnage. He compared this with the lower requirements of Convention No. 147, i.e. ten States with 25 per cent of world tonnage. The inclusion of the “no more favourable treatment” clause envisaged in the new Convention, as included in SOLAS and STCW, would mean that a simple majority, i.e. 50 per cent world tonnage, should be required in order to ensure that the Convention truly was representative of common international practice.

Enforcement (Title 5)

- 129.** On behalf of both the Shipowners’ and Seafarers’ groups, an observer from the International Shipping Federation introduced a “joint informal proposal on enforcement and control” (see Annex 2), which had been prepared during the meeting. He described its main elements:

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- Agreement that the Convention would have to be enforceable and also flexible; provisions of the Convention would be enforced in the first instance by flag State and port state control; port state control would only be able to exercise the right of control over those aspects concerning shipboard living and working conditions; and that flexibility was necessary to allow ratification of the Convention but must not prejudice the ability of States to enforce its provisions and exercise effective control over ships within their jurisdiction.
 - A proper enforcement mechanism would have two stages: the first being the issue by a flag State of a certificate of compliance, which would attest that the shipboard conditions conformed to the provision of the Convention; the second that the flag State would also issue an additional document, to be kept on board, which would contain provision of the Convention subject to port state control as well as an information and an explanation of its application of substantial equivalence together with clear references to relevant and applicable national legislation (the latter document to form part of a State's report to the ILO under article 22 of the ILO Constitution).
 - Consideration of a role for an ILO tripartite maritime committee in the oversight of the various auditing regimes, including the article 22 procedure.
 - A description of the uses of the additional document, including providing clarity for port state control officers and for seafarers on board concerning applicable requirements.
 - An additional enforcement mechanism, as determined by each flag State, that would ensure that all relevant Convention requirements are continuously complied with.
- 130.** Furthermore, he noted that the two groups had differing views over the issue of improving consultation with regard to enforcement: the Seafarers wishing to include provisions on enforcement within the enforcement title; the Shipowners seeing this as a more general matter, to be reflected elsewhere in the Convention. He added that the groups, due to lack of time, had included only flag state and port state control enforcement provisions, but had not included labour-supplying State provisions.
- 131.** The Government spokesperson discussed some of their preliminary views concerning the regulation part of Title 5. They expressed the view that some of the provisions were more appropriate in sections dealing with implementation. They requested more clarification of the responsibilities of flag and labour-supplying States since some difficulties might arise concerning the ability of flag States to monitor areas that were under the control of labour-supplying States, but which may be inspected by port state control. They also requested cooperation with IMO in matters regarding the abandonment of seafarers. Finally, it was pointed out that a number of administrators would delegate the certification work to classification societies, and therefore the contents of the Convention needed to be clear so as to ensure uniform implementation and enforcement.
- 132.** The Government spokesperson also spoke about some of the issues they have concerning Title 1. The clear definition of seafarer was required in 1.2 since different categories of seafarers were mentioned. Regarding 1.3, the Governments stated that clear and precise definitions were required as this went beyond Convention No. 53 which referred to officers, since it was not possible to require all personnel to hold qualifications. The word "national" had to be made more clear in 1.4. Concerning 1.5, clarification was required of some words such as, efficient, adequate, etc. He noted the Office explanation that more precise definitions would be in the Code where amendments would be through the tacit procedure.

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- 133.** The representative of the Government of Greece suggested the inclusion of the principles included in Article 2, paragraph 1, of Convention No. 179 listed in Regulation 1.5.
- 134.** The Seafarer spokesperson requested comments from the Governments on the joint submission to the meeting, STWGMLS/2003, by the Shipowners and Seafarers. They sought dialogue on the paper and wanted to at least hear some views on it. Moreover, he added that, in addressing the enforcement and control, the Office would need to consider how to address the problem of the decent work deficit with regard to tripartism and social dialogue evident in many member States and, in doing so, make proposals for the effective consultation of Shipowners' and Seafarers' groups in member States over the detail of the Certificate of Compliance.
- 135.** The Government spokesperson explained that some believed certain suggested provisions might be too condensed and parliaments would have problems adopting such brief statements. More elaboration was required to make these texts clear to lawmakers who were not as knowledgeable as ourselves.
- 136.** The Seafarer spokesperson explained that these were rights for which they sought acceptance of the Governments. After these were accepted as basic rights, they could move forward to add the information that would be required by parliaments to ratify and implement the Convention.
- 137.** Addressing a question as to whether the document on enforcement submitted by the Shipowners and Seafarers addressed the certificates of compliance that were in the appendix of the preliminary draft, the Shipowners pointed out that the main substance was the same even if different terminology was used. In addition, a further document would be necessary to specify where a flag State might have specifically used "substantial equivalence" and to assist the port state control inspectors in making determinations as to compliance.
- 138.** The spokesperson of the Government group summarized the discussions of his group on the issue regarding Title 5. Some parts would be more appropriate under implementation rather than under enforcement. Some areas depending more on the labour-supplying country would be difficult for a flag State to implement. The abandonment of seafarers should be addressed together with the IMO. Clear language was required, particularly as concerns the inspection of ships, since this task was often delegated to classification societies. His group had considered the joint informal paper submitted by the social partners on the enforcement issue. In the part dedicated to port state control, much of what was in the footnotes had already been identified before. Regarding the identity document, his group had the feeling that it was more appropriate to allude to port services, such as immigration, rather than to port state control. However, in most of the issues in this section, port state control would be concerned. Regarding welfare ashore, it was an obligation of the port State, but would not be relevant to port state control. His group agreed with the Certificate of Compliance. However, the three-year period was too short. A period of five years was better if accompanied by quality control measures. The "additional document" referred to in paragraph 8 was considered as acceptable but was rather similar to the one proposed by the Office. There were some objections regarding the listing of items falling under substantial equivalence. The wording included in paragraph 11 regarding the fact that the flag State should make sure that the requirements were continually applied was considered to be inapplicable. Finally, regarding the monitoring of the whole system, his group was interested by the proposal made by the Office to use the Tripartite Maritime Committee. The opinion of the Governing Body should be requested on this issue.

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- 139.** The Shipowner spokesperson explained that the paper had been drafted with the purpose of avoiding a vocabulary already used in other documents. It was clear that flag States should ensure compliance, by whatever system they would deem suitable. He recalled that the expression “quality standard system” was used in the STCW Convention. Such a requirement could be taken into account, provided more detailed guidance would be inserted into Part B of the Code.
- 140.** The Seafarer spokesperson agreed with the Shipowners but stressed that enforcement, which was addressed in paragraph 11 of the joint submission, meant more than just checking on board the living and working conditions of the seafarers. There was a need to develop appropriate mechanisms to ensure compliance with the terms of the Convention, so that the whole system would not merely rely on complaints. The development of a third level of control provisions was necessary. He found that the response of the Governments to the ideas contained in the footnotes was encouraging. He was of the opinion that, at a certain stage, a tripartite working group could be formed to agree the measures enforceable through port state control. His group had found that a three-year period between certification inspections was already too long and the five-year period envisaged by the Governments was far too long. The verification of substantial equivalence provisions was provided for in the additional document. This should be established in advance, since it was not the task of an inspector to decide on such issues, but to check on their implementation.
- 141.** The representative of the Government of the United States remarked that a whole section of the Office document, on page 106, was devoted to quality control. He thus questioned the contents of paragraph 11 in the joint submission, and thought that the section of the Office document effectively represented the third level alluded to by the Seafarer spokesperson.
- 142.** The Seafarer spokesperson replied that the procedures described in the Office document were of a neutral nature, whereas what the social partners wanted was a continuous and detailed assessment system.
- 143.** The representative of the Government of Norway was appreciative of the efforts made by the social partners to consider the Norwegian proposal for a quality assurance system. However, he would take this proposal to flesh out such a system back home for further consultations.
- 144.** The representative of the Government of the United States said that the draft provisions of Regulation 5.1, flag state responsibilities, paragraph 12, quality control, were the correct way forward, with one exception: the text calling for an “independent evaluation” was not necessary in light of the text of paragraph 11 of the joint informal proposal by the social partners. More importantly, the text in paragraph 9 of the social partners’ proposal, which set out a possible role for the Tripartite Maritime Committee, posed no problems. However, bearing in mind that there would be a review as provided in article 22 of the ILO Constitution and an oversight review, there would be no need to use the phrase “including independent evaluation” in paragraph 12 of the Office text.
- 145.** The representative of the Government of the Netherlands said that his country, which had a large number of vessels, would have a problem ensuring “continuous compliance”, as provided in paragraph 11. He, too, wished to have more clarification on the consultation provisions in paragraph 12 of the proposal.
- 146.** The Shipowner spokesperson said that his group had no problem with any role which the Governing Body might assign to the Tripartite Committee envisaged in paragraph 9.

Bearing in mind the comprehensive nature of the instrument, the Shipowners wished to be involved in a transparent oversight activity.

- 147.** The Secretary-General explained that paragraph 15 of the draft submission by the Office to the Committee on Legal Issues and International Labour Standards, entitled “The proposed consolidated maritime labour Convention: Key features”, set out a role which might be played by the Tripartite Committee. It was a sensitive issue, and the views of governments on this subject were essential. She further noted that it would be for the Governing Body to decide on this role. The Convention itself did not necessarily need to go into detail on this matter, only to provide a reference to the Committee.
- 148.** The Chairperson suggested that Government representatives, upon their return home, should discuss this issue with those officials who would attend the 286th Session of the Governing Body in March 2003 in order that the latter could have an informed debate of the ILO submission.
- 149.** The representative of the Government of Denmark supported the proposal by the social partners, together with the Office proposal. A compliance certificate was a good idea, as was the proposed role of the Tripartite Maritime Committee in the oversight of the various auditing regimes, itself an important element. However, his country would prefer that inspections of vessels should be carried out every five years rather than three as provided in Title 5, Code, Part A, III, paragraph 1.
- 150.** The Seafarer spokesperson did not object to a quality assurance system in the third level, but warned that quality assurance systems often produced a considerable amount of paperwork and the burden fell on the lowest level – the seafarer – and that this aspect must be taken into account and addressed.
- 151.** The representative of the Government of the United States, responding to concerns expressed by the Seafarers, noted that under quality control paragraph 12 provided that “... laws and regulations ... shall establish clear objectives and quality standards covering the administration of inspection and enforcement ...”. Under certification, in paragraph 9, there is reference to “such documentation shall evidence the policies and procedures ...” and later that “the ship has been inspected and that the policies and procedures ... are adequate to ensure compliance ...”. Thus, it would appear the Seafarers’ concerns were addressed, but the text might require a closer look. He was in agreement with the Seafarers, but believed that the Office draft has addressed it in paragraph 12. While he supported a certificate of compliance, he had an issue with the additional document on substantial equivalence. However, he reiterated his Government’s position with regard to the inclusion of substantial equivalence as being essential to the ratification of the new instrument and that the wording of Convention No. 147 needed to remain.
- 152.** The representative of the Government of Germany agreed with the position of the United States regarding this. He said that a five-year period between the inspections would be adequate. Regarding the proposed role of the Tripartite Committee in the supervisory process of the Convention, which was indicated in paragraph 15 of the draft submission by the Office to the Committee on Legal Issues and International Labour Standards (GB.286/LILS/8), the representative of the Government of Germany said that more information was needed on the envisaged composition and the tasks of the Committee. He also wanted to know more about the allocation of duties between the NORMES/APPL Department and the Tripartite Committee.
- 153.** The representatives of the Governments of Greece and India praised the joint submission by the social partners and believed that an independent evaluation would help.

154. The Seafarer spokesperson provided a hypothetical incident that justified that the additional document would explain the substantial equivalence used, and that it would not endanger the ship from being retained in port. In the example, the additional document was primarily for those States which abuse the provision of substantial equivalence since not one or two additional documents would be posted, but the inspector would see multiple sheets plastered on the wall.

Social security (Title 4)

155. The Seafarer spokesperson highlighted the main issues concerning social security in Title 4. He said this section should cover compensation for an accident, sick pay, facilities for medical treatment on board or ashore and cover for invalidity benefits. These were the rights that the seafarers were looking for, at no cost to themselves. Once these basic humanitarian rights were agreed upon, the responsible party or parties to provide these could be determined later. He specifically excluded old-age benefits, as he realized the “minefield” that he would be entering. He quoted parts of a speech made by the Shipowner spokesperson during the Conference which adopted Convention No. 165 to stress that his demands on the social security of seafarers were quite reasonable.

156. The Shipowner spokesperson acknowledged the Seafarers comments and explained that this would create an opportunity for dialogue on an agreement. Pointing out that the Office draft of Title 4 was based largely on the provisions of Convention No. 165, he was concerned that there would be few ratifications unless the new Convention included a MARPOL type approach of excluding specific titles. The Shipowners proposed that Title 4 be renamed as “Health protection, welfare and medical care” and the relevant provisions dealing with these should be transferred from Title 3 to Title 4. This meant that Title 3 would only contain matters concerning crew accommodation and catering arrangements. Title 4 would deal with shipowners liability for sick and injured seafarers, payment of sick pay, the provision of medical care on board and ashore and other related issues. Old-age benefits should be removed from Title 4. The provisions currently in Title 4 which deal with “General principles” concerning state social security protection adapted from Convention No. 165, could be retained if so desired. Consideration could then be given to whether there were any significant provisions affecting health, welfare and medical care which have been omitted and should be provided for in some manner. Title 4 would include shipowners’ liability for sick and injured seafarers, medical care on board and ashore, accident prevention, welfare and general principles concerning social security protection.

157. The spokesperson of the Government group welcomed a joint submission presented by the Shipowners and the Seafarers concerning social security (see Annex 3), and was relieved to see a departure from the issues creating a barrier for governments to ratify Convention No. 165. However, there was a concern and a need for clarity in paragraph 7(v) relating to general principles concerning social security protection since it was such a broad statement. The general view was that moving most of the selected issues from Title 3 to Title 4 was not a problem. Governments were seeking a flexible approach to providing the benefits and suggested a phrase that permits national laws to prevail in this regard.

158. The Shipowner spokesperson was grateful to hear the comments of the Government group and considered them a breakthrough on a possible obstacle to widespread ratification. Addressing their concerns for the statement of general principles, he noted that this was a generic clause that could be developed later. Only selected parts of the Office text under that heading would be relevant.

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- 159.** The Seafarer spokesperson suggested that paragraph 8, which suggests that there should be a suitable balance between the various sections of the Convention, was an important point to be noted.
- 160.** A representative of the Office addressed the concerns regarding the Social Security (Minimum Standards) Convention, 1952 (No. 102) in response to a request by the Subgroup. He pointed out that the original drafters envisioned the gradual application of its provisions to ensure universal application. The objectives were based on a realistic approach permitting flexibility. States that ratified the Convention were permitted to accept just three of the classical nine components of it, and one of the three must be from parts 4-6, 9 and 10. A Member was required to protect prescribed classes of persons constituting not less than a specified percentage of employees or residents of at least one sector of economic activity. The maritime sector and seafarers could be included or excluded. He also noted that the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), was relevant to occupational hazards and diseases and that the Equality of Treatment (Social Security) Convention, 1962 (No. 118), also dealt with the nine classical areas of social security. There was to be equality of treatment for non-nationals and nationals.

Grievance procedures

- 161.** A spokesperson of the Shipowners' group introduced a joint paper submitted by the Shipowners and Seafarers' groups (see Annex 4). The objective was to encourage seafarers to make use of internal procedures to resolve their grievances. Seafarers should be safeguarded as to confidentiality and protection from victimization provided that the complaint is not made maliciously. Port state control officers should inquire whether internal procedures have been used when presented with a complaint.
- 162.** The spokesperson of the Seafarers' group thanked the representative of the Shipowners' group for his introduction, and stressed that, in spite of the fact that the bulk of the paper represented a common position, some paragraphs left between square brackets represented considerable differences of opinion. It was the opinion of the Seafarers' group that those paragraphs would be incompatible with the provisions of both UNCLOS and of widely ratified human rights instruments. Seafarers have the right of access to courts and any attempt to reduce their legal rights in the new instrument would have considerable implications for many judicial systems. He appealed to governments to ensure that recourse to external grievance procedures, especially in the case of serious breach of rights and material hardship, was not undermined.
- 163.** The spokesperson of the Government group welcomed the paper on grievances but sought a clarification as to the difference between the word "grievance" used in the paper, and the word "complaint" which was used in Convention No. 147. He wondered if there was any intention to change the terminology. The Governments were also confused about mandatory provisions on the internal grievance procedures that were included. Specifically whether they would be placed in Part A or Part B of the Code. The Governments were curious as to which system of law should apply to grievances, and if there would be a single authority responsible. Regarding this, they did not want to have a "pick and choose" system. Another comment addressed the need for a timetable for which a grievance could be moved from the internal to external procedures. The flag State needed to be notified so that they could be involved in the external grievance procedure so that they can act on the matter in a timely fashion.
- 164.** Responding to the Governments' comments, the Seafarer spokesperson explained that there was no intent to change the terminology when they used the word "grievance", but it

was to refer to breaches of the provisions of the Convention. They had not specifically considered in which part of the Code that it should be placed, but that the nature of it as a procedure would suggest placing it in Part A. Using the term “normally” in the section of internal procedures, suggested that this was the usual method to carry out the procedures. However, it was felt that there were occasions when seafarers could only be treated fairly if external officials or agencies were involved. The issue of victimization, although extremely difficult to establish, was real and the Seafarers were concerned about certain flag States which sought to suppress cases and exploit the rights of individuals registering complaints. He added that seafarers sought guidance from governments to provide a mechanism to protect them from victimization. He suggested that it might be useful to have a working paper identifying the problems and to see what commitments were already entered into by flag states.

- 165.** A representative of the Shipowners’ group thanked the Government group for their positive approach towards the joint paper. He saw no basic difference between a complaint and a grievance in this respect. Regarding the distribution of the provisions between different parts of the Code, he suggested that the mere requirement for a grievance procedure should go to Part A, whilst the parameters of the system could go to Part B of the Code. He also indicated that the flag state authorities should take an interest in the procedure, because the need to arrive at a resolution of grievances through efficient processes involved everyone.
- 166.** The representative of the Government of Japan raised the concern of the difficulties that could be encountered regarding the confidentiality aspect of the grievance resolution procedure. Not only was it very often difficult to ensure this on board, but it could also be the case in a port. The representative insisted on the protection of the seafarer from victimization.
- 167.** The representative of the Government of Cyprus stressed the importance of keeping the flag State fully involved in the resolution of disputes. He gave examples drawn from his experience within the Cyprus Register, and reiterated that no action should be undertaken until the flag State has been fully informed.
- 168.** The representative of the Government of Denmark welcomed the paper. He addressed the differences between the resolution of internal and external grievances, and remarked that, since Denmark had particular procedures regarding the latter, he would have to make reservations on this particular item. Denmark could not introduce such complaints to a foreign court.
- 169.** The representative of the Government of France expressed his agreement on the proposals contained in the joint document. He insisted on the necessity to keep the flag State informed, and remarked that France was taking steps to facilitate the access of foreign seafarers to French courts whenever necessary.
- 170.** The representative of the Government of India thought the joint document was a very good paper. She elaborated on the point that the two levels of grievance resolution addressed in the joint proposal were not always usable in such a clear-cut manner as described, and that a seafarer should be permitted to seek external intervention when necessary.
- 171.** The Seafarer spokesperson spoke with regard to concerns expressed by the Government group over the need to avoid permitting a “pick and choose” system, and that it would not be possible to empower a single authority or determine the applicable law in the new instrument. He stressed that an even-handed, neutral and dispassionate mechanism should be identified.

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172. Replying to this, the spokesperson for the Government group said that this had not been considered. People had just expressed a concern over the “pick and choose” situation. Some countries however, did have comprehensive systems to make this determination, and would prefer to continue using them.

GB/LILS paper: The proposed consolidated maritime labour Convention

173. The spokesperson for the Government group credited the Office for a fine report but made some minor observations. Point 3(a), Key features, “so far as possible” should be reworded to state “so far as practical”, and the ability to update provisions should be incorporated through the addition of a phrase such as “with any necessary updating”. The Seafarer spokesperson also considered this to be an excellent report and a good reference for all, but was interested to know if the mandate of the group was “so far as possible”, and this was possibly the reason the Office used this term.
174. The Shipowner spokesperson reported that they were pleased with the report, but would prefer to see some of the issues that were discussed in the plenary this week to be reflected in the document. In particular, in paragraph 7, there was a discussion of adding a special percentage, possibly more than 50 per cent of gross tonnage as a condition for entry into force if there is no disagreement by one-third of the Members. There were various views on enforcement, notably in paragraph 11 concerning an independent evaluation that should be reflected. The group of experts should be clarified in paragraph 15, as there have been other committees mentioned.
175. The Secretary-General responded that the Office is looking at all of the different stages where they feel that maritime expertise would be necessary. There might also be a need to have a working group of the Conference committee that would contain maritime experts. Regarding the structure, paragraph 16, the Shipowners indicated that there might be some changes to it and this should also be reflected. The Secretary-General advised the meeting that this is kind of a “moving feast” for the Committee on Legal Issues and International Labour Standards and in paragraph 1 it was noted that we are providing them with the key features of the new instrument envisaged so far. When we make changes at each stage, we will submit a document to the Governing Body for continued information. On this the spokesperson of the Government group stated that they have not discussed this item and would need something in writing so that they could consider it properly.
176. The representative of the Government of Greece asked whether the committee referred to in paragraphs 14 and 15 was the same committee as the one that would be tasked with the amendment procedures. He understood that the Governing Body could permit the committee to have a bigger role in the supervisory process and not to decide upon whom the participants were or what their role was.
177. The Secretary-General reported that, as now envisaged, the same tripartite body that dealt with amendments could also be given a role in the supervisory process. The provisions to date indicated that the Shipowners’ and Seafarers’ representatives would be nominated by the Governing Body and the governments would be ratifying governments. The terms of reference for the mandate of the committee should be established by the Governing Body.
178. The representative of the Government of the Netherlands asked if it was possible if the Office could make a clear distinction between what was envisaged now, the issues we have discussed already, and what exists in paragraph 15. The Secretary-General explained that everything in the document, except paragraph 15, has been what has happened in the high-level tripartite working group so far.

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179. The Seafarer spokesperson reminded the meeting that this was an information paper and that there would be more information papers to come forward. The work of the High-level Working Group would be reflected in the next information paper submitted to the Governing Body.

**Informal paper supplementing the preliminary draft
for a Convention on maritime labour standards,
STWGMLS/2003/5**

180. The spokesperson of the Shipowners' group said that the paper provided very good guidance on how to redraft the Regulations, Parts A and B. The secretary of the Shipowners' group suggested that a short sentence should be inserted at the beginning of each regulation, stating its specific purpose, and "enshrining" it. The detail of the Regulation would then appear, followed by the Code in its Parts A and B. This could help the seafarers, who wished to see their fundamental rights encapsulated in the instrument, and the governments, which desired more substance than brief and concise sentences in the Regulations.
181. The spokesperson of the Seafarers' group agreed that the informal paper provided interesting possibilities, and indicated that his group would consider the Shipowners' suggestion regarding including text which would establish the purpose of each regulation. It was of primary importance for the Seafarers that the rights provided for were clearly stated in the Convention.
182. The spokesperson of the Government group explained that they had considered the document as a contribution regarding the specific issue of repatriation as much as an example of the redistribution of the substance of the instrument between Code Part A and Part B. A general impression of the group had been that they preferred, as much as possible, be moved from Part A to Part B without losing sight of the mandatory provisions that must be retained in Part A since it is subject to tacit amendment and might create problems for some parliaments.
183. The representative of the Government of Cyprus was adamantly opposed to some port authorities treating seafarers as hostages when a ship was abandoned. To this effect, he suggested the inclusion, after paragraph IV.2 of section A2.6, of the wording: "Member States shall not refuse the right of repatriation to any seafarer (including the master) on account of financial obligations of the owners or the charterers or others, or their inability or unwillingness to replace him."
184. The representative of the Government of Namibia supported the informal paper, and suggested that the Regulations should state specific rights under each title, together with an indication of the areas covered by each part of the Code, so that parliaments would have enough information at their disposal. He reiterated that Part A should only contain mandatory provisions, whilst Part B would contain guidelines and non-mandatory material. Even in this case, there should be some substance into the mandatory part, not mere brief principles. From a practical point of view, he suggested that the future instrument should be composed of three booklets, one for the Preamble, the Articles and the Regulations, the second one for Part A, and the third for Part B.
185. The representative of the Government of Greece reiterated the importance of creating a level playing field. He also suggested that models of all certificates should be included into Part B of the Code.

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- 186.** The representative of the Government of Denmark assured that his delegation was agreeable to the informal paper. He pointed out that Part A of the Code could sometimes be more explicit than in the example provided, in particular where the text came from Conventions which already had received a large ratification.
- 187.** It was agreed that the informal paper should be included in the present report (see Annex 6), and that the recommended approach should be followed in the drafting of Titles 1 to 4 of the next version of the preliminary draft.

Administrative matters

- 188.** The spokespersons and many other speakers were concerned regarding the timing of future work. They felt that internal ILO procedures were impeding the facilitation of work on the new instrument. In particular, that the Office had six weeks to do the work of rewriting the Convention, taking into consideration everything discussed this week for the next high-level meeting, while it would take 12 weeks to complete the paperwork including translation and printing. They were concerned by the large disparity in time and made a plea to those responsible for the office documents and translation services to devote the necessary resources that would render the work in a more realistic timeframe and would enable more time to be devoted to rewriting the Convention.
- 189.** The Secretary-General of the meeting gave practical information on the time line on the exercise for the coming months, and on the use of various electronic means to expedite some of its aspects. She thanked the Government of Norway for their assistance in this process.
- 190.** The representatives of the Governments of France and Canada expressed concern on the delays experienced in obtaining documents in languages other than English and asked for the necessary documents to be translated and delivered expeditiously since it impacted on their work.

Closing statements

- 191.** The Shipowner spokesperson commented on the “smooth sailing” that had prevailed during this meeting of the Subgroup, which his group considered to be very fruitful.
- 192.** The Seafarer spokesperson agreed that it had been a job well done, and complimented the Governments on their dedication by taking ownership. He insisted that the real value of their work would only be measured after the adoption of the future Convention, when ratifications would be expected. He also recalled the statement that they had made over the detention of the Captain of the PRESTIGE and informed the meeting that they had just been advised that the P+I Club had posted the bond and that Captain Mangouras had been released on bail. This was very welcome news; however, it did not remove the need to address the growth in the criminalization of ship’s crews and the fact that they could be imprisoned pending the posting of an unreasonably high bond.
- 193.** The spokesperson of the Government group thanked the social partners, in particular for their various joint submissions during the meeting, which had helped the meeting to progress considerably.
- 194.** The Chairperson of the Subgroup, having thanked the participants and the personnel that had enabled the session to proceed smoothly and fruitfully, closed the meeting of the Subgroup.

Annex 1

Joint paper by the Shipowners' and Seafarers' groups on the principles to be embodied in the consolidated Convention

Articles of the Convention

Level 1: Fundamental principles and rights

All seafarers shall have the rights flowing from the following core Conventions:

Freedom of Association (C. 87)

Right to Organise and Collective Bargaining (C. 98)

Discrimination (C. 100 and C.111)

Child Labour (C. 138 and C. 182)

Forced Labour (C. 29 and C.105)

[NB: The above list of general instruments applying to seafarers is not exhaustive.]

Level 2: Specific principles and seafarers' rights

Member States have the responsibility to ensure that seafarers shall have safe and decent working and living conditions which fully take into account the following specific principles and rights, which shall be applied by reference to the detailed regulations and rules:

Part I: Prerequisites for going to sea and related provisions

Minimum age	No under age person shall be engaged in a ship.
Medical examination	All seafarers shall be certified medically fit for service at sea.
Certificates of competency	No person shall be engaged on board a vessel to perform any duty unless he/she is certified to be competent or qualified to perform such duties.
Training	All seafarers shall have the opportunity to benefit from appropriate national provisions and facilities for vocational training.
Recruitment and placement	All seafarers shall have access to an efficient, adequate and regulated system for finding employment without charge.
Identity documents ¹	All seafarers shall have a seafarers' identity document.

¹ To be covered by a stand-alone Convention.

Part II: Conditions of employment

Articles of agreement	All seafarers shall sign articles of agreement, which shall incorporate an agreed written and enforceable contract setting out the terms and conditions of employment incorporating any applicable collective bargaining agreement.
[Equality	All seafarers shall have the right to equal remuneration for work of equal value without discrimination.]
Wages	All seafarers shall on a regular basis be paid their agreed wage and any other agreed remuneration such as overtime.
Hours of work	As for other workers, the normal hours of work for all seafarers, shall be regulated.
Annual leave	All seafarers shall have paid annual leave in addition to public holidays.
Continuity of employment ²	All seafarers shall benefit from the national policy that encourages continuous or regular employment at sea.
Repatriation	All seafarers shall be repatriated at no cost to themselves.
Crewing	All ships shall be sufficiently, safely and efficiently crewed.

Part III: Working and living conditions

Accommodation	All seafarers shall be entitled to decent accommodation and such other facilities as may be necessary.
Food and catering	All seafarers shall have, free of charge, a supply of sufficient food of good quality, and catering arrangements designed to secure their health and well-being.
Health and safety and accident prevention	All seafarers shall live, work and train in a safe and hygienic environment and be represented on any on-board safety committee.
Medical care	All seafarers shall be provided with occupational health protection and prompt medical and emergency dental care at no cost to the seafarer whilst engaged on a ship.
Welfare on board and ashore	All seafarers shall be provided with adequate welfare facilities and services both on board and in port and shall have the right to shore leave.

Part IV: Social security

Social security	All seafarers and where applicable their dependants shall be provided with social security including social insurance no less favourable than that provided for [seafarers and] shoreworkers [in the flag State].
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[Part V: Rules on enforcement

Complaints procedure	All seafarers or their representative shall have easy access to an independent complaints procedure in the flag State.
Port state control	All seafarers or their representative shall have easy access to an independent complaints procedure in the port State.
Access to justice	All seafarers or their representative shall have the right to easy access to the legal system in the flag State, labour-supplying State and the port State.

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² Shipowners wish to shift this to Part IV (Social security).

Annex 2

Joint informal proposal on enforcement and control

1. It has been agreed that the Convention will have to be enforceable and must also be flexible.
2. Enforceability will be achieved through two channels; through provisions of the Convention enforced in the first instance by the flag States and by port state control; and labour-supplying States.
3. Port state control will only be able to exercise the right of control over those aspects of the Convention relating to on-board living and working conditions.¹
4. Flexibility is necessary to allow member States the possibility of ratification within the confines of domestic legislation and practice and will be achieved by the incorporation of relevant provisions within the Convention. However, such flexibility must not prejudice the ability of States to enforce the provisions of the Convention and exercise effective control over ships within their jurisdiction.
5. The Shipowners' and Seafarers' groups consider that the first stage of a proper enforcement mechanism should be the issue by the flag State of a Certificate of Compliance to ships flying their flag. This certificate should attest that the shipboard living and working conditions conform to the provisions of the Convention.
6. The second stage of the enforcement mechanism should be the issue by the flag State of a document additional to the Certification of Compliance. This document, which would be maintained on board each ship flying the flag of a ratifying State, would contain the provisions of the Convention subject to control by the port State as well as, in the appropriate places, the relevant member States application of the substantially equivalent provisions of the applicable Articles of the Convention together with clear references to the relevant and applicable domestic legislation which should be posted in a central location in English and the working language of the ship.
7. Certification of Compliance will be made by the flag State, with the primary purpose of providing the ship with prima facie evidence that the provisions of the Convention applicable to the shipboard living and working conditions which are subject to control by the port State are complied with. Port state control would only make further inspections of the ship if there were clear grounds to justify further inspections.
8. The additional document would be made by the flag State, for the reason that all ships registered under one flag State will be subject to the same interpretation of the Convention. This document would therefore be broadly the same for every ship registered under a certain flag.
9. The additional document would, furthermore, form a part of the ratifying member States' follow-up procedure under article 22 of the ILO Constitution (described in Appendix II of 2002/1) and would therefore be indirectly approved by the ILO as meeting the provisions and intention of the Convention. There could also be a role for the tripartite maritime committee which may be established in the consolidated Convention in the oversight of the various auditing regimes, including the article 22 procedure.
10. The document would therefore have the following uses:
 - It would describe the conditions under which the Certificate of Compliance would be issued.
 - It would be used by port state control inspectors to check the on-board living and working conditions subject to control by the port State against the flag States' interpretation of the substantially equivalent provisions of the Convention.
 - It would be a reference document for the seafarers serving on board the ship and assist the resolution of disputes and complaints.

¹ Inter alia – minimum age; medical certification; certification of competency; identity documents; articles of agreement/contracts; hours of work; crewing of vessels; accommodation; food and catering; health and safety and accident prevention; medical care; welfare on board/ashore.

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- It would be a document providing objective standards, easily used by inspectors who might not be experts in labour-related issues and remove the current subjectivity and allow the communication of the provisions of the Convention subject to substantial equivalence to the ILO. Therefore, guidance should be provided in level 4 of the training of the various inspectors and other relevant officials involved.
 - It would be used by the member State as evidence of application of the Convention under article 22 reporting and other auditing aspects. This should involve the establishment of a link to tripartite maritime structure which may be established in the consolidated Convention.
11. In addition to the Certificate of Compliance and the additional document, the Convention should also provide a third level of enforcement. Each flag State should adopt a mechanism that will ensure that all relevant Convention requirements are continuously complied. The precise mechanisms to be adopted will be determined by each flag State.

Annex 3

Title 4. Social security

Joint submission by the Shipowners' and Seafarers' groups

The Shipowners' and Seafarers' groups note that the Office draft of Title 4 is based largely on the provisions of ILO Convention No. 165. This Convention contains obligations which are not currently accepted by any significant maritime nation.

Therefore, if the current draft is maintained, the new Convention is likely to attract few ratifications. In order to avoid such a situation arising, the social partners propose that an alternative approach is adopted to Title 4.

Joint proposal

1. Title 4 should be renamed as "Health Protection, Welfare, Medical Care and Social Security Protection".
2. The relevant provisions dealing with health protection, welfare and medical care should be transferred from Title 3 to Title 4. Title 3 would then only cover all matters concerning crew accommodation and catering arrangements.
3. However, Title 4 would deal with shipowners' liability for sick and injured seafarers, payment of sick pay, social security protection, the provision of medical care and attention on board and ashore and other related issues.
4. The detailed provisions dealing with specific state social security services, e.g. old-age benefits, etc., should be removed from Title 4.
5. The relevant provisions currently in Title 4 which deal with "General principles" concerning state social security protection (which are taken from Convention No. 165) are, however, to be retained in Title 4.
6. Consideration could then be given to whether there were any significant provisions affecting health, welfare, medical care and social security protection which have been omitted from the text and which ought to be provided for in some way.
7. At the end of this process, Title 4 would include provisions dealing with, among other things:
 - (i) shipowners' liability for sick and injured seafarers;
 - (ii) medical care on board and ashore;
 - (iii) accident prevention;
 - (iv) welfare on board and ashore;
 - (v) general principles concerning social security protection.
8. Central to addressing these aspects will be to agree a suitable balance between the various sections of the Convention.
9. The social partners appreciate that this proposal might create difficulties with regard to the status of Convention No. 165 once the new Convention is adopted. Nevertheless, the proposal would allow for the identification of one specific "family" of provisions within one title, and the advantages of this approach are considered to outweigh the disadvantages.

Annex 4

Joint submission by the Shipowners' and Seafarers' groups concerning provisional grievance procedures

Thank you Madam Chairperson. I am very pleased to have the opportunity to address the Subgroup and speak in the Governing Body room for the first time.

The Shipowners' group acknowledges that Convention No. 147 gives seafarers the right to complain to port state control (PSC) inspectors when they have grievances relating to the requirements of that Convention. It is clear that, when our current work is concluded, this right will apply in respect of the standards of the full Convention.

The Shipowners' group wants all seafarers to have the opportunity to present such grievances on board their ships using internal procedures. We also wish to encourage seafarers to make use of internal procedures to resolve their grievances.

The Shipowners' and Seafarers' groups have held discussions prior to and during this meeting of the Subgroup with a view to presenting to governments and the Office a general statement of our thinking. These have resulted in a large measure of agreement with regard to internal grievance resolution procedures. However differences of opinion did become apparent when it came to consideration of how to settle disputes that could not be resolved internally and this is reflected in the document you have before you.

Shipowners note that the right of a seafarer to complain to a PSC inspector does not equate to unfettered access to the courts of a port State. We feel it is not the role of an ILO maritime Convention to force port States to open up their legal systems to seafarers who are nationals of other States. Additionally we note that there exist in some flag States and labour-supplying States laws providing for exclusive jurisdiction over disputes involving seafarers resident there or serving on their ships. We would not expect these laws to be undermined.

Whilst remaining mindful of these points, the Shipowners agreed with the Seafarers that it would be helpful to consider a range of options without seeking to establish an order of preference. The internal procedures set out in the document are an example of structures that we consider would be appropriate for the shipboard resolution of grievances. We agree that it is important that seafarers raising grievances should be given safeguards as to confidentiality and protection from victimization, provided the complaint is not vexatious or made maliciously. How this is to be achieved in practice will require further consideration.

The Employers' group also considers that seafarers should have the facility to use the internal procedures to resolve disputes concerned with the employment relationship but not related to Convention standards. We consider this a matter of good employment practice.

Turning to external procedures, it is our belief that PSC inspectors should inquire whether internal procedures have been used to take the response to this inquiry into account when deciding whether and/or how to deal with the complaint. We recognize that, depending on the circumstances of the case, the PSC inspector may consider it appropriate to take action on a complaint when the internal procedures were not used in full or in part.

There are two paragraphs in square brackets under the heading "external procedures" indicating differences of view. Further detailed consideration of the matters contained therein will be needed.

Nevertheless, I hope that this paper has achieved its aim of providing information and guidance on the issue of grievance procedures. Madam Chairperson, on behalf of the Shipowners' group, I commend it to the Subgroup.

Annex 5

Report of the Drafting Group on Definitions

Recommendations

1. Re: seafarer definition in Article I.1(f)

Proposed new definition and addition to Article I

1. (c) the term *seafarer* means any person who is employed or is engaged or works in any capacity on board a vessel to which this Convention applies;
2. Except where expressly provided otherwise this Convention applies to all seafarers.
3. Sections 1(c), (d), (e) setting out categories of seafarers would be removed from the Articles and will be inserted where necessary to clarify the application of provisions in Code A.
4. Section 3(ii) should be deleted.

Commentary

The Drafting Group concluded that the best approach is to have a comprehensive and simple definition of seafarer in the Articles. This definition will apply to all rights and responsibilities unless expressly provided otherwise in the Convention. A new provision stating the scope of application of the definition of seafarer is required. It was agreed that the four categories of seafarers (master, officers, ratings, other personnel) will need to be defined to clarify the application of some parts of the Code. A decision regarding the placement of these four definitions (in the Articles or in the Code) will be made as the Convention is developed.

2. Re: adding a new definition of “employer”

It was concluded that the current definition of shipowner, which is consistent with ILO and IMO Conventions, should be retained. It was decided that the term “employer” should be defined in the specific parts of the Code where it is used and should not be defined in the Articles.

Annex 6

Informal paper supplementing the preliminary draft for a Convention on maritime labour standards

1. In the preliminary draft Convention prepared for the meeting of the Subgroup of the High-level Tripartite Working Group on Maritime Labour Standards, Titles 1 to 4 set out the maritime labour standards that were proposed for inclusion in the Convention. Essentially, the binding standards in relevant international labour Conventions were included in Part A of the Code in the proposed new instrument and the substance of relevant Recommendations in the non-mandatory, Part B of the Code. The document was submitted as a basis for discussion rather than as a specific proposal of a text.
2. It was recognized in the commentary on the preliminary draft that further work would be needed to meet the objective of the widespread ratification of the new Convention in the shortest possible time. Indeed, if the new Convention took the precise form of the preliminary draft, it might be difficult for national parliaments to find time even to study the instrument, let alone approve its provisions. There were however indications of an appropriate way forward in the High-level Group last October: namely, the transfer of some of the details in Part A of the Code to Part B. In its general comment at the start of the commentary on the preliminary draft, the Office has therefore suggested that provisions in Part A that are not essential from the point of view of the Decent Work Agenda or to maintain a level playing field could be transferred to Part B, provided that Part A is sufficiently comprehensive: it must cover all aspects of implementation that are necessary to enable proper verification by the flag State and the port State and under the international supervisory procedures. This coverage should be expressed in mandatory terms, even if they might sometimes be of a general character. The Office has requested the Subgroup's advice on, inter alia, how an approach of this kind might be applied with respect to concrete provisions of the preliminary draft.
3. The purpose of the present addendum is to assist the Subgroup's discussions on this point by presenting an illustration: in the annex to this addendum the provisions on repatriation have been taken as an example – Regulation 2.6, section A.2.6 of Part A of the Code and section B.2.6 of Part B. The detailed provisions in Part A that might be moved to Part B have been framed. At the same time, general provisions reflecting the substance of the provisions to be moved have been added to Part A; they are reproduced in bold type. The annex also shows how Part B of the Code might read with the additions from Part A and consequential adjustments.
4. In the illustration the Office has sought to achieve the following objectives:
 - make the provisions on repatriation easier to ratify by removing the detailed prescriptions from the mandatory provisions;
 - avoid any consequent weakening of existing standards by ensuring that the general provisions have the same scope as the detailed provisions that they would replace; and
 - ensure that the general provisions in Part A, read in conjunction with the detailed (non-binding) provisions in Part B, are sufficiently clear as to enable national inspectors and the international supervisory bodies to assess whether or not Members are respecting their obligations under the Convention.
5. The Subgroup's advice on the extent to which these and any other necessary objectives have actually been achieved would greatly assist the preparation of future drafts.

Annex

*Regulation 2.6 – Repatriation*¹

1. All seafarers shall have the right to be repatriated at no cost to themselves.
2. The Code shall specify:
 - (a) the circumstances in which repatriation is to be carried out, when an engagement or contract of employment comes to an end or is interrupted for necessary or justified reasons;
 - (b) the means by which seafarers are to be repatriated; and
 - (c) the respective responsibilities of shipowners and member States.

*Code, Part A: section A.2.6 – Repatriation*²

I. Entitlement to repatriation

1. Seafarers shall be entitled to repatriation:
 - (a) if their engagement for a specific period or for a specific voyage expires abroad (C166A2/1a); and
 - (b) when their contract of employment or articles of agreement expire or are terminated –**
 - (i) by the shipowner; or**
 - (ii) by the seafarer for justified reasons; and also**
 - (c) when they are no longer able to carry out their duties under the contract or articles or cannot be expected to carry them out in the specific circumstances.**

[Taken to Part B]

- (b) upon the expiry of the period of notice given in accordance with the provisions of the seafarers' contract of employment and articles of agreement;*
- (c) in the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel;*
- (d) in the event of shipwreck;*
- (e) in the event of the shipowner not being able to continue to fulfil his or her legal or contractual obligations as an employer of the seafarers by reason of bankruptcy, sale of vessel, change of vessel's registration or any other similar reason;*
- (f) in the event of a vessel being bound for a war zone, as defined by national laws or regulations or collective agreements, to which the seafarers do not consent to go;*
- (g) in the event of termination or interruption of employment in accordance with an industrial award or collective agreement, or termination of employment for any other similar reason. (C166A2/1)*

2. National laws or regulations or collective agreements shall prescribe:
 - (a) the kinds of circumstances in which seafarers are entitled to repatriation in accordance with paragraphs (b) and (c) above;**
 - (b) the maximum duration of service periods on board following which a seafarer is entitled to repatriation; such periods shall be less than 12 months. (C166A2/2)

¹ See doc. STWGMLS/2003/1, p. 33.

² See doc. STWGMLS/2003/1, p. 44.

II. Destinations for repatriation

1. The Member shall prescribe by national laws or regulations the destinations to which seafarers may be repatriated. (C166A3/1) **These shall include the countries with which seafarers may be deemed to have a substantial connection.**

[Taken to Part B]

*2. The destinations so prescribed **should** include the place at which the seafarers agreed to enter into the engagement, the place stipulated by collective agreement, the seafarers' country of residence or such other place as may be mutually agreed at the time of engagement. Seafarers **should** have the right to choose from among the prescribed destinations the place to which they are to be repatriated. (C166A3/2)*

III. Arrangements for repatriation

1. It shall be the responsibility of the shipowner to arrange for repatriation by appropriate and expeditious means. The normal mode of transport shall be by air. (C166A4/1)
2. Seafarers who are to be repatriated shall be able to obtain their passport and other identity documents for the purpose of repatriation. (C166A6)
3. The cost of repatriation shall be borne by the shipowner. (C166A4/2) **It shall include at least the cost of travel and of food, accommodation and necessary medical treatment or facilities during travel.**
4. Where repatriation has taken place as a result of a seafarer being found, in accordance with national laws or regulations or collective agreements, to be in serious default of the seafarer's employment obligations, nothing in this section of the Code shall prejudice the right of recovery from the seafarer of repatriation costs or part thereof in accordance with national laws or regulations or collective agreements. (C166A4/3)

[Taken to Part B]

*5. The cost to be borne by the shipowner **should** include:*

- (a) passage to the destination selected for repatriation in accordance with Chapter II above;*
- (b) accommodation and food from the moment the seafarers leave the vessel until they reach the repatriation destination;*
- (c) pay and allowances from the moment they leave the vessel until they reach the repatriation destination, if provided for by national laws or regulations or collective agreements;*
- (d) transportation of 30 kg of the seafarers' personal luggage to the repatriation destination;*
- (e) medical treatment when necessary until the seafarers are medically fit to travel to the repatriation destination. (C166A4/4)*

*6. Time spent awaiting repatriation and repatriation travel time **should** not be deducted from paid leave accrued to the seafarers. (C166A7)*

*7. Seafarers **should** be deemed to have been duly repatriated when they are landed at a destination prescribed pursuant to Chapter II above or when they are provided with suitable employment on board a vessel proceeding to one of those destinations, or when they do not claim their entitlement to repatriation within a reasonable period of time to be defined by national laws or regulations or collective agreements. (C166A8, C55A6/4)*

5. The shipowner shall not require seafarers to make an advance payment towards the cost of repatriation at the beginning of their employment, nor shall the shipowner recover the cost of repatriation from the seafarers' wages or other entitlements except as provided for in paragraph 4 above. (C166A4/5)
6. National laws or regulations shall not prejudice any right of the shipowner to recover the cost of repatriation of seafarers not employed by the shipowner from their employer. (C166A4/6)

IV. Obligations of Members for repatriation

1. If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated:
 - (a) the competent authority of the Member in whose territory the vessel is registered shall arrange for and meet the cost of the repatriation of the seafarers concerned; if it fails to do so, the State from which the seafarers are to be repatriated or the State of which they are a national may arrange for their repatriation and recover the cost from the Member in whose territory the vessel is registered;
 - (b) costs incurred in repatriating seafarers shall be recoverable from the shipowner by the Member in whose territory the vessel is registered;
 - (c) the expenses of repatriation shall in no case be a charge upon the seafarers, except as provided for in paragraph 4 of Chapter III above. (C166A5)
2. Each Member shall facilitate the repatriation of seafarers serving on vessels which call at its ports or pass through its territorial or internal waters, as well as their replacement on board. (C166A10)

V. Enforcement

1. The text of this rule shall be available in an appropriate language to the crew members of every vessel which is registered in the territory of any Member for which this Convention is in force. (C166A12)

VI. Transitional provision

1. A Member which –

- (a) has ratified the Repatriation of Seamen Convention, 1926 (No. 23), and
- (b) has not ratified the Repatriation of Seafarers Convention (Revised), 1987 (No. 166)

may, in a declaration appended to its ratification of this Convention, specify that it wishes to continue to apply the provisions of the Repatriation of Seamen Convention, 1926 (No. 23) during a transitional period, which shall not exceed [three] years, beginning from the date when the present Convention comes into force for that Member.

2. During the said transitional period the Member shall be deemed to be in compliance with the provisions of the present section to the extent that it is in compliance with the Convention referred to under paragraph 1(a) above.

*Code, Part B: section B.2.6 – Repatriation*³

I. Entitlement to repatriation

1. In accordance with paragraphs (b) and (c) of Chapter I of Part A above, seafarers should be entitled to repatriation:
 - (a) upon the expiry of the period of notice given in accordance with the provisions of the seafarers' contract of employment and articles of agreement;
 - (b) in the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel;
 - (c) in the event of shipwreck;
 - (d) in the event of the shipowner not being able to continue to fulfil his or her legal or contractual obligations as an employer of the seafarers by reason of bankruptcy, sale of vessel, change of vessel's registration or any other similar reason;
 - (e) in the event of a vessel being bound for a war zone, as defined by national laws or regulations or collective agreements, to which the seafarers do not consent to go;

³ See doc. STWGMLS/2003/1, p. 55.

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- (f) in the event of termination or interruption of employment in accordance with an industrial award or collective agreement, or termination of employment for any other similar reason. (C166A2/1)
 2. In determining the maximum duration of service periods on board following which a seafarer is entitled to repatriation, in accordance with paragraph 2 of Chapter I of Part A above, account should be taken of factors affecting the seafarers' working environment. Members should seek, wherever possible, to reduce these periods in the light of technological changes and developments and might be guided by any recommendations made on the matter by the Joint Maritime Commission. (C166A2/2)
 3. If, after young seafarers under 18 years of age have served in a vessel for at least four months during their first foreign-going voyage, it becomes apparent that they are unsuited to life at sea, they should be given the opportunity of being repatriated at no expense to themselves from the first suitable port of call in which there are consular services of the country either of the flag of the vessel or of the nationality of the young seafarer. Notification of any such repatriation, with the reasons therefore, should be given to the authority which issued the papers enabling the young seafarers concerned to take up seagoing employment. (R153P6(1))

II. Destinations for repatriation

1. The destinations to which seafarers may be repatriated that are prescribed in Chapter II of Part A above should include:
 - (a) the place at which the seafarers agreed to enter into the engagement;
 - (b) the place stipulated by collective agreement;
 - (c) the seafarers' country of residence, or
 - (d) such other place as may be mutually agreed at the time of engagement.
2. Seafarers should have the right to choose from among the prescribed destinations the place to which they are to be repatriated. (C166A3/2)

III. Arrangements for repatriation

1. The cost to be borne by the shipowner in accordance with Chapter III of Part A above should include:
 - (a) passage to the destination selected for repatriation in accordance with Chapter II above;
 - (b) accommodation and food from the moment the seafarers leave the vessel until they reach the repatriation destination;
 - (c) pay and allowances from the moment they leave the vessel until they reach the repatriation destination, if provided for by national laws or regulations or collective agreements;
 - (d) transportation of 30 kg of the seafarers' personal luggage to the repatriation destination;
 - (e) medical treatment when necessary until the seafarers are medically fit to travel to the repatriation destination. (C166A4/4)
2. Time spent awaiting repatriation and repatriation travel time should not be deducted from paid leave accrued to the seafarers. (C166A7)
3. Shipowners should be required to continue to cover the costs of repatriation until the seafarers concerned are landed at a destination prescribed pursuant to Chapter II of Part A above or are provided with suitable employment on board a vessel proceeding to one of those destinations (C166A8, C55A6/4).
4. The entitlement to repatriation may lapse if the seafarers concerned do not claim it within a reasonable period of time to be defined by national laws or regulations or collective agreements. (C166A8)

IV. Obligations of Members for repatriation

1. Whenever seafarers are entitled to be repatriated pursuant to the provisions of Part A above, but both the shipowner and the Member in whose territory the ship is registered fail to meet their

obligations under this Convention to arrange for and meet the cost of repatriation, the State from which the seafarers are to be repatriated or the State of which they are a national should arrange for their repatriation, and recover the cost from the Member in whose territory the ship is registered in accordance with Chapter IV of Part A above. (R174)

2. A Member which has paid the cost of repatriation pursuant to Chapter IV of Part A above may detain, or request the detention of, the vessels of the shipowner concerned until reimbursement has been made in accordance with that section.
3. Every possible practical assistance should be given to seafarers stranded in foreign ports pending their repatriation.
4. In the event of delay in the repatriation of seafarers, the competent authority should ensure that the consular or local representative of the flag State is informed immediately. (R173P21)
5. In particular, each Member should have regard to whether proper provision is made for –
 - (a) the return of seafarers employed on a vessel registered in a foreign country who are put ashore in a foreign port for reasons for which they are not responsible to –
 - (i) the port at which they were engaged; or
 - (ii) a port in their own country or the country to which they belong; or
 - (iii) another port agreed upon between the seafarer concerned and the master or shipowner, with the approval of the competent authority or under other appropriate safeguards;
 - (b) medical care and maintenance of a seafarer employed on a vessel registered in a foreign country who is put ashore in a foreign port in consequence of sickness or injury incurred in the service of the vessel and not due to his own wilful misconduct. (R107P2)

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**Representatives of 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

International Civil Aviation Organisation (ICAO)

Organisation de l'aviation civile internationale

Organización de Aviación Civil Internacional

Ms. Mary Mcmunn, Chief, Facilitation Section, Montreal

International Maritime Organization (IMO)

Organisation maritime internationale

Organización Marítima Internacional

Mr. Milhar Fuazudeen, Technical Officer, STCW and Human Element Section, Maritime Safety Division, 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. Jean Dejardin, Adviser, Geneva

Mr. André Yuren, Adviser, Geneva