
INTERNATIONAL LABOUR ORGANIZATION
Sectoral Activities Programme

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

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

Geneva, 2002



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Introduction

1. At its first meeting in December 2001, the High-level Tripartite Working Group on Maritime Labour Standards gave its full support to eight “preferred solutions”¹ in relation to the proposed new consolidated maritime labour Convention. One of them was that the new instrument “should contain provisions giving responsibility to all States to ensure that decent conditions of work apply on all ships that are placed under their jurisdiction or that come within their jurisdiction”.
2. In his summary of the High-level Tripartite Working Group’s discussions,² the Chairperson formulated certain “preliminary thoughts on the various issues” concerning a possible new Convention. The following appear particularly relevant to the issue of enforcement:
 - that “the new instrument should be clearly based on the existing body of ILO standards”, but that “International Maritime Organization (IMO) Conventions should be closely reviewed as a source of inspiration” and that “modifications of IMO solutions may be suggested where appropriate”;
 - that “the instrument should set out standards that are clear, simple, easy to ratify and easy to implement” and that “the respective roles and responsibilities of flag States, port States and labour-supplying States should be clearly defined”.
3. The Chairperson noted that many participants in the High-level Tripartite Working Group had stressed the importance of effective enforcement mechanisms:
 - (a) both flag States and port States should be responsible for enforcement;
 - (b) the principle of “no more favourable treatment” (see paragraph 26 below) was supported;
 - (c) consideration should be given to the appropriateness of the following enforcement mechanisms or solutions:
 - (i) extension of port state control as provided for in Convention No. 147 and strengthening of related remedial measures;
 - (ii) the IMO “panel of competent persons” mentioned in paragraph 30 below (there were however drawbacks to be studied);
 - (iii) obligation of Members to submit their enforcement procedures for review at the time of ratification;
 - (iv) integration into IMO instruments such as the International Safety Management Code (ISM Code) (see paragraph 27 below) or creation of similar mechanisms could be explored; and

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

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

(v) creation of a database recording violations of social rights.

4. Other principles relevant to the questions considered in this paper emerged from the Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers held in Geneva from 6 to 8 May this year. The experts agreed upon a “Consensual Statement”, which is reproduced in Appendix I to this paper.
5. This paper suggests the main ingredients for possible provisions for the new instrument on the subject of “enforcement”. It takes account of all the above considerations as well as the observations and guidance of the subgroup, which reviewed a draft of the paper at its meeting held from 24 to 29 June 2002. The Office understands the subject of enforcement to cover any provisions which are directly or indirectly relevant to ensuring that the substantive provisions of a legal instrument are actually being implemented. These provisions may be adopted at the national level, relating in particular to inspection and control as well as recourse procedures, or at the international level, exemplified by the ILO’s own supervisory system for ratified Conventions. One of the conclusions of the present study is that there should be a line of continuity starting from the actual drafting of a substantive provision and continuing through national inspection systems and national systems for the quality control of the national inspection system up to the international supervisory system. The main ingredients for possible provisions, which the Office suggests in paragraphs 51 and 52, are therefore only one part of the enforcement picture: aspects of enforcement will be relevant in the design of many other parts of the proposed new instrument. This point is touched upon in paragraph 53. The proposed ingredients are based on the various solutions and ideas identified in the preceding sections, which cover the practice of other organizations, in particular the IMO, as well as the scope for strengthening the existing port state control provision.

Enforcement of ILO standards at the national level

(a) Role of the flag State

6. The flag State has the overall responsibility for ensuring that the rights of seafarers are respected in relation to service on board ships flying its flag.³ In the existing system of enforcement, the flag State is given a primary role. In the basic Convention of general scope, the United Nations Convention on the Law of the Sea, 1982, the role and responsibilities of the flag State are set out in Article 94, which provides that:
 1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.
 2. In particular every State shall:
 - (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
 - (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

³ See the “Consensual Statement” (point 2) in Appendix I.

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3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:
- ...
- (b) The manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
- ...
6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.
7. The obligation of the flag State to exercise effective jurisdiction in social matters had in fact already been set forth six years earlier in the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). This Convention has been ratified by 43 member States of the ILO. In addition, in accordance with article 35 of the ILO Constitution, it has been made applicable to 25 non-metropolitan territories, bringing within the scope of the Convention about 54.6 per cent of the world's shipping fleet in gross tonnage. It is the most important of the ILO's maritime labour instruments not only because of the breadth of the working and living conditions that it covers, but also because it contains an aspect that had had no precedent in previous international instruments, namely the "port state control" provision in Article 4, reproduced in paragraph 17 below. As a consequence, this Convention has been included as a "relevant instrument" in all but one of the existing regional port state control agreements. More detailed information is contained in Chapter VI, Jurisdiction and control, of the General Survey on labour standards on merchant ships.⁴
8. As far as the duties of the flag State are concerned, Article 2 of Convention No. 147 requires the parties, in particular, to have legal provisions establishing the following standards and to exercise effective jurisdiction or control over their application in ships registered in their territories:
- (a) safety standards, including standards of competency, hours of work and manning, so as to ensure the safety of life on board ship;
- (b) appropriate social security measures; and
- (c) shipboard conditions of employment and shipboard living arrangements corresponding to the basic standards set out in the Convention itself as well as the standards in other important maritime Conventions and in the general Conventions covering, in particular, minimum age and freedom of association and collective bargaining. These other standards are specified in the appendix to Convention No. 147, which has been complemented by the 1996 Protocol to that Convention. Parties to Convention No. 147 that have not ratified the Conventions containing the other standards are required to have provisions that are "substantially equivalent" to them. Members that have ratified the Conventions concerned are required to verify by inspection or other appropriate means compliance by ships registered in their territories.

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

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

issued. The Officers' Competency Certificates Convention, 1936 (No. 53), generally requires that certain categories of seafarers must hold certificates – issued or approved by the public authority of the territory where the vessel is registered – to perform certain duties and sets out the conditions for issuing of the certificate. Article 5 of the Convention provides that States which ratify it “shall ensure its due enforcement by an efficient system of inspection”; violation of the Convention can result in detention of ships registered in the Member's territory or a report to the flag State, in the case of ships registered elsewhere. The Medical Examination (Seafarers) Convention, 1946 (No. 73), provides, in Article 3, that:

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

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

(b) Role of the port State

- 17.** The role of the port State obviously varies in importance depending upon the quality of inspections carried out by the flag State. Thus, a provision on port state control was included, for the first time, in a Convention adopted “with regard to substandard vessels”, namely the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Article 4 provides:

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

(c) Role of labour-supplying States

18. Labour-supplying nations have a major role to play in the international “enforcement” process. In particular, they are in a position to exercise control over the recruitment and placement services (or “manning agencies”) established on their territories,⁵ as well as over contracts of employment and articles of agreement. An important conclusion of the tripartite meeting of experts referred to in paragraph 4 above, which was endorsed by the subgroup, was that “In States where manning agencies are legally established, the manning agencies shall be made jointly and severally liable with shipowners, regardless of their domicile, for breach of the contract of employment and/or articles of agreement”.⁶ Convention No. 147 also has a provision which is particularly relevant to labour-supplying States: under Article 3, a ratifying Member must advise its nationals on the possible problems of signing on a ship registered in a State which has not ratified the Convention, until the Member is satisfied that standards equivalent to those fixed by the Convention are being applied.
19. Labour-supplying States, moreover, would have the primary responsibility for ensuring implementation of certain of the standards to be embodied in the consolidated Convention, particularly those in the area of social security and social protection. This responsibility would not however detract from the overall obligation of the flag States to exercise effective jurisdiction and control in social matters, including providing the necessary measures to ensure that all seafarers on ships flying their flag have adequate social security coverage in their country of domicile (especially as far as short-term protection is concerned, such as sickness, injury and medical insurance) or, failing this, under the legislation of the flag State.

The ILO’s follow-up procedures

20. Under article 22 of the ILO Constitution, all Members submit reports to the International Labour Office on the measures they have taken to give effect to the Conventions that they have ratified. These reports are first transmitted to a committee of eminent experts, established in 1927, which carefully reviews progress in the Member’s implementation of the Convention concerned on the basis not just of the reports themselves, but also of all relevant information, including observations from employers’ and workers’ organizations. The report of the Committee of Experts is transmitted to the annual session of the International Labour Conference, at which it is discussed at length by a tripartite Committee on the Application of Conventions and Recommendations. After a general discussion, the Committee turns to an examination of individual cases. Governments of countries mentioned in the Committee of Experts’ report as not fully applying a ratified Convention may be invited to make a statement to the Conference Committee, which is followed by a discussion of the case by representatives mostly of workers and employers, but also of governments, with a view to furthering progress through tripartite dialogue. Often first steps towards the solution of a given problem, both in law and in practice, can be made.
21. The ILO Constitution (articles 24 and 26) also permits formal representations as well as complaints to be lodged against a government which is alleged not to be respecting the

⁵ The subject of the Recruitment and Placement of Seafarers Convention (No. 179), and its accompanying Recommendation (No. 186), 1996.

⁶ See point 10 of the “Consensual Statement” in Appendix I.

provisions of a Convention that it has ratified. *Representations* (under article 24) that a particular State is not respecting a Convention that it has ratified may be made by employers' and workers' organizations. They may be referred in the first instance to a tripartite panel for investigation. A refusal by the government concerned to reply, or a reply deemed by the ILO's Governing Body to be unsatisfactory, may lead to a formal publication of the representation (and any reply) by order of the Governing Body. A *complaint* (under article 26) normally leading to the establishment of a Commission of Inquiry may be made by another Member which has ratified the same Convention. The procedure may also be initiated by the Governing Body on a complaint by a delegate to the International Labour Conference or on its own motion. Subject to the right of the Member concerned to request referral to the International Court of Justice, the recommendations of the Commission of Inquiry are binding on the Member. If the Member fails to comply with the recommendations or the decision of the International Court of Justice, "the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith" (article 33 of the Constitution).

22. A fuller description of the above procedures is given in Appendix II to this paper.

Sources of inspiration from other organizations

(a) Documentation of inspections; certification

23. The Conventions of the IMO can indeed provide a source of inspiration (see paragraph 2 above) as far as certification provisions are concerned. The International Convention for the Safety of Life at Sea 1974 (SOLAS 74) addresses maritime safety. The main objective is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. The technical details as well as the various requirements relating to inspection and enforcement are set out in the annex to the Convention, which forms an integral part of it. A consolidated version of that annex, taking account of subsequent amendments, is provided by a Protocol to the Convention, adopted in 1988. It is used here as the basic source of reference.

24. Chapter I of the annex requires (Regulation 6 onwards) the flag State to carry out initial, periodic and special inspections and surveys to ensure that each ship registered in its territory is in conformity with the provisions of the Convention including the technical requirements set out in the annex. The inspection and survey (if positive) is followed by the issue of one or more of the certificates prescribed in the annex, which are valid for a specified period. The inspection and survey is to be carried out by officers of the flag State or by surveyors nominated for the purpose or organizations recognized by it. The latter also have the duty of checking conformity of a ship with a certificate issued with respect to it, and of taking steps to have the certificate withdrawn where any significant shortcomings are not immediately corrected. If the ship is in another State, the authorities of the port State are to be notified of the situation. They are to provide any assistance required by the surveyors and to prevent unsafe ships from sailing. The survey and the issue of a certificate required by the Convention may also be delegated by the flag State concerned to another Contracting State.

25. Under the key provision relating to port state control (Regulation 19):

- (a) Every ship when in a port of another Contracting Government is subject to control by officers duly authorized by such Government in so far as this control is directed towards verifying that the certificates issued under [the Annex] are valid.

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

26. From the wording of the above provision and related provisions (Regulations 17 and 20) in the Convention, the certificate appears essentially as an advantage for the ship concerned, protecting it, subject to certain provisos, from a more thorough inspection in any of the Contracting States. It is clearly implied that full control will be exercised by the port State in the absence of a valid certificate. In this connection, reference should be made to the basic principle set out in Article I of the 1974 Convention as amended by the 1988 Protocol, under which “[w]ith respect to ships entitled to fly the flag of a State which is not a Party to the Convention and the present Protocol, the Parties to the present Protocol shall apply the requirements of the Convention and the present Protocol as may be necessary to ensure that no more favourable treatment is given to such ships”. This principle was cited with approval by the Subgroup at its meeting last June. It is already applied in the context of the ILO’s Convention No. 147, with respect to the standards set out in the text of that Convention and in the instruments referred to in the appendices to the Convention and its 1996 Protocol. However, it was noted in the Subgroup that it would be premature at this stage to consider the precise extent to which the principle would be applied in the context of the proposed new consolidated maritime labour Convention.

27. Chapter IX of the annex to the SOLAS Convention lays down (Regulation 3, Safety management requirements) an obligation to comply with the requirements of the ISM Code. It provides (Regulation 4, Certification) for the issue of a “Document for Compliance” to every “company” (defined in Regulation 1) which complies with the requirements of the ISM Code, as well as a “Safety Management Certificate” to every ship after verification that the company and its shipboard management operate in accordance with the approved safety-management system adopted in accordance with the provisions of the ISM Code. The Code establishes “safety management objectives” which are: to provide for safe practices in ship operation and safe working conditions; to establish safeguards against all identified risks; to continuously improve safety management skills of personnel, including preparing for emergencies. The Code requires a “safety management system” (SMS) to be established by the company. The system should be designed to ensure compliance with all mandatory regulations. Under the Code, the company is required to establish and implement a policy for achieving the specified objectives. Procedures

required by the Code are to be documented and compiled in a safety management manual, a copy of which is to be kept on board. The company is to carry out regular checks and audits of the system and periodically review the system. Administrations are to issue the Safety Management Certificate noted above and carry out periodic checks to ensure the SMS is functioning properly.⁷

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

(b) Quality assessment of certification

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

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

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

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

⁷ A fuller account of the ISM Code is contained in the information paper prepared by the IMO Secretariat for the forthcoming meeting of the High-level Tripartite Working Group.

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

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

Strengths and weaknesses of ILO instruments and procedures

33. Conventions Nos. 147 and 178 and the Recommendation accompanying the latter (outlined in paragraphs 7-13 above), as well as certain provisions of other ILO standards of which examples have been given above, appear to provide flag States with a solid basis for an effective system of inspection covering the main areas of seafarers’ working and living conditions. In this connection, it would be helpful if Government representatives on the High-level Tripartite Working Group could draw attention to any difficulties encountered in practice. The system is reinforced by the port state control provision of Convention No. 147 (paragraph 17 above), which to a certain extent provides a remedy in specific cases for any shortcomings in the inspection at the flag State level. The sophisticated machinery at the international level for the examination of the country reports, complemented by the international complaints procedures, is valuable not only for encouraging and assisting Members to carry out proper inspections in accordance with the standards laid down, but also to provide to the world at large an indication of the respects in which a country’s system of inspection is substandard, and may accordingly need to be complemented by port States.
34. There are two aspects of the systems in other organizations which, at present, do not exist to any substantial degree in the ILO context and which warrant consideration with a view to seeing how far they could be imported into the new instrument. They relate to certification and quality assessment. On the other hand, one of the strengths of the ILO system, namely the possibility for shipowners’ and seafarers’ organizations to make observations, representations and complaints, has no equivalent in the systems of other organizations and – as pointed out by the Subgroup in its June meeting – could be usefully expanded (see paragraph 39 below).

(a) Certification

- 35.** One essential difference between the port state control provision of Convention No. 147 and the SOLAS Convention, reproduced respectively in paragraphs 17 and 25 above, is that the object of inspection in the case of SOLAS is, in the first instance, the certificate(s) to be produced by the visiting ship. A certificate which is issued by the flag state authorities and whose reliability is generally recognized (see paragraph 38 below) appears to be an advantage for the ship, which could thereby avoid repeated inspections of the same conditions, and would facilitate the task of the flag State and, above all, of port States. It is quite likely that certification will be of limited value or not feasible in the case of international labour standards which are less susceptible to the kind of objective verification that is possible in the realm of safety and environment protection. The question of what kinds of subjects lend themselves to certification is a matter that will need careful consideration; guidance could be provided perhaps in the non-mandatory part of the proposed consolidated instrument. At the same time, inspections under the port state control provision of Convention No. 147 can be assisted by an aspect that does not exist in the SOLAS provision, namely the possibility of the port State to take action upon receiving a complaint. This possibility is dealt with in paragraph 40 below.
- 36.** Another question deserving consideration relates to the possible areas in which standards under the proposed consolidated Convention could better be expressed in terms of management systems to be put in place, as is the case under the ISM Code referred to in paragraph 27 above, rather than of concrete conditions to be observed.⁸ Such ISM-type obligations could also be the subject of certification. Preferably, in so far as possible, all matters to be certified by the flag State should be dealt with in a single certificate. A related question, also discussed in the Subgroup, was the extent to which the ISM Code could be directly used with respect to ensuring compliance with international labour instruments. The extent to which the ISM Code could be expanded to cover subjects of concern to the ILO is a matter that would fall outside the scope of the consolidated Convention. However, the new Convention could contain provisions to avoid a second inspection, to the extent possible, where questions of safety are adequately covered by a “Document of Compliance” or “Safety Management Certificate” under the ISM system.
- 37.** The conclusion from the various discussions on the question indicate that national certification is an essential element of an international enforcement system, but that it should be limited to matters that can be effectively certified, that proliferation of certificates should be avoided and that care should be taken to avoid unjustified reliance on certificates, particularly in the context of port state control. The International Association of Classification Societies (IACS) has provided information on their activities with regard to the inspection of working and living conditions aboard ships. This information is to be found in Appendix III.

(b) Quality assessment

- 38.** 38. The quality assessment of the systems and procedures for inspection and certification, of the kind required by the STCW Regulations (see paragraph 29 above) would seem to be an essential element for an effective enforcement process at the national level. However, in

⁸ The IMO information paper referred to in footnote 7 provides a broad definition of a “management system” in the present context as well as an assessment of how far the ILO standards in the maritime area might fit in with a safety management system (see paras. 15 onwards of that paper).

order for the certificate to constitute an advantage outside the flag State, it must be not only reliable but also internationally recognized as reliable. A provision in the new instrument requiring ratifying Members to establish the necessary procedures for a system of quality assessment would come within the purview of the ILO's supervisory system described in Appendix II to this paper. Also, if it were seen to be in the interest of flag States to have a system of inspection and control leading to the issue of certificates recognized as reliable, they might voluntarily avail themselves of a reputable audit of the kind organized by the ICAO (see paragraph 32 above), especially if it were possible for assistance to be provided to ratifying Members with inadequate resources.

(c) Internal resolution and complaints procedures

39. An important complement to inspection and certification systems, particularly in the area of social rights, could be an "internal resolution system" at the level of the flag State, in addition to the complaints procedure at the level of the port State. The efficacy of both systems would depend to a large extent on the existence of transparency – of the kind indicated in paragraph 16 above – as to the situation on board ship and the related rights of the seafarers. An internal resolution system would be based on the possibility of each seafarer having an open dialogue with the master of the ship. The master could be required to record each internal complaint as well as his or her response to that complaint. This record would be available to flag State and port state inspectors. One of the benefits of such a system might be to resolve minor complaints or eliminate unjustified ones before they reach the port State level.
40. The element of port state control which distinguishes the system under the ILO's Convention No. 147 from the SOLAS system is the possibility (under Article 4 of the Convention) to initiate action through a complaint. The consolidated Convention might set out a number of principles covering individual complaints, whether at the flag State or port State level: in particular, the principle that all seafarers should be informed of the mechanisms available to them, that complaints should be covered by the maximum degree of confidentiality and that all possible measures should be taken to ensure that complainants are not later made the subject of discrimination.
41. Facilitating access to remedies available from the courts of port States is also a matter that might be covered by the consolidated Convention. It was suggested at the Subgroup's June meeting that foreign seafarers (in particular) should have a contact point in each port, for example, the inspector of maritime labour, as well as the benefit of rapid procedures, providing the necessary protection in such cases as the abandonment of seafarers or the non-payment of wages. Port States could also be required to ensure that there are effective procedures for the execution of court orders, which could include a lien upon the ship concerned. Special provisions might also be made for legal aid for seafarers in appropriate cases.

(d) Port state control

42. The port state control provision of Convention No. 147 (paragraph 17 above) is clearly one of the strengths of the ILO system. Its reference to "the standards of this Convention" also covers the concept of "substantial equivalence", provided for in Article 2(a)(iii) (see paragraph 8(c) above). The concept makes it easier for many States to ratify the Convention as their national laws, regulations and collective agreements need not be exactly in line with the Conventions, or Articles of Conventions, in the appendix to Convention No. 147. On the other hand, substantial equivalence has been considered as partly responsible for difficulties arising for ratifying States, or at least the inspectors

working in those States, in carrying out port state control inspections to check compliance with the Convention. This, they have said, makes port state control of certain aspects of Convention No. 147 subjective. However, it has also been suggested that the task of inspectors could be better improved by clearer wording in the provisions covering the substantive obligations concerned. It would also be helpful if, where applicable, certificates indicated precisely what the national law or the inspectors in the flag State considered to be “substantially equivalent”. There will, of course, necessarily be areas of standards – such as those relating to “appropriate social security measures” – which are difficult or even impossible for a port state inspector to check, as is evidenced by the regional Memoranda of Understanding on port state control, referred to in the following paragraph. This tends to confirm the usefulness to a certain extent of the possibility of initiating action by a complaint, referred to in paragraph 40 above.

43. Information on the practical difficulties that arise in connection with port state control inspections, and on possible ways of dealing with them, can usefully be drawn from experience under the various regional port state arrangements. Eight out of the nine such arrangements have included Convention No. 147 within their scope. Information collected by the Office from port state control authorities on the application of Convention No. 147 is to be found in Appendix IV.

(e) International supervisory system

44. The ILO’s greatest strength in this context is undoubtedly its supervisory system, carrying the necessary institutional guarantees and authority and an important tripartite component. A system like the “panel of competent experts”, under the STCW Convention referred to in paragraph 30 above could not be the basis for improvements in an ILO context. However, a principal drawback is that the supervisory and complaints system generally only applies to the ships of a Member which has decided to ratify the Conventions concerned. This is of course also true of the IMO Conventions; but the difference is that the IMO Conventions are almost universally ratified. One of the expected benefits of the proposed new instrument would be its greater attractiveness for ratification, through such measures as the modernization and rationalization of existing provisions and clear wording as well as strong enforcement provisions. A system under which certificates issued by flag States under the new instrument would have to be accepted unless there were clear grounds for not doing so might add a useful commercial incentive for ratification, especially if the ships concerned would have to bear the extra cost of thorough inspections when they were objectively justified. They would, by definition, be objectively justified, *inter alia*, when no certificate had been issued by a ratifying Member.

Extension of port state control under Convention No. 147

45. In addition to possible improvements inspired by the Conventions of other organizations, there is considerable scope for strengthening Article 4 (reproduced in paragraph 17 above) of Convention No. 147. Paragraph 1 provides for two possible remedies where a port State “receives a complaint or obtains evidence that the ship does not conform to the standards of this Convention”:
- it “may prepare a report addressed to the government of the country in which the ship is registered, with a copy to the Director-General of the International Labour Office”; and

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- it “may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health” (which may sometimes involve detention or delay for the ship).

46. The first of the two possible remedies could be made to apply in the case of any alleged violations of the new instrument: the provision could become the basis of increasing the accountability of substandard flag States or shipowners as well as an important means of disseminating information on substandard ships. It could provide that, when addressing its report to the flag State and before sending a copy to the Director-General, the port State would request a reply from the flag State within a deadline that would be prescribed in an annex to the proposed new ILO instrument. The reply would, inter alia, outline any measures taken by the flag State to verify or require the correction of alleged defects. The port State’s report might also be sent to the authorities of the next port of call together with information on any undertakings that the ship may have made to remedy the defects found. Once the flag state reply has been received or the deadline for it has passed, the report and the reply (if any) might be transmitted to the ILO Director-General for appropriate action. The precise action to be taken in such cases might be decided by the ILO Governing Body or the International Labour Conference. It might involve:

- (a) transmittal of the documentation to the ILO supervisory bodies if the alleged flag state action or inaction might evidence a violation of an ILO Convention ratified by that State;
- (b) transmittal of the documentation to the most representative international organizations of shipowners and seafarers, and generally making the information available to parties which might be interested in availing themselves of relevant recourse procedures. If the flag State is a party to the proposed consolidated Convention, action might, in particular, be taken under article 24 or 26 of the ILO Constitution (see paragraph 21 above) in the case of serious or repeated violations of a fundamental provision of the proposed new Convention – namely, the provision laying down the flag State’s obligation to exercise effective jurisdiction and control in social matters;
- (c) recording of the documentation in a database of the kind referred to in paragraph 3(c)(v) above, which might not be limited to violations, but might also provide information on viable certification procedures in flag States; such information on shortcomings and progress might be the subject of discussion in an especially created tripartite body, such as the one suggested (at the first meeting of the High-level Tripartite Working Group) in the context of reviewing the operation of the new instrument to ensure rapid updating.

47. The second, and more far-reaching, possible remedy referred to in paragraph 45 above is at present limited to “conditions on board which are clearly hazardous to safety or health”. While there are no express constraints on port States with respect to appropriate enforcement action within their own territories, they should refrain from any action that would unreasonably interfere with free movement or trade. The protection of safety and health are clearly areas in which the port State should intervene and have been generally recognized as such in the law and practice of States and in the international community, as evidenced by the provisions on port state control in international instruments and other less formal arrangements, namely the Memoranda of Understanding on that subject. There are at least two circumstances in which similar action might appear justified in the case of violations of social rights which do not involve a clear hazard to safety and health:

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- (a) in the first place, situations that could clearly lead to serious material hardship for the seafarers or their families could be placed on a par with hazards to health; such situations might involve inadequate insurance coverage or non-payment of wages;
- (b) the other possible circumstance might be serious and repeated violations that are documented of any right laid down in the new instrument; the justification for intervention in this case would rest not only on the inherent humanitarian considerations, but also on the right of the port State to protect the ships registered in its territory, and in that of other parties to the new instrument, from unfair competition by substandard ships. The possibility of documenting repeated violations of this kind would depend upon the efficacy of the systems for the exchange of information that are indicated in paragraph 46 above.
48. On the other hand, doubts have sometimes been expressed about any extension of the situations leading to detention of ships on the order of port state inspectors. Both the situations indicated in the preceding paragraph could, in fact, be dealt with in other ways in the consolidated Convention: the situation under (a) above might be covered by a facilitated resort to the local courts, as suggested in paragraph 41 above; and the situation referred to under (b) above might be dealt with by removal of the substandard flag State's authority to issue certificates under the consolidated Convention .
49. If the idea of requiring each ship to be covered by a certificate is adopted, the consolidated Convention would also have to deal with the consequences if a valid certificate is not produced. Under the relevant SOLAS provision, reproduced in paragraph 25 above, "the officer carrying out the control shall take steps to ensure that the ship shall not sail until it can proceed to sea or leave the port for the purpose of proceeding to the appropriate repair yard without danger to the ship or persons on board". This seems to be a reasonable consequence in the case of certificates relating solely to the question of safety. The possible consequences in the case of certificates relating to social matters might be on the following lines: the port State would make arrangements for a full and detailed inspection to be carried out at the cost of the shipowner concerned; the ship would have to remain in port while such inspection was being arranged and carried out and until the cost had been paid. The ship would then be allowed to proceed unless a situation justifying detention had been found during the inspection. The port State would issue a temporary certificate for the ship so as to avoid a new inspection at each new port of call.
50. On the assumption that an extension of the kind mentioned in paragraph 46 above could lead to the availability of objective information concerning the ability of flag States to exercise effective jurisdiction in matters covered by the new instrument, there would also be scope for extending Article 3 of Convention No. 147. The warning to be given to a Member's nationals about possible problems of signing on a ship of a non-ratifying State could be extended to cover ratifying States where there were clear grounds for believing that the standards of the Convention were not being respected.

Main ingredients for possible provisions on inspection and control and recourse procedures

(a) Inspection and control

51. In the light of the various considerations set out above, the proposed new instrument might contain provisions dealing with inspection and control on the following lines:

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- (a) provision, closely reflecting Article 2 of Convention No. 147 (see paragraph 10 above), which would set forth the basic requirement that ships registered in the territory of the ratifying Member must be subject to an effective and coordinated system of inspection and control for compliance with the standards of the new instrument;
 - (b) provision ensuring that inspectors have the necessary training, competence, powers, status and independence (see paragraph 13 above) and are issued with clear guidelines concerning their inspections;
 - (c) provision linking inspection with the requirement for certification, referred to under (e) below;
 - (d) maintenance of records and submission and publication of reports on inspections (see paragraph 13 above);
 - (e) provision requiring a certificate, in the form prescribed in the relevant annex. The Convention would set out in general terms the areas to be covered by the certificate and the type of inspections to be carried out (inspection of concrete conditions or management oriented (see paragraph 27 above). The specific matters to be inspected might be provided for in the annex. A copy of the certificate would have to be posted in a prominent position on the ship. No ship could be put to sea in the absence of the required certificate, valid for the period of the intended voyage;
 - (f) provision specifying the need to establish clear objectives and quality standards covering the administration of the inspection and certification system, with an independent evaluation, along the lines of the STCW Regulations outlined in paragraph 29 above;
 - (g) provision reflecting, in the ILO context, the “full and complete effect” requirements referred to in paragraphs 29-31 above: in its first report in accordance with article 22 of the ILO Constitution, a ratifying Member would have to provide a description of its inspection and certification system in such detail as to demonstrate that it is designed to give full and complete effect to the relevant standards of the Convention (the idea that information of this kind should be communicated already at the time of ratification (see paragraph 3(c)(iii) above) might be difficult to fit in to the ILO system). In subsequent reports under article 22, the Member would have to provide a summary of the annual reports of its inspectors as well as a complete copy of any new independent evaluation reports referred to in the preceding paragraph;
 - (h) requirement, as under the SOLAS Regulation 19(a) (see paragraph 25 above), for port state control directed towards verifying that the certificates issued under the Convention are valid. If they are, they are to be accepted unless there are clear grounds for believing that the shipboard conditions of employment and shipboard living arrangements do not correspond substantially with the particulars of any of the certificates or, in general, fail to comply with the basic standards of this Convention (based on SOLAS Regulation 19(b));
 - (i) provision for full inspection by port state inspectors with the full cost being borne by the shipowner (see paragraph 49 above) where a validly issued certificate is not produced or is not acceptable, to ensure that the shipboard conditions of employment and shipboard living arrangements substantially comply with the basic standards of the Convention; issue of a temporary certificate by the port state authorities;
 - (j) provision for a partial inspection to the extent necessary to investigate any complaint, as is now the case under Article 4 of Convention No. 147, but with emphasis on the

need for measures to safeguard confidentiality as far as possible, as well as for protection of complainants from discrimination;

- (k) consequences of a negative finding after an inspection under (i) or (j): ship informed of the shortcomings and measures needed to rectify them; reporting to the diplomatic representatives of the flag State, with a request for a reply, and also to the authorities of the next port of call. A port State which considers that the flag State is not in compliance with its obligation to effectively exercise its control would have the right to transmit the report concerned to the ILO Director-General, together with any reply from the flag State, with a view to such action as may be considered appropriate and expedient in order to ensure that a record is kept of such information and that it is available to relevant ILO forums and brought to the attention of parties which might be interested in availing themselves of applicable recourse procedures (see paragraph 46 above);
- (l) circumstances in which the officer carrying out the control shall take steps to ensure that the ship shall not sail until the defects found have been remedied:
 - (i) where the defects constitute a clear hazard to safety or health or could clearly result in serious material hardship for the seafarers or their families;
 - (ii) where the defects constitute a continuation of documented systematic non-compliance with the basic standards of the Convention (see paragraph 47 above); and
- (m) liability of the port State to compensate for any loss or damage suffered from undue detention or delay (SOLAS Regulation 19(f) – see paragraph 25 above).

(b) Prevention and recourse

52. The consolidated Convention could also provide for the following other kinds of measures in the area of enforcement:

- (a) the strengthening by flag States of internal resolution procedures on board ship (see paragraph 39 above);
- (b) the facilitation of recourse actions in port States (see paragraph 41 above);
- (c) control by labour-supplying States, in particular, over contracts of employment and articles of agreement, with a mandatory clause making both the shipowner and manning agency jointly and severally liable to the seafarer for breaches of the agreement (see paragraph 18 above); and
- (d) extension of Article 3 of Convention No. 147, as suggested in paragraph 50 above.

53. In addition to general provisions devoted to the question of “enforcement” of the kind illustrated above, there will probably be numerous provisions in different parts of the instrument for which the enforcement aspect should be strengthened. Paragraph 15 above mentioned two ILO Conventions covering certification on specific matters. A requirement for certification might also be considered in connection with provisions on, for example, accommodation, shipowners’ insurance schemes, medical care and contracts of employment. Paragraph 16 referred to an ILO Convention which places emphasis on measures to document compliance. In general, the annexes to the new instrument should transform any imprecise or subjective criteria into concrete objective provisions. In other

words, one of the aspects to be taken into account in the formulation of the substantive provisions in the new instrument should be that of verifiability.

Points for discussion

54. The High-level Tripartite Working Group may wish to provide guidance on:

- (a) the appropriateness and general content of the various ingredients suggested;
- (b) the nature and general content of additional ingredients that should be included in the enforcement system; and
- (c) other aspects of enforcement that should be explored.

Appendix I

Consensual Statement of the Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers (Geneva, 6-8 May 2002)

The experts consider this tripartite Meeting to be an opportunity to continue the multifaceted drive of governments, seafarers and shipowners already under way to improve the living and working conditions for all seafarers regardless of nationality or domicile.

The experts stress the need for the strongest possible national and international measures to be taken against breaches of international labour standards, including violations of freedom of association and right to organize and collective bargaining, which undermine decent living and working conditions for seafarers.

The experts consider that it is urgent to effectively address the decent work deficits in the shipping industry. It is recognized that conditions of employment, social protection, social security and social dialogue, including collective bargaining, are matters that will require particular attention. To this end, the experts recognize the importance of the decent work at sea programme and invite the Governing Body to instruct the Office to secure further action, in consultation with the constituents.

The experts recognize that consideration should be given to a possible mechanism by which a performance measurement for flag States in respect of ILO instruments might be introduced.

The experts consider that in the context of enforcement, due consideration should be given to the relevant provisions of UNCLOS and the relevant provisions of the ISM Code.

The experts stress the importance of the following principles and rights.

1. In order to effectively exercise its jurisdiction in social matters, every State shall have a sound maritime administration with a firm legislative framework complying with, as a minimum, international labour standards, and a strong enforcement mechanism.
2. The flag State has the overall responsibility for ensuring that the rights of seafarers are respected in relation to service on board ships flying its flag.
3. Every flag State shall have in place means to enforce decent living and working conditions on ships flying its flag wherever they may be in the world.
4. Every State shall ensure that manning agencies for seafarers legally established within its jurisdiction are subject to government control and shall ensure that seafarers' rights are respected.
5. All States shall have in place the necessary mechanism for monitoring living and working conditions on ships visiting their ports, in accordance with international instruments in force.
6. All inspectors responsible for the control of living and working conditions shall be properly qualified, trained and shall have clear terms of reference.
7. Every flag State should ensure that shipowners are responsible for making available to the seafarers the applicable laws, regulations and collective agreements addressing their living and working conditions and should, in accordance with national law and practice, ensure that they are enforced.
8. All States shall provide easy access to simple and inexpensive procedures enabling all seafarers, regardless of nationality and domicile, to make complaints alleging a breach of national legislation on living and working conditions or employment contracts and/or articles of agreement.

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9. All shipowners shall provide and be responsible for safe and decent working conditions for seafarers they employ or engage.
 10. In States where manning agencies are legally established, the manning agencies shall be made jointly and severally liable with shipowners, regardless of their domicile, for breach of the contract of employment and/or articles of agreement.

Appendix II

The ILO's follow-up procedures

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

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

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

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9. For serious allegations of failure to respect a ratified Convention, there is a complaints procedure under article 26 of the Constitution. Complaints may be submitted by another ratifying Member. The procedure may also be initiated by the Governing Body on a complaint by a delegate to the Conference or on its own motion which may be examined by a Commission of Inquiry set up by the Governing Body. Due to the seriousness of the problems dealt with, the procedure before Commissions of Inquiry will usually take about one year to complete. Members are required to cooperate in this inquiry and, subject to the right of the Member concerned to request referral to the International Court of Justice, the recommendations of the Commission of Inquiry are binding on the Member. If the Member fails to comply with the recommendations or the decision of the International Court of Justice, “the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith” (article 33 of the Constitution).
 10. The actions outlined in the above procedures can be taken only if the Member has ratified the Convention concerned. There is one procedure under which a complaint can be lodged even when the Member concerned had not ratified any relevant Convention. This is a complaint that the Member is not respecting the constitutional obligation of freedom of association. It may be lodged with the Governing Body by workers’ or employers’ organizations or by governments. They are considered by the Governing Body’s Committee on Freedom of Association.

Appendix III

Information received from the International Association of Classification Societies (IACS)

The Office requested the IACS to provide information on the inspection of ships with regard to working and living conditions.

The following information was received:

- (a) *Are inspections carried out by classification societies to verify conditions of work and life of seafarers, particularly in the application of Convention No. 147 on behalf of national maritime authorities? If so, what types of inspections are carried out and what specific issues are inspected, e.g. crew accommodation?*

The IACS members are not authorized by any national maritime authority to certify compliance with ILO Convention No. 147, per se, the scope of which extends to considerably more than crew accommodation matters. However, members are authorized by a limited number of national maritime authorities to certify compliance with some or all of the construction and arrangement requirements contained in ILO Conventions Nos. 92 and 133 (both concerning accommodation of crews).

This is normally done by a review of drawings to determine compliance, followed by a survey of the relevant spaces and arrangements to verify that they have been built in accordance with the requirements and the approved drawings. The scope of authorization and instructions from the different national maritime authorities vary; however, the plan appraisal and survey for compliance are normally only carried out at the time of new construction or when significant modifications are made to spaces/arrangements covered by the Convention.

For most of the authorizing administrations, a report on compliance with the applicable provisions of the Convention is required at the time of new construction or major modification. This is usually provided to the owner of the vessel. A few administrations require the issuance of a certificate of compliance with a limited period of validity – usually four or five years – and demand a survey to confirm continuing compliance prior to issuance of a new certificate. However, re-certification is usually the responsibility of organizations other than IACS members.

In contrast, IACS members collectively offer statutory certification services to monitor compliance with a number of IMO Conventions (SOLAS, MARPOL, Load Line, etc.). These are provided on behalf of more than 130 administrations in accordance with relatively uniform procedures and are subject to annual and other periodic surveys prior to renewal of certification at five-yearly intervals throughout a ship's life. Thus, IACS members' involvement in the certification of compliance on behalf of administrations in accordance with ILO Conventions is, in comparison, quite limited in scope, content and frequency.

- (b) *What actions, if any, are taken in case of non-compliance or persistent non-compliance?*

Compliance with the construction requirements is required at the time of certification – subject to any exemptions or waivers approved by the administration at the request of the owner. As pointed out above, periodic surveys to renew certification are only required by a few of the administrations.

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- (c) *What difficulties have been encountered with the carrying out of inspections under Convention No. 147?*

As indicated in the replies to questions (a) and (b), IACS members have relatively limited involvement in the certification of compliance with ILO Conventions Nos. 92 and 133. The principal difficulties lie in the fact that there are no uniform requirements and procedures for survey and certification amongst administrations which are signatories to these Conventions and that periodic verification is either not required or is carried out by other organizations.

However, as indicated by port state control detentions, the principal problem appears to be that some shipowners do not maintain their ships in compliance with the requirements of the Conventions after initial certification, or between periodic surveys when these are required.

Appendix IV

Information received from port state control authorities on the application of Convention No. 147

The Office requested the regional port state control agreements to provide information on the inspection of ships with regard to working and living conditions in their respective regions. Information was received from the Tokyo MOU, the Paris MOU, Indian Ocean MOU, the Mediterranean MOU and the Black Sea MOU. The following is a compilation of the replies received. It should be noted that Convention No. 147 has been included in all the regional port state control agreements except the Vina del Mar agreement.

(a) *Are inspections carried out in the ports of your member States to verify the application of Convention No. 147?*

All the responding MOUs have included Convention No. 147 in their regional agreements and report that inspections are carried out accordingly. The Tokyo MOU adds that, although some authorities have not ratified ILO Convention No. 147, parts of the ILO Conventions referred to therein are implemented under their national legislation and port state control is carried out on matters covered by the national regulations. Within the Indian Ocean MOU, Australia, which has not ratified the Convention, nevertheless carries out inspections on matters covered under Convention No. 147, as empowered under Australian legislation. In its 2001 port state control report, the Australian Maritime Safety Authority states that a deficiency is recorded whenever there is a hazard to the health and safety of the crew which is considered to be in breach of ILO Conventions. India reports that it is committed to carrying out inspections. The Islamic Republic of Iran reports that it is progressing towards ratification of Convention No. 147 since it carries out inspections and provisions of the Convention. Turkey conducts inspections although it has not ratified Convention No. 147.

(b) *Can you provide any information on the actions taken as a result of these inspections?*

The Tokyo MOU reports the following record of deficiencies relating to Convention No. 147 during 1998-2000.

Nature of deficiency	Number of deficiencies		
	1998	1999	2000
Crew and accommodation	920	717	695
Food and catering	387	462	410
Working spaces	267	260	251
Accident prevention	352	521	472
Mooring arrangements	619	638	603
Total	2 545	2 598	2 431

The Paris MOU's most recent figures for deficiencies relating to Convention No. 147 are as follows:

Nature of deficiency	Number of deficiencies	
	2000	2001
Crew and accommodation	1 963	2 113
Food and catering	1 031	876
Working spaces	678	703
Accident prevention	1 506	1 586
Mooring arrangements	878	878
Total	6 387	6 056

India reports no major deficiencies as a result of inspections under the Convention.

The Mediterranean MOU cannot provide information until its information centre becomes operational.

Romania reports that in a two-month period 18 inspections on working and living conditions were carried out and 25 deficiencies identified. Twenty-six cases were rectified before departure; six cases were to be rectified within 14 days and three cases were to be rectified at the next port.

In Turkey inspections give special concern to working and living conditions, especially certain aspects relating to safety and health.

(c) What actions, if any, are taken in case of non-compliance or persistent non-compliance?

All the MOUs report that deficiencies found are expected to be remedied. The Tokyo MOU specifies that, depending on the nature and seriousness of the deficiency, action may be required within various time frames, namely: (a) the deficiency must be put right before departure; (b) the deficiency must be remedied at the next port; (c) the deficiency must be put right within 14 days or three months; (d) the deficiency warrants detention; and (e) the flag State must be informed. The Paris MOU notes that ships may be detained depending upon the seriousness of the deficiency – but Convention No. 147 does not provide clear provisions to that effect. The ILO-related deficiencies warranting detention are (according to Annex 1, section 9.3.4.9 of the Paris MOU): insufficient food and drinking water; excessively unsanitary conditions; no heating in accommodation in the case of low temperatures; and excessive garbage or other blockages to passageways causing unsafe conditions. However, a number of replies point out that there have been few cases of persistent non-compliance and some – i.e. Romania and Turkey – add that no detentions have been made solely on the basis of Convention No. 147; indeed, it is easier to detain on other issues and to demand rectification of deficiencies found under Convention No. 147.

(d) If inspections are not comprehensive, what could be done to improve the quality of inspections?

All the respondents stated that harmonization and improvement of the training of port state control officers and inspectors would improve the quality of inspections. The Paris MOU suggests that inspections carried out should include the items of working and living conditions as per the contents of the Paris MOU, section 3.1 and its Annex 1, section 7.

Several replies favour joint training from the ILO and the IMO. Turkey reported that it was trying to increase the number and level of training of its inspectors.

(e) What difficulties have been encountered with the carrying out of inspections under Convention No. 147?

The Tokyo MOU states that some of its member authorities have problems ratifying Convention No. 147 because of the complexity of the Convention and the limitations of national legislations. If the ILO were to consolidate the maritime labour standards into a single instrument and make it easier for ratification by all countries, it would promote the implementation of maritime labour standards. The Paris MOU stresses that standards for working and living conditions are not “certified” (verified and covered by certificates) by flag States. Port state control is, therefore, the only mechanism to effectively enforce ILO standards. Many Conventions in the Appendix to Convention No. 147 need to be updated in line with today’s standards. Enforcement options in Convention No. 147 are too vague.

Port state control officers and inspectors feel more comfortable detaining on SOLAS/MARPOL items even when social and labour deficiencies are detected. Bulgaria reports difficulties with ships which are over 30 years old and do not meet requirements with regard to construction. Turkey mentions that ships registered under flags of convenience and in developing countries sometimes have important deficiencies with regard to safety and living and working conditions. Rectifying deficiencies regarding living and working conditions take a long time and are expensive.