
INTERNATIONAL LABOUR ORGANIZATION
Sectoral Activities Programme

**High-level Tripartite Working Group
on Maritime Labour Standards
(Second meeting)**

Two information papers prepared by the International Maritime
Organization (IMO) for the meeting

Geneva, 2002



INTERNATIONAL LABOUR OFFICE GENEVA

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Information paper I

Introduction

1. At its first meeting (24 to 28 June 2002) the Subgroup of the High-level Tripartite Working Group on Maritime Labour Standards requested that the IMO provide an information paper pointing out the strengths and weaknesses of the linkage between the consolidated Convention and the ISM Code. As the text of the consolidated Convention was not available at the time this paper was prepared, it summarizes the ISM Code requirements for safety management and then identifies, in broad terms, those areas of existing ILO Conventions that might be addressed within a company safety management system meeting ISM Code requirements. Existing ILO Recommendations are not considered.

International Safety Management (ISM) Code

Introduction

2. The purpose of the ISM Code is to provide an international standard for the safe management and operation of ships and for pollution prevention. Recognizing that no two shipping companies or shipowners are the same, and that ships operate under a wide range of different conditions, the Code is based on general principles and objectives. The Code is expressed in broad terms so that it can have a widespread application. The preamble to the Code recognizes that the cornerstone of good safety management is commitment from the top and that in matters of safety and pollution prevention it is the commitment, competence, attitudes and motivation of individuals at all levels that determines the end result.

Some relevant Code definitions

3. In considering safety management systems as a possible vehicle for implementing ILO requirements the following definitions are relevant. For complete reference, the full text of the ISM Code is annexed.

“**Company**” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all duties and responsibility imposed by the Code.

“**Safety management system**” means a structured and documented system enabling company personnel to implement effectively the company safety and environmental protection policy.

“**Document of compliance**” means a document issued to a **company** which complies with the requirements of this Code.

“**Safety management certificate**” means a document issued to a **ship** which signifies that the company and its shipboard management operate in accordance with the approved safety management system.

Code objectives

4. The objectives of the Code are to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular to the marine environment and to property.

Safety management system

5. The safety management objectives of the company should provide for safe practices in ship operation and a safe working environment. The safety management system should ensure compliance with mandatory rules and regulations and should also take into account applicable codes, guidelines and standards recommended by the IMO, classification societies and maritime industry organizations. The system should also ensure a continuous improvement of the safety management skills of personnel ashore and aboard ships.
6. A safety management system should include:
 - a safety and environmental protection policy;
 - instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag state legislation;
 - defined levels of authority and lines of communication between, and amongst, shore and shipboard personnel;
 - procedures for reporting accidents and non-conformities with the provisions of this Code;
 - procedures to prepare for and respond to emergency situations; and
 - procedures for internal audits and management reviews.

Reports and analysis of non-conformities, accidents and hazardous occurrences

7. The safety management system should include procedures ensuring that non-conformities, accidents and hazardous situations are reported to the company, investigated, analysed and corrected with the objective of improving safety and pollution prevention.

Company verification, review and evaluation

8. The company should carry out internal safety audits to verify whether safety and pollution-prevention activities comply with the safety management system and should periodically evaluate the efficiency of and, when needed, review the safety management system in accordance with procedures established by the company.

Certification and periodical verification

9. The ship should be operated by a company which has been issued with a document of compliance (or interim document of compliance) valid for a period not exceeding five years. The validity of a document of compliance is subject to annual verification within three months before or after the anniversary date.

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10. A safety management certificate should be issued to a ship for a period which should not exceed five years. The validity of the safety management certificate should be subject to at least one intermediate verification between the second and third anniversary dates of the safety management certificate.
 11. The document of compliance is only valid for the ship types explicitly indicated in the document. Such indication should be based on the types of ships on which the initial verification was based. Other ship types should only be added after verification of the company's capability to comply with the requirements of this Code applicable to such ship types.
 12. The document of compliance should be withdrawn by the administration or, at its request, by the contracting government which issued the document when the annual verification is not requested or if there is evidence of major non-conformities with this Code. All associated safety management certificates and/or interim safety management certificates should also be withdrawn if the document of compliance is withdrawn.

ILO Conventions

Introduction

13. Ships are surveyed and inspected to ensure compliance with IMO SOLAS, MARPOL and Loadline Convention requirements and issued certificates which are accepted as evidence that the ship meets these international standards. The safety management system should ensure compliance with these mandatory rules and regulations but verification of ISM Code implementation does not duplicate or substitute those surveys and inspections.
14. Although made mandatory through Chapter IX of the SOLAS Convention, the safety management system is not limited to IMO requirements as mandatory rules and regulations (both national and international) and guidance promulgated by others is to be taken into account. Within the limits of the Code's objectives to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, existing ILO Conventions and Recommendations might therefore be addressed by a company safety management system.

Existing ILO standards within a safety management system

15. A management system is, in broad terms, a structured and documented system to enable personnel to implement effectively a company policy. The system required under the provisions of the ISM Code is however more focused as it is directed towards a company safety and environmental protection policy. When considering existing ILO requirements and how they might be addressed by a safety management system meeting ISM Code requirements there are a number of approaches that might be adopted. For example, a safety management system limited to safety and environmental protection policies might only be able to address a limited number of existing ILO requirements. Conversely, a wider interpretation of "safety management" and some expansion of the scope of company policy outside of purely safety and environmental protection issues might allow other additional requirements also to be addressed under the ISM Code provisions. In addition, some refining of the existing ILO requirements might allow ILO provisions to be addressed within an existing safety management system.

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16. As IMO Conventions are chiefly technical standards (with however some operational elements included), the safety management system under the ISM Code might also ensure compliance with similar technical ILO standards. This is particularly so if a requirement for survey and certification was to be adopted to address existing “technical” ILO requirements such as those contained in the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133).
 17. In the context of existing ILO Conventions, Articles 5 and 6 of the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), contain obligations on shipowners related to accident prevention and the provision of protective equipment which are compatible with the general ISM Code objective to provide for safe practices and a safe working environment on board. This is one example of an existing ILO provision that fits in with the ISM Code requirement for the safety management system to enable personnel to implement a company safety and environmental protection policy.
 18. Similarly, the Seafarers’ Hours of Work and the Manning of Ships Convention, 1996 (No. 180), contains provisions that are aimed at safe ship operation and a safe working environment through establishing rest periods and minimum manning levels. Specific responsibilities are placed on shipowners and masters in Article 13. As the SOLAS and STCW Conventions also address these issues, inclusion of ILO provisions within a company safety management system to achieve a similar aim might be readily achievable.
 19. Existing ILO Conventions such as the Seamen’s Articles of Agreement Convention, 1926 (No. 22), and the Seafarers’ Identity Documents Convention, 1958 (No. 108), appear to be less compatible with an ISM Code safety management system limited to addressing safety and environmental protection. A company system might include structured and documented procedures addressing the simple process of signing articles of agreement, but such a system does not appear to be appropriate for determining the particulars of any agreement or its enforcement. The issue of seafarers’ identity documents is a process totally outside of a company’s responsibilities so is incompatible with a company safety management system.
 20. With respect to ILO Conventions addressing conditions for admission to employment, e.g. the Minimum Age (Sea) Convention (Revised), 1936 (No. 58), and the Medical Examination (Seafarers) Convention, 1946 (No. 73), whilst the responsibilities in these Conventions are clearly aimed at ensuring that employers do not engage underage or unfit seafarers, the application and enforcement of the requirements is obtained through national legislation and do not appear to be appropriate for implementation through an ISM Code safety management system.
 21. In the areas of social security identified in the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), shipowners (undefined) currently have liabilities with respect to medical care of seafarers on board or who are left ashore by reason of their condition. These liabilities are limited in time as the Convention anticipates that they should fall to member Governments. A broadly written safety management system might extend to cover medical issues on board ship under the ISM Code objective of prevention of human injury or loss of life but the other liabilities falling to shipowners under this current Convention do not appear to be addressable under a safety management system.

Conclusion

22. A safety management system aims to ensure compliance with mandatory rules and regulations and to provide for a continuous improvement in the safety management skills

of personnel ashore and aboard ships. The policies, instructions and procedures in such a system might readily address some existing ILO requirements or encompass revised and updated ones. A broader interpretation of the current ISM Code requirement for policies related to safety and environmental protection or, alternatively, some expansion of the ISM Code objectives would be required to address the current ILO requirements related to such issues as health and welfare, social security and general conditions of employment.

Annex

International Safety Management (ISM) Code 2002

Preamble

1. The purpose of this Code is to provide an international standard for the safe management and operation of ships and for pollution prevention.
2. The Assembly adopted resolution A.443(XI), by which it invited all governments to take the necessary steps to safeguard the shipmaster in the proper discharge of his responsibilities with regard to maritime safety and the protection of the marine environment.
3. The Assembly also adopted resolution A.680(17), by which it further recognized the need for appropriate organization of management to enable it to respond to the need of those on board ships to achieve and maintain high standards of safety and environmental protection.
4. Recognizing that no two shipping companies or shipowners are the same, and that ships operate under a wide range of different conditions, the Code is based on general principles and objectives.
5. The Code is expressed in broad terms so that it can have a widespread application. Clearly, different levels of management, whether shore-based or at sea, will require varying levels of knowledge and awareness of the items outlined.
6. The cornerstone of good safety management is commitment from the top. In matters of safety and pollution prevention it is the commitment, competence, attitudes and motivation of individuals at all levels that determines the end result.

Part A. Implementation

1. General

1.1. Definitions

The following definitions apply to parts A and B of this Code.

1.1.1. “International Safety Management (ISM) Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the Assembly, as may be amended by the Organization.

1.1.2. “Company” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all duties and responsibility imposed by the Code.

1.1.3. “Administration” means the Government of the State whose flag the ship is entitled to fly.

1.1.4. “Safety management system” means a structured and documented system enabling company personnel to implement effectively the company safety and environmental protection policy.

1.1.5. “Document of compliance” means a document issued to a company which complies with the requirements of this Code.

1.1.6. “Safety management certificate” means a document issued to a ship which signifies that the company and its shipboard management operate in accordance with the approved safety management system.

1.1.7. “Objective evidence” means quantitative or qualitative information, records or statements of fact pertaining to safety or to the existence and implementation of a safety

management system element, which is based on observation, measurement or test and which can be verified.

1.1.8. “Observation” means a statement of fact made during a safety management audit and substantiated by objective evidence.

1.1.9. “Non-conformity” means an observed situation where objective evidence indicates the non-fulfilment of a specified requirement.

1.1.10. “Major non-conformity” means an identifiable deviation that poses a serious threat to the safety of personnel or the ship or a serious risk to the environment that requires immediate corrective action and includes the lack of effective and systematic implementation of a requirement of this Code.

1.1.11. “Anniversary date” means the day and month of each year that corresponds to the date of expiry of the relevant document or certificate.

1.1.12. “Convention” means the International Convention for the Safety of Life at Sea, 1974, as amended.

1.2. Objectives

1.2.1. The objectives of the Code are to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular to the marine environment and to property.

1.2.2. Safety management objectives of the company should, inter alia:

- provide for safe practices in ship operation and a safe working environment;
- establish safeguards against all identified risks; and
- continuously improve safety management skills of personnel ashore and aboard ships, including preparing for emergencies related both to safety and environmental protection.

1.2.3. The safety management system should ensure:

- compliance with mandatory rules and regulations; and
- that applicable codes, guidelines and standards recommended by the Organization, administrations, classification societies and maritime industry organizations are taken into account.

1.3. Application

The requirements of this Code may be applied to all ships.

1.4. Functional requirements for a safety management system

Every company should develop, implement and maintain a safety management system which includes the following functional requirements:

- a safety and environmental protection policy;
- instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag state legislation;
- defined levels of authority and lines of communication between, and amongst, shore and shipboard personnel;
- procedures for reporting accidents and non-conformities with the provisions of this Code;
- procedures to prepare for and respond to emergency situations; and
- procedures for internal audits and management reviews.

2. Safety and environmental-protection policy

2.1. The company should establish a safety and environmental protection policy which describes how the objectives given in paragraph 1.2 will be achieved.

2.2. The company should ensure that the policy is implemented and maintained at all levels of the organization, both ship-based and shore-based.

3. Company responsibilities and authority

3.1. If the entity who is responsible for the operation of the ship is other than the owner, the owner must report the full name and details of such entity to the administration.

3.2. The company should define and document the responsibility, authority and interrelation of all personnel who manage, perform and verify work relating to and affecting safety and pollution prevention.

3.3. The company is responsible for ensuring that adequate resources and shore-based support are provided to enable the designated person or persons to carry out their functions.

4. Designated person(s)

To ensure the safe operation of each ship and to provide a link between the company and those on board, every company, as appropriate, should designate a person or persons ashore having direct access to the highest level of management. The responsibility and authority of the designated person or persons should include monitoring the safety and pollution prevention aspects of the operation of each ship and ensuring that adequate resources and shore-based support are applied, as required.

5. Master's responsibility and authority

5.1. The company should clearly define and document the master's responsibility with regard to:

- implementing the safety and environmental protection policy of the company;
- motivating the crew in the observation of that policy;
- issuing appropriate orders and instructions in a clear and simple manner;
- verifying that specified requirements are observed; and
- reviewing the safety management system and reporting its deficiencies to the shore-based management.

5.2. The company should ensure that the safety management system operating on board the ship contains a clear statement emphasizing the master's authority. The company should establish in the safety management system that the master has the overriding authority and the responsibility to make decisions with respect to safety and pollution prevention and to request the company's assistance as may be necessary.

6. Resources and personnel

6.1. The company should ensure that the master is:

- properly qualified for command;
- fully conversant with the company's safety management system; and
- given the necessary support so that the master's duties can be safely performed.

6.2. The company should ensure that each ship is manned with qualified, certificated and medically fit seafarers in accordance with national and international requirements.

6.3. The company should establish procedures to ensure that new personnel and personnel transferred to new assignments related to safety and protection of the environment are given proper

familiarization with their duties. Instructions which are essential to be provided prior to sailing should be identified, documented and given.

6.4. The company should ensure that all personnel involved in the company's safety management system have an adequate understanding of relevant rules, regulations, codes and guidelines.

6.5. The company should establish and maintain procedures for identifying any training which may be required in support of the safety management system and ensure that such training is provided for all personnel concerned.

6.6. The company should establish procedures by which the ship's personnel receive relevant information on the safety management system in a working language or languages understood by them.

6.7. The company should ensure that the ship's personnel are able to communicate effectively in the execution of their duties related to the safety management system.

7. Development of plans for shipboard operations

The company should establish procedures for the preparation of plans and instructions, including checklists as appropriate, for key shipboard operations concerning the safety of the ship and the prevention of pollution. The various tasks involved should be defined and assigned to qualified personnel.

8. Emergency preparedness

8.1. The company should establish procedures to identify, describe and respond to potential emergency shipboard situations.

8.2. The company should establish programmes for drills and exercises to prepare for emergency actions.

8.3. The safety management system should provide for measures ensuring that the company's organization can respond at any time to hazards, accidents and emergency situations involving its ships.

9. Reports and analysis of non-conformities, accidents and hazardous occurrences

9.1. The safety management system should include procedures ensuring that non-conformities, accidents and hazardous situations are reported to the company, investigated and analysed with the objective of improving safety and pollution prevention.

9.2. The company should establish procedures for the implementation of corrective action.

10. Maintenance of the ship and equipment

10.1. The company should establish procedures to ensure that the ship is maintained in conformity with the provisions of the relevant rules and regulations and with any additional requirements which may be established by the company.

10.2. In meeting these requirements the company should ensure that:

- inspections are held at appropriate intervals;
- any non-conformity is reported, with its possible cause, if known;
- appropriate corrective action is taken; and
- records of these activities are maintained.

10.3. The company should establish procedures in its safety management system to identify equipment and technical systems the sudden operational failure of which may result in hazardous situations. The safety management system should provide for specific measures aimed at promoting

the reliability of such equipment or systems. These measures should include the regular testing of standby arrangements and equipment or technical systems that are not in continuous use.

10.4. The inspections mentioned in 10.2 as well as the measures referred to in 10.3 should be integrated into the ship's operational maintenance routine.

11. Documentation

11.1. The company should establish and maintain procedures to control all documents and data which are relevant to the safety management system.

11.2. The company should ensure that:

- valid documents are available at all relevant locations;
- changes to documents are reviewed and approved by authorized personnel; and
- obsolete documents are promptly removed.

11.3. The documents used to describe and implement the safety management system may be referred to as the safety management manual. Documentation should be kept in a form that the company considers most effective. Each ship should carry on board all documentation relevant to that ship.

12. Company verification, review and evaluation

12.1. The company should carry out internal safety audits to verify whether safety and pollution prevention activities comply with the safety management system.

12.2. The company should periodically evaluate the efficiency of and, when needed, review the safety management system in accordance with procedures established by the company.

12.3. The audits and possible corrective actions should be carried out in accordance with documented procedures.

12.4. Personnel carrying out audits should be independent of the areas being audited unless this is impracticable due to the size and the nature of the company.

12.5. The results of the audits and reviews should be brought to the attention of all personnel having responsibility in the area involved.

12.6. The management personnel responsible for the area involved should take timely corrective action on deficiencies found.

Part B. Certification and verification

13. Certification and periodical verification

13.1. The ship should be operated by a company which has been issued with a document of compliance or with an interim document of compliance in accordance with paragraph 14.1, relevant to that ship.

13.2. The document of compliance should be issued by the administration, by an organization recognized by the administration or, at the request of the administration, by another contracting government to the Convention to any company complying with the requirements of this Code for a period specified by the administration which should not exceed five years. Such a document should be accepted as evidence that the company is capable of complying with the requirements of this Code.

13.3. The document of compliance is only valid for the ship types explicitly indicated in the document. Such indication should be based on the types of ships on which the initial verification was based. Other ship types should only be added after verification of the company's capability to comply with the requirements of this Code applicable to such ship types. In this context, ship types are those referred to in regulation IX/1 of the Convention.

13.4. The validity of a document of compliance should be subject to annual verification by the administration or by an organization recognized by the administration or, at the request of the

administration, by another contracting government within three months before or after the anniversary date.

13.5. The document of compliance should be withdrawn by the administration or, at its request, by the contracting government which issued the document when the annual verification required in paragraph 13.4 is not requested or if there is evidence of major non-conformities with this Code.

13.5.1. All associated safety management certificates and/or interim safety management certificates should also be withdrawn if the document of compliance is withdrawn.

13.6. A copy of the document of compliance should be placed on board in order that the master of the ship, if so requested, may produce it for verification by the administration or by an organization recognized by the administration or for the purposes of the control referred to in regulation IX/6.2 of the Convention. The copy of the document is not required to be authenticated or certified.

13.7. The safety management certificate should be issued to a ship for a period which should not exceed five years by the administration or an organization recognized by the administration or, at the request of the administration, by another contracting government. The safety management certificate should be issued after verifying that the company and its shipboard management operate in accordance with the approved safety management system. Such a certificate should be accepted as evidence that the ship is complying with the requirements of this Code.

13.8. The validity of the safety management certificate should be subject to at least one intermediate verification by the administration or an organization recognized by the administration or, at the request of the administration, by another contracting government. If only one intermediate verification is to be carried out and the period of validity of the safety management certificate is five years, it should take place between the second and third anniversary dates of the safety management certificate.

13.9. In addition to the requirements of paragraph 13.5.1, the safety management certificate should be withdrawn by the administration or, at the request of the administration, by the contracting government which has issued it when the intermediate verification required in paragraph 13.8 is not requested or if there is evidence of major non-conformity with this Code.

13.10. Notwithstanding the requirements of paragraphs 13.2 and 13.7, when the renewal verification is completed within three months before the expiry date of the existing document of compliance or safety management certificate, the new document of compliance or the new safety management certificate should be valid from the date of completion of the renewal verification for a period not exceeding five years from the date of expiry of the existing document of compliance or safety management certificate.

13.11. When the renewal verification is completed more than three months before the expiry date of the existing document of compliance or safety management certificate, the new document of compliance or the new safety management certificate should be valid from the date of completion of the renewal verification for a period not exceeding five years from the date of completion of the renewal verification.

14. Interim certification

14.1. An interim document of compliance may be issued to facilitate initial implementation of this Code when a company is newly established, or new ship types are to be added to an existing document of compliance, following verification that the company has a safety management system that meets the objectives of paragraph 1.2.3 of this Code, provided the company demonstrates plans to implement a safety management system meeting the full requirements of this Code within the period of validity of the interim document of compliance. Such an interim document of compliance should be issued for a period not exceeding 12 months by the administration or by an organization recognized by the administration or, at the request of the administration, by another contracting government. A copy of the interim document of compliance should be placed on board in order that the master of the ship, if so requested, may produce it for verification by the administration or by an organization recognized by the administration or for the purposes of the control referred to in regulation IX/6.2 of the Convention. The copy of the document is not required to be authenticated or certified.

14.2. An interim safety management certificate may be issued:

- to new ships on delivery;
- when a company takes on responsibility for the operation of a ship which is new to the company; or
- when a ship changes flag.

Such an interim safety management certificate should be issued for a period not exceeding six months by the administration or an organization recognized by the administration or, at the request of the administration, by another contracting government.

14.3. An Administration or, at the request of the administration, another contracting government may, in special cases, extend the validity of an interim safety management certificate for a further period which should not exceed six months from the date of expiry.

14.4. An interim safety management certificate may be issued following verification that:

- the document of compliance, or the interim document of compliance, is relevant to the ship concerned;
- the safety management system provided by the company for the ship concerned includes key elements of this Code and has been assessed during the audit for issuance of the document of compliance or demonstrated for issuance of the interim document of compliance;
- the company has planned the audit of the ship within three months;
- the master and officers are familiar with the safety management system and the planned arrangements for its implementation;
- instructions, which have been identified as being essential, are provided prior to sailing; and
- relevant information on the safety management system has been given in a working language or languages understood by the ship's personnel.

15. Verification

15.1. All verifications required by the provisions of this Code should be carried out in accordance with procedures acceptable to the administration, taking into account the guidelines developed by the Organization.

16. Forms of certificates

16.1. The document of compliance, the safety management certificate, the interim document of compliance and the interim safety management certificate should be drawn up in a form corresponding to the models given in the appendix to this Code. If the language used is neither English nor French, the text should include a translation into one of these languages.

16.2. In addition to the requirements of paragraph 13.3, the ship types indicated on the document of compliance and the interim document of compliance may be endorsed to reflect any limitations in the operations of the ships described in the safety management system.

Information paper II

1. At its first meeting (24–28 June 2002), the Subgroup of the High-level Tripartite Working Group on Maritime Labour Standards requested that the IMO prepare an information paper on the possible ways forward for the incorporation of certain provisions currently contained in ILO Conventions into an IMO instrument. (See paragraphs 131-140 of the Report of the Discussion, document STWGMLS/2002/10.) In this regard, specific reference was made during the Subgroup's discussion to the Certification of Ships' Cooks Convention, 1946 (No. 69), and the Certification of Able Seamen Convention, 1946 (No. 74), and to the possible relevance of the requirements in those Conventions to the International Convention on Standards of Training, Certification and Watchkeeping as amended (STCW 95). The present paper focuses on the procedural aspects of how a certification requirement currently in an ILO Convention (e.g., for able seaman or ship's cook) might be brought into the framework of the STCW Convention, and identifies a number of issues which should be kept in mind in following such a process.
2. In the absence of more detailed guidance from the Subgroup, this paper is based on a working hypothesis that the substance of ILO Conventions Nos. 69 and 74 would be integrated into the STCW Convention. It should be noted that some of the information provided below is in the form of a summary of complicated material, and may not reflect all the significant aspects of that material.

General information on amendment of STCW

3. In document STWGMLS/2002/1, the first meeting of the Subgroup was provided with a general overview of the amendment procedures employed in certain IMO Conventions, and extracts of the relevant articles from the HNS and SOLAS Conventions were included in an appendix to that note. Similar procedures apply in the case of the STCW Convention. Article XII of the STCW Convention allows for two procedures for amending the Convention:
 - (1) *Amendments which are considered with the Organization.* An amendment is proposed by a party to the Convention and is circulated to all members of the Organization, to all parties to the Convention, and to the ILO at least six months prior to its consideration. It is referred to the Maritime Safety Committee (MSC), which is "expanded" to include all parties to the Convention. The amendment must be adopted by a two-thirds majority of the parties present and voting, provided at least one-third of the parties to the Convention is present at the time of voting. In practice, voting is rarely necessary as MSC normally operates by consensus. Once adopted, the amendment is circulated to all parties for acceptance. If the amendment affects the annex (i.e., the technical requirements)¹ it is deemed to be accepted once it has been accepted by two-thirds of the parties, and this is assumed to take place automatically at the end of two years (a period which can be reduced to one year by the MSC) unless more than one-third of parties or parties representing not less than 50 per cent of the world's merchant shipping notify the IMO that they object to the amendment. The amendment enters into force six months after it has been accepted, except with

¹ If the amendment affects the "articles" of the Convention (i.e., the formal legal agreement in the body of the Convention) then the amendment must be positively or explicitly accepted by at least two-thirds of the parties by means of a submission to the IMO of an instrument of acceptance.

respect to a party which has objected to the amendment. This is sometimes referred to as the “tacit” amendment procedure.

- (2) *Amendment by a conference.* The second procedure for amending the STCW Convention is by means of a conference of parties which is convened upon the request of a party, and the request is concurred with by at least one-third of the parties to the Convention. The conference is convened by the IMO in association or consultation with the ILO. An amendment which is adopted by the conference by a two-thirds majority of the parties present and voting is communicated by the IMO to all Parties for acceptance. Unless the conference decides otherwise, the amendment is deemed to have been accepted and enters into force by the same process as stated above for amendments approved by the MSC.
4. It should also be noted, as a matter of amendment process under STCW, that the Seafarers’ Training, Certification and Watchkeeping Code (STCW Code) is incorporated by reference and integrated with the STCW Convention pursuant to paragraph 2 of regulation I/1. This paragraph also stipulates that amendments to Part A of the Code (which is mandatory) shall be adopted, brought into force and take effect in accordance with Article XII of the Convention; but Part B of the Code (which contains non-mandatory guidance and explanatory material) can be amended by the Maritime Safety Committee in accordance with its own rules of procedure.
5. For purposes of the discussion below regarding incorporation of ILO Conventions Nos. 69 and 74 into the STCW, it is assumed that the preferred approach would be the “tacit” amendment procedure under Article XII of the STCW Convention, as described in paragraph 3.1.

Incorporation of ILO Convention No. 69

6. With respect to the provisions on certification of ship’s cooks in ILO Convention No. 69, the following approach would appear to be the most appropriate means of bringing those provisions into the framework of the STCW Convention: a party (or parties)² to the STCW Convention would submit a note to the MSC which proposes that the STCW be amended by introducing new provisions which are derived from the ILO Convention. Ideally, the note would contain a preliminary draft text to indicate to the Committee where the new provisions would be added to the existing STCW Convention. For example, the proposal might be to add the substance of Article 4 of ILO Convention No. 69, suitably redrafted to conform with the format and style of the existing STCW text, as a new regulation in Chapter VI (e.g., new regulation VI/5 – minimum mandatory requirements for certification of ship’s cook). The proposal would presumably give consideration to the need for resolving any issues concerning the scope of application (Article 1 of ILO Convention No. 69 and Article III of the STCW), and any need for new or amended definitions or for provisions on other administrative matters.
7. Once such a proposal is submitted to the MSC, the Committee would most likely refer the proposal to the Subcommittee on Standards of Training and Watchkeeping (STW) for consideration. On receiving the recommendations of the STW, the MSC would be in a position to adopt a resolution by which the amendments would be adopted for the purposes

² The proposal could also be submitted to the MSC by the ILO or by an observer organization, but it would need to be endorsed by a government which would in effect become its sponsor for the purposes of Article XII.

of Article XII. Depending on the decision by the Committee, the amendment could come into force as soon as one year after its adoption under the tacit amendment procedure.

8. One important consideration should be kept in mind as this process unfolds. Since the text is likely to be modified from the wording used in ILO Convention No. 69 when it is moved to the STCW Convention, there is the chance that there will be some degree of inconsistency in substance between the requirements of the two Conventions. This will be particularly important for States which are party to both instruments, unless a process is followed by which ILO Convention No. 69 is renounced for those States on the date on which the STCW amendment comes into force.

Incorporation of ILO Convention No. 74

9. With respect to the provisions on certification of able seamen in ILO Convention No. 74, the most efficient and effective means of bringing those provisions into the framework of the STCW Convention would seem to be the same as those for ILO Convention No. 69, with one additional special consideration. The STCW Convention currently contains provisions on requirements for certification of ratings forming part of a navigational watch (regulation II/4), and on requirements for the issue of certificates of proficiency in survival craft, rescue boats and fast rescue boats (regulation VI/2). An editorial footnote attached to regulation II/4 in the text of the Convention published by the IMO contains the following observation: “These requirements are not those for certification of able seamen as contained in the ILO Certification of Able Seamen Convention, 1946, or any subsequent Convention”. In light of this footnote, any proposal submitted to the MSC for incorporating the substance of ILO Convention No. 74 (presumably Article 2 with some revision) into the STCW Convention should indicate what requirements in addition to those set out in STCW regulations II/4 and VI/2 and the associated sections of Part A of the STCW Code are intended to be included as requirements for special certification of an able seaman. The proposal should also offer a view on how the position of able seamen might be incorporated within the framework of seven functions and three levels of responsibility, as currently reflected in the STCW Code. However, it is recognized that this is largely an issue of policy rather than legal process.

Conclusion

10. The High-level Tripartite Working Group on Maritime Labour Standards is invited to consider the information contained in this note and take action as appropriate.