

Final report ¹

Introduction

1. The High-level Tripartite Working Group on Maritime Labour Standards (hereafter referred to as the “High-level Group”) met in its third session at the International Labour Office in Geneva from 30 June to 4 July 2003. The High-level Group continued its work in accordance with a decision taken by the Governing Body of the International Labour Office at its 280th Session (March 2001) and in accordance with a proposal made unanimously by the Joint Maritime Commission at its 29th Session (January 2001) calling for a single, coherent international maritime labour standard incorporating, as far as possible, the substance of all the various international maritime labour standards that are sufficiently up to date.

Composition of the High-level Group

2. This meeting of the High-level Group was attended by 49 Government delegations, with a total of 112 participants, and 27 Shipowners’ and 31 Seafarers’ delegates and advisers. A number of non-governmental delegations were also present.
3. The Officers of the High-level Group were:

Chairperson: Mr. Jean-Marc Schindler (Government representative, France)

Vice-Chairpersons: Mr. Tatsuya Teranishi (Government representative, Japan)

Mr. Lachlan Payne (Shipowner member, Australia)

Mr. Brian Orrell (Seafarer member, United Kingdom)

¹ As decided by the meeting, this report does not attribute interventions to specific Government representatives, unless otherwise requested.

The Officers of the groups were as follows:

Government group

Chairperson: Mr. B.M. Shinguadja (Namibia), replacing Mr. C.H.G. Schlettwein (Namibia), who was unable to continue in office due to his transfer to another position in his Government

Vice-Chairperson: Mr. Young-Moon Park (Republic of Korea)

Secretary: Mr. Georg Smefjell (Norway)

Shipowners' group

Chairperson and spokesperson: Mr. Dierk Lindemann (Germany)

Vice-Chairperson: Mr. Joe Cox (United States)

Secretary: Mr. David Dearsley (International Shipping Federation)

Seafarers' group

Chairperson and spokesperson: Mr. Brian Orrell (United Kingdom)

Vice-Chairperson: Mr. Thomas Tay (Singapore)

Secretary: Mr. Jon Whitlow (International Transport Workers' Federation)

The meeting set up a Working Party on Tonnage Issues. The spokesperson was Mr. J. Angelo (Government, United States) (Annex 1).

General statements

4. The Secretary-General introduced the documents prepared by the Office and submitted to the meeting. These documents were prepared so as to remain true to the spirit and standards of existing Conventions and at the same time to be more “radical”, in “plain language” and “simple and easy to read”. The legal framework intended to serve current and future demands for flexibility and for rapid change with respect to details, as well as to remain firm on principles. She outlined the philosophy followed by the Office in drafting these texts. The Office had sought to strike a balance between the need for simplicity and brevity and the equally important concerns voiced by governments for the Convention to be sufficiently specific to allow national legislators to responsibly adopt it. The present first draft did not reproduce the wording of existing relevant maritime labour standards, but distilled the essence of the obligations and rights contained in them in order for all Members to be able to ratify and implement. Initially envisaged as a consolidation of existing Conventions, the new Convention now constituted an updating of the prior Conventions, addressing current and emerging issues including the changing nature of the international seagoing workforce. All seafarers might not always be treated in the same way but they had all been recognized as being entitled to decent work. This updating exercise also took into account the globalization of ownership, management and employment in this sector.

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5. After outlining the contents of the four Office documents, the Secretary-General raised the question as to whether the newly adopted Convention on seafarers' identity documents should also be included in the consolidation. Finally, she identified the possible priorities for the meeting: questions giving rise to major difficulties for one or more constituents; comments or suggestions relating to the split-up between Regulations, Code A and Code B; questions relating to the scope of titles; and questions left open by the Office in the first draft. The objective would be to obtain a complete text reflecting the general compromises agreed in this High-level Group.
 6. The representative of the Government of France expressed satisfaction with the progress made by the High-level Group but he pointed out the need for more work on the draft Convention. He then invited the meeting to a special final session to be held in France in January 2004. More details would be given later.
 7. The Chairperson of the Subgroup of the High-level Group reported on the meeting of the Subgroup held in February 2003. She pointed out that a complete report had been produced under reference STWGMLS/5/2003/8. The Subgroup first discussed the Articles, and spent some time on the amendment procedure. It also expressed a general acceptance on the need for a tripartite committee, as alluded to in Article XVI of the draft text. A small drafting group had been tasked with the definition of a seafarer, and produced one that was slightly amended in plenary, as explained in paragraph 84 of the report of the Subgroup. A discussion took place on fundamental principles and rights as well as on social security, bearing, in particular on the repartition of responsibilities between flag States and labour-supplying States. The distribution of provisions between Parts A and B of the Code was also considered. The notion of substantial equivalence, stemming from Convention No. 147 was addressed, and the Legal Adviser of the ILO provided necessary explanations. She also added that other Articles had been considered, like the entry into force of the Convention, but that no common view was reached on these specific ones. The Seafarers had requested a discussion on implementation and control and due consideration had been given to the concept of a certificate of compliance.
 8. The discussion on social security had proved to be a difficult point. To alleviate this difficulty, the social partners had provided the meeting with a joint submission on the issue, which subsequently became Annex 3 to the Subgroup's report. It was also recognized in this respect that Convention No. 165 was not a widely ratified instrument. In the same vein, the social partners had also prepared a joint submission on fundamental principles and rights as well as a joint submission on the settlement of grievances procedures (Annexes 1 and 4 to the Subgroup's report). Finally, the Chairperson of the Subgroup thanked its members for their cooperation.
 9. The Shipowner spokesperson reaffirmed the commitment of his group to the objectives of the group, and noticed that the recent G-8 meeting in Evian had clearly expressed support for the development of a consolidated maritime labour Convention. He then presented the document entitled "ISF submission to the ILO High-level Tripartite Working Group on Maritime Labour Standards (third meeting)", submitted by his group.
 10. The Seafarer spokesperson stated that the Seafarers had also noted that the G-8 Evian Summit adopted an action plan on marine environment and tanker safety that included a statement of support to the ILO's effort for a new consolidated Convention on maritime labour standards and an undertaking to seriously consider the ratification of this Convention when adopted. He then recalled the adoption of the revised Convention on seafarers' identity documents and a resolution on decent work for seafarers that recognized the need of seafarers for special protection and requested the Director-General to take relevant measures including the promotion of access to shore leave and facilitation of transit. It is therefore essential that the deliberations reflect the core mandate of the

Organization which is to promote decent conditions of work. We must ensure that the concepts, which the ILO has agreed are fundamental to decent work, are not only included in the new instrument but guide us at all times as we consider the draft instrument. He congratulated the Office for producing the text but observed that the new Convention was currently not clear, simple and easy to ratify and implement. The documents for this meeting gave rise to a number of fundamental concerns, particularly in the case of introduction of new concepts like “other persons employed on board” that would further deregulate the industry and would not contribute to remedying the existing decent work deficit, which was identified and expressly referred to in a consensual statement adopted by the 2002 Meeting of Experts on Working and Living Conditions of Seafarers on Board Ships in International Registers. In this regard, there was a need to include measures that would promote social dialogue and to find a mechanism to deal with situations where there were no representative social partners or seafarer trade unions. It would lead to unfair competition and prevent the realization of a level playing field if it were possible to have relaxations or to give dispensations on compliance with certain provisions on the basis of consultations with non-existent or non-representative social partners. He was awaiting governmental reaction to the text but there was a need to ensure that the new instrument, the adoption of which appeared to be on schedule, could be widely ratified. However, its provisions should not be meaningless. It should be in conformity with international law and should not legitimate the status of many seafarers as casual migrant workers. The elaboration of the detailed provisions could only be progressed on the basis of tripartite discussions for which the seafarers needed to have some understanding of the dynamics and the nuances amongst the Government group. In the absence of such information the normal ILO negotiation process would be prejudiced. The Seafarer spokesperson ended by indicating the Seafarers’ commitment to making substantive progress at this session.

- 11.** The Chairperson of the Government group, reporting on discussions in his group, stated that the general structure of the first draft of the Convention was acceptable. However, he identified some areas of concern expressed by some Governments: Article II, definitions – particularly “recruitment and placement”, “seafarer”, “shipowner” and the treatment of tonnage; Article III, the best placement of the reference to the Declaration on Fundamental Principles and Rights at Work; Article IV, the need to make the linkage between the seafarers’ employment rights and the substantive provisions in the regulations; Article V, the meaning of the words “other measures” and clarification regarding paragraph 7 concerning sanctions; Article VI, queries concerning the legal status proposed for Part B; Article VII, the requirements for entry into force and the need also to consider the role of States that are primarily involved in labour-supplying activities; and Article XV, the need to further simplify the simplified amendment procedure. The length of time required for an amendment to come into force, as well as the requirements for entry into force, were also seen as needing reconsideration. He concluded by stating that these issues were taken in a broad sense and invited the Governments concerned to amplify or explain their respective concerns.
- 12.** A Government representative questioned the status of Code B. She expressed the opinion that the Convention should deal only with mandatory provisions and therefore suggested that Part B should be removed and become a Recommendation, as it was not mandatory.
- 13.** A Government representative said that while the first draft was acceptable in general, his Government would like to see some gender sensitivity in the Convention, which should be simple and clearly understandable to the seafarers.
- 14.** A Government representative expressed the opinion that in view of the declining number of seafarers per vessel due to technological advances the Convention should be more generous to the seafarers, particularly with the definitions.

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15. A Government representative stressed the importance of the tripartite composition of the meeting so that a balanced view could be represented at this meeting. He stated that most of the delegates present had attended another ILO maritime meeting held 15 days ago, which had ensured the adoption of a new maritime labour Convention. He stated that the High-level Group had now a new challenge, which was to achieve another milestone for this week.
 16. A Government representative noted that the draft proposed consolidated maritime labour Convention took into account the eight core ILO Conventions that were the pillars of the ILO's Decent Work Agenda. He had some difficulties with the definitions of some major terms in the draft Convention, such as "seafarer" and "seagoing ships". He also insisted on the need to consider the total number of seafarers from labour-supplying States ratifying the Convention when the issue of entry into force would be considered.
 17. A Government representative agreed with the Shipowners that discussions during this meeting should take place as broadly and intensively as possible.
 18. A Government representative underscored the importance of ratification and implementation of the future Convention. He stated that his Government considered the adoption of the draft instrument as an issue of great importance for the maritime community. He reported to the meeting that on 5 June 2003, the European Union Council of Ministers for Maritime Transport, under the Greek Presidency, had adopted conclusions regarding the improvement of the image of the shipping community and of those people working in seafaring professions. He pointed out that these conclusions called upon the member States to make every effort to abide by the international standards created at the IMO and at the ILO. He added that the conclusions requested the member States to enhance compliance with, and further development of, international legal instruments, and in particular regarding the draft consolidated maritime labour Convention, which entailed that the application of minimum standards for working conditions should not be an area of competition in international maritime transport.
 19. A Government representative stated that his country considered the draft consolidated maritime labour Convention as a fourth pillar in maritime safety and quality shipping, together with the SOLAS, MARPOL and STCW Conventions. He stressed that port States and labour-supplying countries needed to play a central role in the implementation of the Convention, being responsible for the verification of working and living conditions of seafarers. Having thanked France for its offer to hold an additional meeting in January 2004, he also stressed the necessity of appropriate national legislation in order to comply with the Convention. He stated that his delegation had identified Title 4 and the status of Part B of the Code as special challenges. Regarding the status of Part B of the Code, it had always been regarded as strictly recommendatory by its delegation. If it were to be given a different status, he pointed out that his Government would need further evaluations.
 20. A Government representative stated that there was no need to change the structure or the distribution between Part A and Part B of the Code, which were clear and unambiguous.
 21. A Government representative pointed out that his delegation had identified some issues that needed more clarification. He pointed out that the relationship between Part A of the Code and Part B was ambiguous and needed further discussion. He called for the meeting to attentively consider the wording in Part B of the Code. He stated that his Government welcomed the "vertical document" prepared by the ISF for its excellent and easy-to-read presentation.
 22. A Government representative welcomed the adoption of a consolidated maritime labour Convention. He stated that the right of any seafarer to decent work and social security

coverage and protection must be upheld. His delegation would continue to make more specific interventions as the meeting progressed.

- 23.** A Government representative also supported the adoption of a consolidated maritime labour Convention. It would be useful to establish a special tripartite committee to deal with substantial equivalence, and for monitoring the implementation of the Convention. He suggested that there should be a system of control and monitoring which defined the functions of all parties involved be it a port State, flag State or labour-supplying State.
- 24.** A Government representative supported the text which was before the Committee. She thanked the delegation of France for hosting the meeting scheduled in January 2004, which would provide the High-level Group further time for discussion. She hoped that the definitions of specific terms would be clear and in line with the context of the Convention, especially as responsibility, supervision, inspection and entry into force were concerned.
- 25.** A Government representative stated that her delegation supported the new initiative and expressed gratitude for the efforts of the Office. She also thanked the Government of France and the Chairperson for arranging a further meeting since it was necessary to go into further detail in order to avoid a number of large amendments at the International Labour Conference. She sought an instrument that would permit quality operators to compete on a level playing field with respect for clear rights for seafarers.
- 26.** A Government representative felt that the draft Convention represented a good basis for efficient and constructive discussions. The existing Conventions had different scopes of application regarding the size of the ships. The exclusion provision in Article II, paragraph 3(a), set out a scope of application, which was different from the existing Conventions. However, the proposed figure of 200 gross tons was sensible and could have uniform application in the various fields of the consolidated Convention. Members were requested to give “full consideration” to implementing the responsibilities stipulated within Part B and this seemed to have a more stringent legal status than a Recommendation. He expressed concern that this could become a major obstacle for some Members to ratify. Careful consideration needed to be given to make Part B softer and more flexible in terms of legal status. The obligation of continuity of employment had not raised problems in respect of nationals, but posed problems for many Members with regard to foreign seafarers. He believed that those provisions should be transferred to Part B of the Code. He reiterated the urgent need to explore equivalent figures of gross tonnage and gross registered tonnage. The figures of GRT stated in existing ILO instruments needed to be modified in order to change the scope of application as little as possible. The ratio of GT to GRT could range from 1.5 to 2.8, depending on national rules, types and sizes of ships. The High-level Group needed to consider how to avoid applying the rules of the new Convention to ships to which the present crew accommodation Conventions did not apply. The Office should approach the IMO for advice regarding equivalent figures. In closing, he pointed out that there was a lack of provisions with regard to the application of ship-related requirements to existing ships. It should be decided whether or not physical requirements (e.g. crew accommodation provisions) or provisions revised through the simplified amendment procedure should apply to visiting ships. His delegation recommended an approach similar to the SOLAS Convention. He also raised the issue of the resolutions on liability and compensation jointly adopted by the ILO and the IMO.
- 27.** A Government representative expressed particular satisfaction with the text of the Convention and especially the social security part, which was a particular concern of his Government. As for recruitment and placement, such agencies did not exist in South America and the related provisions could therefore cause problems.

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28. A Government representative stated that the first draft of the Convention reflected the spirit of the existing Conventions but was also a very balanced answer to the problems raised by delegates at prior meetings. The text protected the interests of the seafarers, was flexible and corresponded to the reality of the seafarers' world.
29. A Government representative expressed satisfaction with the text of the Convention. He sought more coordination between the ILO and the IMO in the enforcement of international regulations.
30. The representative of the International Christian Maritime Association (ICMA) described the vital services to promote seafarers' well-being in seafarers' centres in more than 400 ports and on board merchant vessels at sea. ICMA supported the consolidation of the many ILO instruments into one comprehensive Convention and believed that the health and vitality of the maritime industry depended upon its ability to provide safe and decent working and living conditions for the men and women working on commercial vessels. Therefore, it was critically important that the Convention provided a clear benchmark for member States on standards affecting seafarers' conditions of work and life. The Convention had to provide clear and enforceable standards, and most notably be capable of broad ratification without eroding established seafarers' rights. The effort to streamline the text and to remove some standards – e.g. requirements for the welfare facilities and services – to separate advisory documents could result in a Convention that fell short of those expectations.
31. In response to the questions raised by some Government representatives on the status of Part B of the Code, the Secretary-General referred to comment 5 (on Article VI) contained in TWGMLS/2003/1. Part B was intended to be non-mandatory and would therefore not be binding. However, member States had to report as for Recommendations under article 19, paragraph 6, of the ILO Constitution, but in addition, Article V of the proposed draft asked for *full* consideration to be given. This wording had been chosen because most provisions in Part B were cascaded from Part A and originally stemmed from Conventions. Further discussion could be helpful, if the current wording was an obstacle for ratification.
32. The Seafarer spokesperson reminded the meeting that many questions remained. The nature and extent of consultations with social partners should be discussed since in some States there were no representative organizations. The conclusions of the *Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers* should not be included in the Convention. The comments made by the Office on continuity of employment were welcome, as was the Convention's structure, because it enshrined seafarers' rights and such a provision should be retained. The role of labour-supplying States and port state control required considerably more work and the principles contained in UNCLOS must be upheld.

Article I

33. A Government representative suggested that Article I(1) and Article VI(3) might be in conflict since one referred to giving complete effect and the other referred to substantial equivalence.
34. A representative of the Office explained that, in his view, there was a very special concordance between the two provisions mentioned in that both placed their emphasis on the effect of the Convention's provisions. Paragraph 4 of Article VI made it clear that an implementing measure would be "substantially equivalent", for the purpose of paragraph 3, if it was conducive to the full achievement of the general object of the Convention and had

effects that were equivalent to those resulting from strict compliance with the provision concerned. In other words, Article VI coincided with Article I by requiring complete effect to be given to the Convention albeit through equivalent means.

35. A Government representative sought information concerning the practice in the ILO of referring to non-binding codes as an “integral part” of a Convention.
36. The Secretary-General responded that the most recent Convention No. 185, was written in this way as it contained an annex with both binding and non-binding provisions. Other Conventions used the word “should” to refer to guidance that was not obligatory and “shall” for mandatory provisions. Although both parts were integral to the Convention, Part A was binding while Part B was non-binding.
37. A Government representative suggested inserting the words “without prejudice to the provisions of Article VI” in Article I as a solution to the possible conflict.
38. A Government representative called for the inclusion of the words “and enforcement” in paragraph 3 after implementation. It would then read: “Members shall cooperate with each other for the purpose of ensuring the effective implementation and enforcement of this Convention.” The High-level Group unanimously agreed.
39. A Government representative, referring to Article I(1) concerning Members giving full effect to the provisions of the Convention, said that the text, supported by the Office’s clarification was consistent and self-explanatory. If some elements were implemented through substantial equivalence, it would still mean that the provisions of the Convention were applied. He could not support proposals for the inclusion of “notwithstanding” in Article I or “irrespective of” in Article VI. It would lead to conflict between the Articles. He reiterated his support for the text as drafted, supplemented by the Office’s clarification.

Article II

40. The Chairperson of the Government group said that discussion on Article II had centred on: the definition of “gross tonnage”, with a view that vessel length should not be used; “competent authority”, which required further discussion; “seafarer”, which some Government members felt should be left until the completion of the discussion of the entire Convention; the possible exclusion of oil rigs, and the language of Convention No. 147, Article I(4)(c), should be used in this regard; and “seagoing ship”, the definition of which should leave some flexibility of the flag State.
41. A Government representative noted that the International Convention on Tonnage Measurement of Ships, 1969, was the only valid Convention and, as certificates of measurement issued under an older regime expired, they were replaced by new ones issued in accordance with this 1969 Convention.
42. The Chairperson noted that ships with one or other of the two types of measurement certificate would continue to exist for a while but the question only arose in a few places, such as on accommodation.
43. A Government representative pointed out that there were different provisions for ships under 24 metres in length that sailed in international waters and to which labour Conventions applied. These smaller vessels were measured in accordance with national regulations which might be in accordance with the Convention, or which could use a simplified system. For this reason, the Convention should refer to vessels of less than 24 metres in length.

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44. The Seafarer spokesperson had several substantive comments on Article II, particularly in relation to paragraphs 1(f) and 6. The terms “certificate of compliance” and “document of compliance” in paragraph 1(a) and (c) were too close to those used in the ISM Code; other terms should be found for the Convention. A working party could usefully discuss the definition of gross tonnage in 1(d). Delaying the discussion of the definition of “seafarer” in 1(f) was not acceptable. His group wanted to know to whom the rights that were being negotiated for inclusion in the Convention would apply, i.e. all seafarers. This group should be as broad as possible, taking into account that there might be small areas of exclusion. Clause (g) should include collective bargaining agreements. As far as offshore installations were concerned, Article II, paragraph 4, covered the point since it referred to such installations under navigation when there were seafarers on board. Referring to paragraph 6, he pointed out that the flexibility provided in the paragraph was not appropriate where there were no trade unions or seafarers’ organizations to be consulted. It might be necessary to consult the tripartite maritime committees; therefore an alternative mechanism for consultation should be included. Moreover, the concept of what constituted an international voyage was not addressed in the current wording. He noted that the fundamental rights of seafarers referred to in paragraph 6 were also mentioned in Article V.
 45. The Shipowner spokesperson preferred to keep the present working definition of “seafarer” pending further consideration at a later stage. Some members of his group preferred to have a narrower definition but he believed it would be wiser to reserve the final position of his group. He questioned the need to have both “ships” and “seagoing ships” in 1(f) and of a definition of “employer” in addition to “shipowner” in 1(i). As for tonnage, he agreed that it was important to agree on appropriate thresholds for various parts of the Convention, such as on accommodation.
 46. The Chairperson of the Government group agreed that the definition of “seafarer” could be revisited later when one would have a clearer picture of the need to adjust it in light of specific parts of the instrument.
 47. The Seafarer spokesperson did not agree with leaving the discussion of the definition of “seafarer” for later. He quoted Annex 5 to the report of the Subgroup to insist that the working definition agreed at that time should be used rather than the modified version contained in the draft text now before the meeting.
 48. The Secretary-General explained that the Office had made a slight change to the working definition of “seafarer” to accommodate the results of consultations held after the meeting of the Subgroup.
 49. The Chairperson suggested returning to the definition of “seafarer” given in the report of the Subgroup. The High-level Group agreed to the suggestion, provided it would be used as a working definition.
 50. A Government representative suggested adding “during the sea voyage and whose name is included in the crew list”, but this was not supported.
 51. The Chairperson, passing to the definition of a “shipowner”, recalled that the present one was taken from existing ILO and IMO Conventions. It could, if necessary, be revisited subsequently.
 52. The Seafarer spokesperson agreed that the present definition was consistent with existing ILO and IMO texts and should be retained. On the other hand, if the term “employer” had to be defined, it could be done in the context of the provision in question and should only be in the Code.

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- 53.** A Government representative, having shown that the term “manager” could apply to various entities, suggested that the appropriate definition was the one contained in the ISM Code.
- 54.** The Shipowner spokesperson agreed with the definition of “shipowner”, as given in the present text, and observed that the term “employer” already appeared in Article II, paragraph 1(e). It should then be defined accordingly, or be replaced by “shipowner”.
- 55.** A Government representative did not disagree with the definition of “shipowner”. However, it depended how it was used. She understood that, when dealing with specific Titles, the definition should be reconsidered. She saw a link between the right definition of “seafarer” and the discussion on the employer issue. Furthermore, she believed that Article II represented a mixture of definitions and scope. Only after having dealt with the whole text could it become clear whether the definitions were appropriate. Definitions were an issue to be dealt with last because they had to be reflected through the whole text for the purpose of consistency.
- 56.** The Chairperson stated that the present definition corresponded to the definition in Convention No. 179 and in the report of the Subgroup. He suggested keeping that definition as the working definition. As was the case with the definition of “seafarer”, the modification of the Titles and the introduction of the concept of employer would be considered at the appropriate stage. Then he returned to subparagraph (d) relating to tonnage. He asked whether the proposal of the social partners to establish a working party to discuss the definition of “tonnage” was supported and, if so, what were the membership and objectives suggested for it.
- 57.** A Government representative supported the proposal for a working party on gross tonnage because the question affected the whole Convention, especially the Titles. The limitations in the Titles were given in the Oslo Convention of 1947 and were not applicable to ships built according to the International Convention on Tonnage Measurement of Ships, 1969.
- 58.** A Government representative also supported the proposal for a working party but recalled that there were issues on gross tonnage in addition to the definition, for example, the provision of equivalent figures. Thus, the terms of reference of the working party should be wider than to address the definition of gross tonnage.
- 59.** As there were no objections to setting up a working party on the question of gross tonnage, the Chairperson wished to turn to the decision on the terms of reference and composition of that working party.
- 60.** The Seafarer spokesperson questioned whether the issue of tonnage really was relevant throughout the Convention and, as such, whether any reference should be included in the Articles. The working party could look at where the tonnage requirement was relevant, e.g. it could be relevant with regard to crew accommodation and suggest suitable thresholds for those provisions and thereby avoid the need for a blanket exclusion in those areas where it was not relevant. The reason was that there could be different size ships operating in different areas and they should not be excluded because they were below 24 metres.
- 61.** A Government representative cautioned staying away from the redefinition of gross tonnage as this was not within the competence of the ILO but rather of the IMO. The task of the working party should only be to guide on how tonnage would be dealt with in the Convention.
- 62.** The Seafarer spokesperson agreed with a wide remit as long as the working party looked at the parts of the Convention where tonnage was mentioned. He agreed not to define

“tonnage” but to look at the application of the Convention. Note should be taken of his group’s view that it was necessary to identify, within the text, what elements were relevant to tonnage and what tonnage figure would be appropriate, given the rights that would be affected.

- 63.** The Chairperson proposed that the working party should be composed of three representatives from each group and that the groups should hand in the names of their representatives to the secretariat so that they could define the procedures according to which they would work. The terms of reference were limited to studying the implications of applying the system of gross tonnage, as appropriate, throughout the Convention. This was agreed to by the Group.
- 64.** A Government representative indicated that, according to the STCW Convention, the safe-manning documents were issued on the basis of tonnage (3,000 tons). The tonnage matter needed to be considered carefully as the IMO dealt with crewing levels and a redefinition of tonnage limits might affect the issuance of safe-manning documents. His Government would oppose such a situation.
- 65.** With reference to paragraph 3 of Article II, a Government representative had two comments. Firstly, as to the applicability to publicly and privately owned vessels engaged in commercial activities, his Government was concerned about the application of the Convention to sovereign immune vessels. He could not provide any solution for the moment but indicated that his delegation would put forward a proposal on how to address the issue at the next session. Secondly, he stated that Convention No. 147 did not apply to vessels such as oil rigs and drilling platforms not engaged in navigation (see Article I, paragraph 4(c), of Convention No. 147). In his view, the same wording should be carried over into the present Convention by adding a new subparagraph (d) under paragraph 3. Paragraph 4 which did address MODUs would then flow from that in a logical way.
- 66.** A Government representative expressed his concern about subparagraph (c) which dealt with ships of traditional build. However, in Europe, old, traditionally built sailing ships were often used for cruising in the Caribbean or Baltic Sea, and nowadays brand new traditionally built sailing ships over 3,000 tons with hundreds or thousands of passengers were common. Those ships should not be excluded, as they were commercially engaged for exactly the same purposes as the mechanically propelled ships.
- 67.** The Seafarer spokesperson assumed that the brackets in paragraph 3(a) would be kept until the working party dealt with the issue. As to the proposal to add a new subparagraph (d) excluding oil rigs and drilling platforms, the problem of interaction with paragraph 4 should be left to the Office for consideration. His proposal would be to delete paragraph 4 because there could be a problem of double exclusion. According to paragraph 4, mobile offshore units engaged in navigation would be covered while, in paragraph 3, the Convention applied to all seagoing ships engaged in commercial activities with certain specific exceptions. If “oil rigs and drilling platforms when not engaged in navigation” were inserted, there would be two negatives. Paragraph 4 was not necessary, as it was clear that Conventions did apply when under navigation and did not apply when not.
- 68.** The Shipowner spokesperson and a Government representative agreed to insert “oil rigs and drilling platforms not engaged in navigation” in a new subparagraph (d).
- 69.** The Seafarer spokesperson reiterated that his group did not agree if paragraph 4 was left unchanged. The wording of subparagraph 3(d) should be looked at and paragraph 4 should be removed. Otherwise, even mobile units under navigation would be excluded. All agreed with the exclusion from Convention No. 147 but the Office would need to consider the removal of paragraph 4 if a new subparagraph 3(d) was added.

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- 70.** The Chairperson concluded that the secretariat be asked to revise the drafting of paragraphs 3 and 4 so as to exclude only platforms not engaged in navigation.
- 71.** A Government representative raised concern over subparagraph (c): “ships of traditional build such as dhows and junks”. He asked how they would be included. Another Government representative pointed out that there could be an issue concerning cruise ships that were built as replicas of traditional ships. Not all provisions should apply to them, in particular those on accommodation.
- 72.** A Government representative, supported by another, said that new ships which were built as replicas should be able to meet current standards since they were newly constructed and not old. She suggested that paragraph 5 could alleviate the concern for this, since it permitted a competent authority to determine whether or not the Convention applied to a ship or categories of ships.
- 73.** A Government representative proposed that certain provisions of labour standards be waived, such as accommodation, for these types of ships. The High-level Group could make a determination whether or not a standard applied to this category as the meeting progressed into the Titles.
- 74.** The Seafarer spokesperson emphasized that this required further discussion, but not at the moment. Therefore, he suggested that square brackets be placed around it and determine if this would create problems when the Titles were examined.
- 75.** A Government representative returned to paragraph 1, subparagraph (g), and expressed concern over the inclusion of collective agreements. She sought information on the consequences this might have.
- 76.** The Seafarer spokesperson replied that the key word was “includes” and it was not meant to be the sole agreement. It only suggested another option so as to be comprehensive. He recalled Convention No. 147 and thought it was a sensible inclusion.
- 77.** The Shipowner spokesperson did not think that the inclusion of collective agreements was necessary.
- 78.** The Secretary-General gave an explanation on the implications of including collective agreements in Article II, paragraph 1(g), as in the draft text. Firstly, it would be possible that the contract could consist solely of one or more collective bargaining agreements (CBAs). Secondly, a number of provisions would then be linked to CBAs, so that these would need to: be legally enforceable (Regulation 2.1), be signed by the seafarer and the shipowner (Regulation 2.1 and Standard A.2.1), and be subject to review by the competent authority to ensure conformity with the Convention (Regulation 5.3, Standard A.2.1).
- 79.** The Seafarer spokesperson agreed that there would be consequential changes but those were not to the detriment of seafarers. In the real world, trade unions might not act independently and he felt it should be the responsibility of flag States to ensure that seafarers’ conditions of work are compliant with the Convention, and this might include collective bargaining agreements. He cited Convention No. 180 which referred to CBAs. This Convention allowed variations under CBAs which flag States could consider. Similarly they could check that entitlements are not less than those provided by the Convention. The Seafarer spokesperson also stressed that labour-supplying countries might well exercise jurisdiction and control relating to contracts concluded in its territory but flag States had responsibility for contracts relating to seafarers on their ships wherever the contract was concluded. Collective agreements should be recognized since they reflected real practices.

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- 80.** The Shipowner spokesperson said that his group would prefer no reference to CBAs. The definition concerned was introduced because some countries did not have articles of agreements but had contracts of employment. He feared that adding CBAs would add another layer of contracts and confuse the situation.
- 81.** The Seafarer spokesperson recalled that he had declared that his group would go back to the articles of agreement if no agreement could be reached. However, at that stage, the Seafarers had not yet realized the significance of the issue. His group could not go back to articles of agreement as the Seamen's Articles of Agreement Convention, 1926 (No. 22), would obviously cause some difficulties. The aim was a modern Convention written in simple, clear and modern language. It would be impossible to have a Convention dealing with conditions of employment and labour, fundamental rights of seafarers, freedom of association and collective bargaining as well as decent work, while ignoring the fact that collective bargaining agreements existed. It was a fact that collective bargaining agreements were prevalent throughout the industry and to ignore them would mean not achieving the set-up objectives. He would be surprised if Governments wanted to avoid collective bargaining agreements in order not to interfere with them or look at them to see whether they provided the minimum protection for seafarers. At the end of the day, the minimum protection for seafarers was often not provided in the collective agreements because there were no trade unions to conclude them. Even where collective agreements existed, his group relied on governments to ensure that those agreements met the requirements of the Convention. He did not know how to overcome the divergence but would be interested in giving further study to the problem.
- 82.** A Government representative said that in his country an employment contract had various names such as employment contract, articles of agreement and collective bargaining agreement. It was important that they all conformed with national and international labour standards. However, collective bargaining agreements usually provided better benefits than the standard national employment contract. Thus, he agreed with the intervention of the Seafarers' group.
- 83.** A Government representative was not entirely clear about the crux of the debate. In some countries collective bargaining agreements affected the employment contracts but whether to quote them here or there was not so crucial. Usually, collective agreements were not included because employment contracts clearly affected collective bargaining positions. In reply to the Seafarers he did not see how to reflect collective bargaining agreements in subparagraph (g) but proposed to include them in Article III among other fundamental principles.
- 84.** A Government representative recalled that Convention No. 22 was adopted to establish that minimum working and living conditions were treated in articles of agreement. Conditions were different today, but a lot of vessels did not meet the minimum working and living conditions for seafarers. Thus, it was still important today that their minimum working and living conditions were based on articles of agreement. He agreed that in some countries there were no articles of agreement, but there might be contracts sustaining minimum requirements. Another layer in working and living conditions could be the collective agreement. As to port state control, the issue was to establish the role of the port state control enforcement officer. In the SOLAS, STCW or MARPOL Convention the text of the Convention was read to check whether the vessel met the requirements or not. The national package of the country could be well above the requirements of the Convention. Thus, he suggested returning to articles of agreement in order to keep the essence and to avoid confusion. His Government was reserved on the inclusion of collective agreements, but not necessarily against it. It was, however, necessary that all its effects be realized.

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- 85.** In view of the consequential changes that the inclusion would entail, a Government representative indicated that her position was in line with the previous intervention. She was hesitant to include the collective agreement, even if her country had a long tradition of collective agreements enforceable through grievance procedures. Employment contracts were required for every person employed on board, while articles of agreement were not used. The employment contracts might contain a reference to collective agreements but the inclusion of collective agreements was not a requirement in her country.
- 86.** A Government representative recalled the fundamental principle that the provisions of an international instrument were binding for member States. If employment contracts or articles of agreement were contrary to that instrument, they were automatically considered as invalid. Thus, there were ways to guarantee that the provisions of the Convention were fully implemented in a member State. In some countries there were only articles of agreement, in others only employment contracts and in still others collective agreements. His solution would be that subparagraph (g) could read "... includes a contract of employment and/or articles of agreement and/or collective bargaining agreements". A few governments supported this inclusion.
- 87.** A Government representative indicated that his country used employment contracts and articles of agreement to guarantee the minimum working conditions on board. In the case that the seafarers were affiliated to trade unions, collective agreements were concluded between the company concerned and the union. A collective agreement contained many provisions which were sometimes above the employment contracts. His country did not have national standards on collective agreements but noted that the situation could vary from country to country. Port state control should be used to guarantee respect for seafarers' rights. Thus, confusion in the port state control of each country caused by such inclusion should be avoided.
- 88.** A Government representative stated that his country had no objection to include the term "collective bargaining agreements" in Article II, paragraph 1(g), because his country's national law had complied with the standards stipulated by the Convention. Laws in his country protected seafarers' rights regardless of the form of their employment contract. He stated that, in his country, the terms and conditions of the collective bargaining agreements were generally above the minimum legal requirements. He pointed out that if a collective bargaining agreement did not meet the legal requirements, the law would prevail in favour of seafarer's rights.
- 89.** A Government representative stated that his delegation disagreed with the inclusion of the term "collective bargaining agreements". There could be a collective agreement, but it should be a contract between independent parties. He believed that one should make a distinction between legal obligations arising from an international Convention, and contractual obligations arising from contracts.
- 90.** A Government representative stressed that the draft Convention included important seafarers' fundamental rights. He believed that since the draft Convention referred to various important issues such as decent work, collective negotiations and continuity of employment, it was not necessary for the Convention to further address collective bargaining agreements.
- 91.** A Government representative stressed that the meeting should discuss the issue of collective bargaining agreements for seafarers on board foreign-flagged ships.
- 92.** A Government representative stated that in her country the contract between a seafarer and a shipowner was governed by a specific law and there was no stipulation for collective

agreements for those on board national ships; regardless, she had no problem with any reference to collective agreements in the text.

- 93.** The Seafarer spokesperson referred to the Code, Part B.2, which would expand on matters relating to collective bargaining agreements such as wages, minimum wages, hours of work, annual leave, calculation of annual leave entitlement, and accumulation of annual leave. Having given the example of his own country, he stressed that a government had the power of enforcing or not enforcing an agreement signed between an individual seafarer and the shipowner. He underscored the importance of modernizing this area of international maritime law. The enforcement of collective bargaining agreements depended upon the legal framework of the member States. It was also necessary to ensure that the collective agreement complied with national law and not on provisions which were offensive to public policy. If it was impractical to examine each one, then the flag State could take a random sample. He stated that legal power was in the hands of governments, and that, thereby governments should see that collective bargaining agreements were complied with. In conclusion, he proposed that the meeting should examine this issue more closely, and should further discuss this issue at the next meeting.
- 94.** The Shipowner spokesperson explained that his group was not against the inclusion of collective bargaining agreements within an employment contract; indeed, this could be beneficial. But the Shipowners' group considered that in many, if not most, countries a collective bargaining agreement was not in itself an employment contract. Therefore, they did not support the proposal by the Seafarers to include collective bargaining agreements within the definition of "employment agreement". However, as a compromise, the Shipowners could accept in Article II, paragraph 1(g), deletion of the word "both", and after "agreement" the following words inserted, "and, if provided for in national law or practice, a collective bargaining agreement".
- 95.** The Seafarer spokesperson noted that his group preferred the wording offering the solution of and/or proposed in paragraph 86.
- 96.** The Seafarer spokesperson expressed some concerns over the current draft Article II, paragraph 6, which deals with possible exemptions from the Convention. There were fundamental issues of principle, the first was an exclusion for vessels that do not trade internationally, with exemptions permitted after tripartite consultations. They have the view that all seafarers should be covered by the Convention. However, they recognized that some member States had indicated that their domestic trades cannot be included within the scope of the Convention for technical reasons. They proposed the following alternative Article II, paragraph 6: "A Member may, upon agreement with the representative shipowners' and seafarers' organizations in its territory, exclude from the scope of application of this Convention seagoing ships engaged in its domestic trades provided that the fundamental rights of seafarers referred to in Article III and seafarers' employment rights referred to in Article IV are protected by national laws and regulations providing for substantial equivalence.". The second issue of principle relates to the numerous references to consultations with representative organizations of the shipowners and seafarers. The Seafarers' group considered this to be open to abuse. There were some member States that did not fully practice the principles of tripartism by not engaging in meaningful consultation with representatives of shipowners and seafarers. There were also some member States where there was not a bona fide representative of seafarers located in the Member's territory. This was often true of shipowners representatives. The Seafarers' group therefore proposed the following additional paragraph to Article II, numbered 6bis. It said: "In the absence of representative organizations of shipowners and/or seafarers within a member State, flexibility, derogations or exemptions expressly provided for in the Convention shall only be granted by a Member following consideration by the Special Tripartite Committee provided for under Article XII."

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- 97.** The Secretary-General pointed out the main differences between the new wording suggested by the Seafarers and the original draft. Firstly, the nature of the consultation required was changed; whereas the original version suggested that exclusions should only be made “after consultations”, the new version required an “agreement” between the governments and social partners. Secondly, seafarers’ employment rights (contained in Article IV) were now included and therefore given the same importance as seafarers’ fundamental rights (contained in Article III). Thirdly, the substitution of “international voyage” by “domestic trade” would bring changes regarding the possible scope of this provision.
- 98.** The Seafarer spokesperson clarified that the aim of the proposed changes was to widen protection given by the Convention and explained that the term “domestic trade” was seen as superior, because of the vagueness perceived in “international voyage”. Furthermore, countries with large fleets of ferries should not be allowed to exclude the seafarers concerned from the application of the Convention.
- 99.** Various Government representatives said that an agreement being concluded between the national legislature and social partners was not compatible with their systems. The adoption of legislation should not depend on obtaining the agreement of the social partners. Any such requirement would clash with the national legislatures’ supreme right to free decision. It was considered, however, that consultations were often essential parts of the process and considered useful.
- 100.** A Government representative agreed with the suggested wording regarding the vessels to which the Convention applied, but could not accept the proposed addition. This opinion was not shared by another Government representative who stressed that the main aim of the Convention was international shipping.
- 101.** A Government representative pointed out that the new amendment would not allow for different segments of the industry to be dealt with individually. The proposed wording would only permit the exclusion of broad categories of ships at the national level and would therefore considerably limit the flexibility of the instrument. Furthermore, the requirement for full substantial equivalence was too drastic.
- 102.** A Government representative reminded the High-level Group that democratic control would suffice to ensure that social partners’ views were sufficiently taken into account before such matters were decided and therefore did not like the term “an agreement”.
- 103.** A number of Government representatives explained that they intended to exclude domestic trades from the application of the Convention, and already had consultative procedures in place. However, they could not be compelled to have an agreement on this issue. Therefore, they were against changing the wording from consultations to agreement, as it could be an obstacle for many to ratify the instrument.
- 104.** The Seafarer spokesperson was aware of the difficulties that some governments had with their volume of domestic trade. These States did not want to exclude seafarers working in domestic trade but did not want to apply international Conventions in their totality either. He sought to close the loophole that permitted governments to have complete discretion on this issue and suggested deleting the paragraph.
- 105.** A Government representative, in response to the Seafarers’ suggestion to delete paragraph 6, replied that it was crucial to widespread ratification.
- 106.** The Secretary-General answered the question posed by a Government representative regarding the terminology of “consultation” in ILO Conventions. Social dialogue was a

strategic objective of the ILO and two terms were used in other instruments, namely “in consultation with” and “after consultation with”. She suggested that the High-level Group remain consistent with this terminology.

- 107.** The Chairperson referred to consultations pertinent to Article II, paragraph 6, and Article V and requested the Seafarers to read out the relevant proposed texts.
- 108.** The Seafarer spokesperson clarified that the following two texts were in square brackets:
- Article II, paragraph 6: [A Member may, in consultation with representative shipowners’ and seafarers’ organizations concerned in its territory, exclude from the scope of application of this Convention seagoing ships that do not undertake international voyages, provided that the fundamental rights of seafarers referred to in Article III and seafarers’ employment rights referred to in Article IV are protected by national laws and regulations.]
 - Additional paragraph in Article V: [In the absence of representative organizations of shipowners and/or seafarers within a member State, flexibility, derogations or exemptions may be made only in consultation with the tripartite committee.]
- 109.** The Chairperson indicated that the text in square brackets implied that no final decision had been taken and that the text should be revisited at another time.
- 110.** A Government representative expressed the view that paragraph 7 of Article II fitted better to Article V and that this issue should be addressed during that discussion.
- 111.** A Government representative expressed the opinion that the Article on definitions was very short and was not compatible with the aim to make the Convention simple and comprehensible and suggested that seafarers should have relevant references readily available when reading the Convention.

Article III

- 112.** The text was put in square brackets, to be discussed at the next meeting.

Article IV

- 113.** The Shipowner spokesperson suggested that Article IV, paragraph 1, that referred to standards of competency should be shifted to the IMO and consequently should be removed from Article IV.
- 114.** A Government representative informed the Working Group that the transfer of issues from the ILO to IMO was preliminarily discussed at the 77th Session of the Maritime Safety Committee of IMO the previous month and the majority of delegates that spoke at the MSC meeting were not in agreement with the transfer of issues from the ILO to IMO.
- 115.** The Chairperson emphasized that the two organizations should make sure the necessary consistency should be in place.
- 116.** A Government representative, supported by other Government representatives, said that while he fully embraced all principles in Articles IV and V, they might be very difficult if not impossible to legislate. He proposed that a possible solution would be to add that all

rights would be cross-referenced to the appropriate regulations, thus overcoming the significant problem of having broad rights.

- 117.** A Government representative said that an essential part of Article IV dealt with the rights of seafarers pertinent to social security and welfare and emphasized the need that these should be extended to their families according to Convention No. 165. There was a need to scrutinize the provisions of Article IV in relation to many other responsibilities.
- 118.** A Government representative supported the two previous interventions and suggested an amendment to paragraph 1 of Article IV so that it would read: “Every seafarer has the right to a safe and secure workplace, that complies with safety standards.” Concerning Article V, he suggested to insert the words “and in accordance with its constitution or constitutional principles” after the word “jurisdiction” in paragraph 1.
- 119.** A Government representative noted that some of the problems could be solved by cross-references. However, the square brackets around “nationals” in the title should be deleted. He preferred the term “shipboard working and living conditions” in paragraph 3 of Article IV. It was clearly defined in Convention No. 178, and was better than the nebulous term of Convention No. 147, which even the Committee of Experts in its General Survey of 1990 could not define.
- 120.** A Government representative shared previously stated concerns regarding social security. He supported the suggestion to put a full stop after “safety standards”, but he could also support the suggestion to put a full stop after “workplace”. A Government representative explained that in her country the social protection in general was state-financed without any special contribution from the seafarer or the shipowner. While recognizing that a flag State had a responsibility to ensure the social protection of seafarers on board ships flying their flag regardless of the nationality or domicile of the seafarer, it should still be possible to make a distinction between the even wider responsibility a state may have vis-à-vis their nationals or domiciled seafarers and those only temporarily engaged in their ships. Social protection was a number of issues ranking from social security – health and medical care – to social welfare benefits such as material aid to families with children. The latter part was the responsibility of the state of domicile and her country would have difficulties to give such financial subsidies to non-domiciled or non-national seafarers. A consequence there was a need for much clearer text in the titles on this issue.
- 121.** A Government representative cautioned the proposal put forth in paragraph 116 as it might lead to lengthy references because the entire Convention could be quoted through those rights. In the event of references, they should be kept in general terms as provided for by the Convention but should not be listed. Furthermore, he supported the statements in paragraph 117. The problem was to find out which State should supply the rights listed, given that it would not necessarily be the flag State that guaranteed all those rights. That matter should be clarified when going through the Convention.
- 122.** The Shipowner spokesperson suggested that in paragraph 4 of Article IV, for the reasons given by other delegates, the final three words “and their family” should be deleted.
- 123.** The Seafarer spokesperson agreed with the full stop after “safety standards” because it made the text more succinct. For the same reason, he did not agree with the suggestion put forth in paragraph 116 that was supported by a number of governments to make references elsewhere. The purpose of paragraph 5 of Article IV was quite clear, namely the application of the rights set out in the Convention. He recalled the previous warning that such references could make the instrument cumbersome and indicated that they were not common practice in international instruments, for example in the STCW and SOLAS Conventions. His group thought that the issue of social security needed further discussion,

not necessarily at the stage of Article IV but rather at the stage of Regulation 4.5 which referred to a number of Articles contained in the International Covenant on Economic, Social and Cultural Rights. Article 9 of that Covenant stipulated that member States recognized the right of everyone to social security and social insurance. He could not accept the other amendments proposed by the Governments. Article IV was fundamental for his group. He objected to the intervention that the emphatic statements of rights were aspirational and considered them rather as statement of facts of what the rights were, given that afterwards the Regulations and Standards could be consulted for identifying and elaborating on them. Usually, all queries and questions of his group, which were not answered in the Articles, were addressed at the other levels. The impact of cascading down to Regulations and Codes was to keep the Articles short. Thus, the document, if read as a whole, was complete. In the case that there was an intention to completely remodel Article IV, he suggested to put the text in square brackets and deal with it at a later stage.

124. The Chairperson understood that there was no intention to remodel Article IV but rather to make it clearer. The principle should be to keep the text clear. The Office would provide a more balanced text.
125. A Government representative emphasized that the issue of references was very important for his delegation. He recalled that the Seafarers' group gave two examples quoting SOLAS and STCW. The SOLAS Articles were purely administrative and there was thus no reason to cross-reference. It was fairly unique to have non-administrative text in the Articles. In STCW, on which the present Convention was closely modelled, the two non-administrative Articles dealing with control and certification contained cross-references to the applicable Regulations, while the other Articles were again of administrative nature. Cross-referencing was the suggested solution, unless a simpler method was found.
126. The Shipowner spokesperson suggested to replace "minimum seafarers' rights" with "seafarers' employment rights" in paragraph 5 to remain consistent with the title of the Article.
127. The Seafarer spokesperson was opposed to the shipowners' amendment, since the Article was much wider than seafarers' employment rights.

Article V

128. The Seafarer spokesperson suggested to replace "a" with "the" competent authority in Article V(3), whilst he questioned the implications of "other shipboard conditions" in Article V(5) and wondered what happened when "a Member has no effective jurisdiction". He suggested the inclusion of "where these are established", and the deletion of the rest, after "territory" in line 2 of Article V(6). He reiterated that, in the opinion of his group, the flag State was always responsible, irrespective of where an employment contract was signed or concluded. Paragraphs 5 and 6 did not belong to Article V, and should accordingly be deleted, or moved somewhere else. In both cases, paragraph 7 would become paragraph 5.
129. The Shipowner spokesperson suggested the deletion of the text in line 3 of paragraph 6, after "as well as ...". He agreed with the Seafarers regarding the relocation of paragraphs 5 and 6 in other Articles.
130. A Government representative remarked that this Article contained parts of Convention No. 179, which had been, until now, inadequately ratified.

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- 131.** The Chairperson of the Government group made a brief résumé of what had been discussed in the group. In paragraph 1, a question had been raised about the attribution of responsibility. In paragraph 3, the responsibility of the shipowner should be clarified, and the part relative to the document of compliance might be transferred to Part B of the Code. In paragraph 4, to be read in relation with Article II(7), the inclusion of a no more favourable clause would be appreciated. It was also felt that certain issues, like social security were difficult to control. In paragraph 5, the role to be played by all States should be clarified. In paragraph 6, the issue of the achievement of effective jurisdiction had been raised, and in paragraph 7, concerns over the word “sanctions” had been introduced together with the need for a better definition of these sanctions.
- 132.** The Seafarer spokesperson, responding to a question of a Government representative, said that he would leave it up to the Office to decide where paragraph 6 could be transferred, and suggested that Part A of the Code could be considered.
- 133.** A Government representative declared that paragraph 5 was not clear, and would need to be redrafted.
- 134.** Several Government representatives agreed with the proposed deletion of paragraph 5 of Article V, as long as paragraph 1 would not be substantially affected.
- 135.** A Government representative agreed with the changes to paragraph 6 suggested by the Seafarers and also concurred to transfer it to another part of the Convention.
- 136.** A Government representative suggested that since paragraph 6 contained clear obligations of labour-supplying States, this provision should not only be dealt with in the Parts A or B, but featured more prominently.
- 137.** A Government representative stressed the importance of labour-supplying state responsibility and reminded the High-level Group of the fact that paragraph 6 was one of its main sources. Another Government representative agreed with this view, but suggested that States where placement agencies were registered should also exercise control to ensure that all recruitment activities are supervised.
- 138.** A Government representative pointed out that because his country had a well working collective bargaining system, it was nationally assumed that collective bargaining was de facto essential and did not require a formal legal framework. The current wording of paragraph 5 did, however, not sufficiently allow for the freedom *not* to legislate. Furthermore, the speaker suggested the mentioning of the right of flag States to retain control over contracts of seafarers working on ships flying their flag.
- 139.** A Government representative noted that no representative of the discussed placement services was present and expressed the need to consult these services before taking a final decision.
- 140.** The Secretary-General provided clarification on questions raised and pointed to comments 4 and 14 in TWGMLS/2003/1. There was a need to articulate responsibilities clearly and this had been deemed to be the most suitable place. The Office recalled, however, that the submitted draft was only meant as a basis for discussion. Article V had been designed to include as many provisions from Convention No. 147 as possible. The Office would redraft Article V incorporating all guidance given.
- 141.** A Government representative suggested that the issue of recruitment should be regulated by this Convention. Since it was de facto possible to hire seafarers from other countries without giving the other country’s authorities any possibility of control, the speaker

suggested that the underlying principle should be that only agencies registered in the seafarer's country would be allowed to employ.

142. Summing up the discussion, the Chairperson noted that the secretariat would redraft paragraphs 5 and 6 of Article V. Furthermore, clarification on the constituents' views on paragraph 7 was needed.
143. A representative of the Office explained that by using terminology close to Article VII of Convention No. 178 he had wanted to give as much discretion as possible to member States in this regard.
144. Some Government representatives felt that port States could impose sanctions according to their own national laws on foreign-flagged vessels.
145. A Government representative was concerned that the wording of this paragraph was parallel to MARPOL, but that the situation was different in this context. It could create confusion with port state control authorities.
146. A Government representative noticed that there were various types of sanctions that could be taken, from administrative to penal ones. Labour-supplying countries should incorporate sanctions, specifically in the field of recruitment.
147. A Government representative explained that, as a labour-supplying State, his country currently imposed sanctions upon unscrupulous shipowners, and made crewing agencies accountable for their errors.
148. A Government representative, supported by another, suggested that the wording used in Article 15 of Convention No. 180 could be used here.
149. A Government representative, supported by two others, declared that the Office wording was satisfactory, since it should be seen in the context of the whole draft instrument. He quoted texts in the Regulations (5.1.3, 5.2.1, 5.3.2), which accurately explained what was meant in Article V(7).
150. The Seafarer spokesperson concurred with the previous speaker. He stressed that similar wording could be observed in SOLAS, and that Part A of the Code was also explicit in this regard.
151. A Government representative suggested that a cross-reference to the relevant regulation at the end of paragraph 7 could be included.

Article VI

152. A Government representative addressed the legal status of the Code, Part B, and felt that the paragraph should not read "full consideration" but rather "due consideration". This would permit flexibility and enable more countries to ratify it. He stressed that this would allow for a simple amendment procedure to apply to Part B.
153. A number of Government representatives stated that Part B should have the status of a Recommendation, being non-mandatory. They did not agree that Part B should have some hybrid status half way between Convention and Recommendation status. It was suggested that the Office might look into the STCW Convention for guidance on the status of the Parts of the Code. STCW asked that parties should take into account, to the greatest degree possible, the contents of Code B of that Convention. It was also stressed that States would

have to pay attention to Part B as they would have to report to the ILO on its application according to constitutional requirements.

- 154.** The Seafarer spokesperson drew attention to the overall structure of the instrument. Part B was a guideline and non-mandatory but he expected States to give “full consideration” to its contents since many of its provisions would have been moved down from Part A. Part B should not become irrelevant; *if this was to be the case*, he would demand a substantial amount of the text to be moved back to Part A.
- 155.** The Shipowner spokesperson, having remarked that references to Part B were not always consistent, a representative of the Office explained that the text had been drafted in line with the wishes of the Group to move provisions from Part A to Part B. At the same time, it was necessary not to weaken standards. Part B would therefore still be in the Convention while being non-mandatory. Traditionally, ILO Conventions used the word “should” or “may” to designate recommendations within them.
- 156.** It was agreed that the Office would take all the comments expressed into consideration and redraft the Article accordingly.

Article VII

- 157.** This Article was accepted without change, with the understanding that a decision on the numbers in paragraph 3 would be decided at the next meeting of the High-level Group.

Article VIII

- 158.** This Article was accepted without discussion.

Article IX

- 159.** The Office would submit a paper on the issues involved for the next meeting.

Articles X and XI

- 160.** These Articles were accepted without discussion.

Article XII

- 161.** The Shipowner spokesperson, commenting on the composition of the special tripartite committee, expressed the wish that Shipowner members from States that have ratified the Convention should be able to attend meetings.
- 162.** A Government representative sought clarification on the selection of members of the committee and on voting rights.
- 163.** A Government representative felt that there should be provision for the adoption of codes of guidance, such as the one on ship inspection which would provide crucial detailed information on how the instrument should be applied.

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- 164.** Another Government representative asked if the tripartite committee referred to in this Article was the same as the one referred to in the newly adopted Seafarers' Identity Documents Convention, 2003 (No. 185).
- 165.** The Seafarer spokesperson expressed his strong support for this Article. This text implied that the ILO would support the machinery required to make this Convention efficient. This tripartite committee would have an important role in this regard.
- 166.** The Secretary-General explained that the Governing Body would decide on the composition of the tripartite committee, probably after the entry into force of the Convention. However, according to the text, all ratifying governments would be represented while the representation of Shipowners and Seafarers would be decided by the Governing Body. Voting rights would have to respect the usual balance in ILO tripartite bodies and as provided for in paragraph 4. Referring to Convention No. 185, she pointed out that the text was deliberately left vague so that the Governing Body could assign all these maritime issues to the same body if it was appropriate.

Article XIII

- 167.** The Shipowners, acknowledging the existence of special maritime machinery, requested the insertion of "... or a Maritime Session of the General Conference" after mention of the General Conference in the second line of Article XIII. The Secretary-General indicated that the Legal Adviser would need to be consulted on whether a Convention could make such a stipulation concerning a Maritime Session.

Article XIV

- 168.** The Chairperson indicated that, depending on the reply given by the Legal Department with respect to a reference to the Maritime Session of the Conference in Article XIII, the title of Article XIV may have to be changed.
- 169.** A Government representative, recalling the debate on Article VII, paragraph 3, inquired if the same logic would apply to paragraph 4 of the present Article under discussion.

Article XV

- 170.** Responding to questions on what a "disagreement" meant and about the time limits associated with withdrawal of a disagreement, the Secretary-General said that the purpose was to provide a window of six months during which member States would not be bound without having to state this explicitly.
- 171.** A Government representative inquired why the provision in paragraph 8 of Article XIV "... unless such an amendment provides otherwise" was not repeated in paragraph 11 of the present Article.
- 172.** The Secretary-General indicated that paragraph 8 of Article XIV dealt with amendments to the Convention, whereas paragraph 11 of Article XV dealt with amendments to the Code, which was a different matter.
- 173.** The Seafarer spokesperson requested a clear explanation of the amendment process and a text in a language which could be understood. He also wished to have the differences with SOLAS identified. He did not want the same procedure in paragraph 11 as that in

paragraph 8 of Article XIV since that might open the door to a piecemeal amendment process ten or 15 years later. As a matter of principle, he was opposed to one member of their group being able to introduce an amendment, and then secure support. The Shipowners' group supported this point, since they felt that an amendment introduced by either of the groups would already enjoy consensus and would not need to be seconded like Government proposals.

- 174.** A Government representative welcomed the ground-breaking nature of Article XV which followed the tacit amendment procedure of the IMO while respecting the tripartite nature of the Convention and procedures of the ILO. Nevertheless, he had three questions. He wondered why such substantial support was required at this stage if every Member had the right to submit an amendment. At this stage we would only be talking about proposals which would be subjected to scrutiny later. Perhaps "co-sponsorship" would be a solution. Secondly, he wondered if paragraph 5 was necessary since it seemed to throw in an extra hurdle in the extremely detailed procedure under paragraphs 3 and 4 which ought to be sufficient for adoption. Thirdly, he had a suggestion. Article XV, as it stood, applied to Parts A and B of the Code. While he had no problem with the procedure with respect to Part A, he wondered if such a lengthy procedure was required for Part B.
- 175.** The Secretary-General noted that earlier drafts had drawn attention to this and the Office had gained the impression that the current formulation had been desired, but this could be changed. Understanding the Shipowners supported the views expressed on this, the Seafarers were of the opinion that the same procedures should apply for the entire Convention.
- 176.** A Government representative felt that there should not be different amendment procedures for Parts A and B.
- 177.** A Government representative suggested that while any "upgrading" from B to A would be subjected to the full amendment procedure, including adoption by the tripartite committee, an amendment to B would only take four to five years if the current proposal was retained.
- 178.** The Seafarer spokesperson indicated that they would appreciate a legal explanation, but was more concerned that provisions could not be downgraded easily. In this respect, they recalled that even Recommendations were under the ILO Constitution adopted by the International Labour Conference.
- 179.** The Secretary-General presented the meeting with an explanation regarding the simplified amendment procedure applicable to some parts of the consolidated Convention. A proposed amendment must be first submitted to the Director-General of the ILO. It was explained that the proposal could be made by any Member of the Organization or as had now been decided by the High-Level Group by the Seafarers' or Shipowners' group in the special tripartite committee. A Government proposal would have to be supported by at least half the governments that have ratified the Convention, in order to avoid unnecessary work regarding unsupported amendments. It was pointed out that the High-level Group could decide on a different figure. The Director-General would examine the proposed amendment, in particular to ensure that it relates to a provision that could be amended through the simplified amendment procedure. The proposed amendment would then be circulated to all ILO Members, which would be entitled to comment, even if they were not party to the Convention. The proposal and any observation would then be submitted to the special tripartite committee for adoption. The adoption procedure had strict requirements:

- half the parties must be represented;

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- a two-thirds majority must be obtained. That majority must have the support of all three groups. In accordance with ILO practice, there would be a system of weighted voting. On the suggestion of the Subgroup, each Government would have two votes, and the Shipowner and Seafarer representatives would have one vote each. Provided these majority and quorum requirements were met, the amendment adopted by the special tripartite committee would then be referred to the International Labour Conference for approval. This procedure is essential since, according to article 19 of the ILO Constitution, the International Labour Conference has the responsibility for adopting Conventions. As a consequence, the International Labour Conference has the duty to oversee that proposed amendments made by the special tripartite committee are in conformity with the Convention and with the policy of the ILO as a whole.

180. If the proposed amendment submitted to the International Labour Conference gained a two-thirds majority, the amendment would be approved. It should be remarked that the International Labour Conference could only approve an amendment or refuse to do so and refer it back to the special tripartite committee with a view to its possible alteration. The approved amendment would then be sent to ratifying Members for consideration. Other ILO Members would also receive a copy. Ratifying Members would have at least one year to express possible disagreement. If more than one-third of ratifying Members had expressed their disagreement, the proposed amendment would fail.

181. The amendment would otherwise enter into force for all ratifying Members, with two exceptions:

- Members having formally expressed their disagreement within a year, and having requested more time to consider the amendment, as per Article XV(8)(a);
- Members having requested the temporary exemption under Article XV(8)(b).

These exceptions were in line with modern maritime Conventions such as the recent IMO Anti-Fouling Convention. It was recognized that such a procedure could lead to a piecemeal situation in which ratifying Members could be bound by different provisions, but that seemed unavoidable in the present system. This inconvenience also existed in the framework of IMO and ILO Conventions. It was observed that the amendment procedure in Part B of the Code could be further simplified, since Part B does not contain mandatory obligations.

182. Amendments adopted by the special tripartite committee, approved by the International Labour Conference, and tacitly accepted by ratifying Members would enter into force for all Members subsequently ratifying the consolidated Convention (unless provided otherwise in the case of amendments to the Articles or Regulations under Article XIV(9)).

183. A Government representative expressed his delegation's concern about the necessity for governments to obtain the support of at least 50 per cent of the ratifying governments in order to be able to propose an amendment.

184. A Government representative asked the Office to clarify if the definition of the meeting in Article XV(4)(a) indicated that the discussion of a proposal for amendment needed to be discussed at one meeting only or could be discussed at a number of different meetings.

185. A Government representative noted that, according to Article XV, paragraph 4(c), an amendment had to be agreed to by at least half the Government representatives, half the Shipowner members and half the Seafarer members. He pointed out that the text deliberately repeated three times the word "half" and did not stipulate that the majority

comprised half the total number of votes cast. He therefore asked what benefit there was in the Governments having twice as many votes as the other two groups if the system was not working with the total number of votes. As he understood the paragraph, if half of the Shipowner members or half of the Seafarer members did not agree, the amendment would not be adopted no matter how many Government votes there were, even on a weighted voting system.

- 186.** A Government representative asked whether the tripartite committee to which the proposed amendment would be sent would meet once or twice a year. He asked about the length of time required for the processing of urgent amendments.
- 187.** The Secretary-General, replying to the question in paragraph 184, stated that the idea was to avoid that the tripartite committee had to meet every time an amendment was submitted to it. Thus, there was a sense to seek a certain amount of support for a proposed amendment, while 50 per cent might not be the right figure. It was for the High-level Group to decide how much support Government proposals needed. There was a consensus that both ratifying and non-ratifying member States could submit proposals, which meant that there was a need to constrain amendments and tripartite committee meetings somehow and to achieve a balance. As to the question whether an amendment needed to be considered and adopted at one committee meeting, she clarified that the word “meeting” was used in Article XV, paragraph 4, in a generic sense and should be distinguished from the term “sitting”. Thus, the term “meeting” was without prejudice to the number of sittings of the tripartite committee. As to the question how often the tripartite committee would meet, she replied that for the moment the terms of reference of the tripartite committee were limited to the consideration of amendments. The number of meetings would depend on how often the procedure was triggered. It was not envisaged to meet every year, but if necessary, it would also meet every year within the budgetary constraints. The Governing Body would decide whether the special tripartite body met at regular intervals or as the Governing Body determined. As to the question in paragraph 185 on Article XV, paragraph 4(c), she said that the Office would look into the voting power of Governments. She recalled the major discussion in the Subgroup on the need to avoid the possibility of one group being outvoted by another group. The Office had tried to achieve such balance but maybe had not yet succeeded.
- 188.** A Government representative referred to Article XV, paragraph 2, where the second sentence read: “An amendment proposed by a Government must be supported by at least half the Governments that have ratified the Convention or by 12 of those Governments if this number is lower than half.” He asked whether he understood correctly that, if the number of ratifications was more than 24, there would never be necessarily more than 12 countries supporting. If so, the figure of 50 per cent, which kept coming up, would be replaced by 12 countries in case of more than 24 ratifications.
- 189.** A Government representative supported the initiative to reduce the number of Governments required to support a proposed amendment because this would facilitate ratification by member States that were unable to ratify prior to the introduction of the amendment.
- 190.** A Government representative was also against the requirement for 50 per cent support, as stated in paragraph 183. The proposal of a lot of amendments was improbable, but not impossible. She confirmed the concern expressed by the Subgroup that no single group should be outvoted. The Subgroup had decided that the distribution of votes should be 2:1:1.
- 191.** The Chairperson considered the indications given as very important for the secretariat for the purpose of rewording Article XV.

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- 192.** A Government representative declared that he shared the concerns referred to in paragraphs 183 and 190 on Article XV, paragraph 4(c), and requested the Office to take note.
- 193.** A Government representative reiterated her concern about the legal status of Part B of the Code and asked for the advice of the Legal Adviser. Firstly, she asked how the provisions of Part B of the Code with their hybrid status fitted in the articulation between ILO Conventions and ILO Recommendations. Secondly, with regard to the wish of many Members that Part B of the Code have the status of a Recommendation, she inquired whether provisions with the status of a Recommendation could be an integral part of a Convention and what would be the legal consequences. Finally, she pointed out that more than half of the provisions of the Code were in Part B and had a hybrid status.
- 194.** The Seafarer spokesperson was also opposed to the requirement for 50 per cent support. He endorsed the previous intervention in paragraph 188 that the maximum number of supporting countries needed would be 12. As to the latter questions raised in paragraph 193, he maintained his group's position on Article VI as stated before. With regard to future movements of previously mandatory provisions into Part B, he cautioned that, if they only had the status of a Recommendation and the member States were not to give due consideration to them, this would have an impact on the content of the mandatory Part A. It should be borne in mind that some of the provisions of mandatory Conventions which were currently in force would be moved into Part B for the purpose of having a modern Convention without ratification problems. He finally asked the secretariat to identify the differences between the simplified amendment procedure of the present Convention and the SOLAS amendment procedure.
- 195.** The Chairperson indicated that the secretariat would seek the advice of the Legal Adviser on the legal status of Part B and reply the next day. Furthermore, the Office asked for more specific government indications as to Article XV, paragraph 4(c), namely how to achieve the balance and to arrive at a fair, effective system. The secretariat had tried to reflect the Subgroup debate in paragraphs 34 and 35 of the Subgroup's report, but if the provision was unacceptable, the secretariat needed further guidance.
- 196.** The Seafarer spokesperson reminded the meeting of the original intention behind the provisions contained in Article XV(4)(c). These provisions stemmed from the decision that there should not be a possibility for two groups to outvote the third. Such protection had been requested especially by the governments, since they did not want to be forced to accept changes only agreed between the social partners.
- 197.** The Chairperson of the Subgroup agreed with the Seafarer representative's recollection, as did a Government representative, who also requested that the Office should re-examine whether possible outcomes would differ under the currently proposed 2:1:1 composition or a 1:1:1 composition in the view of paragraph (4)(c) of Article XV.
- 198.** Further examining paragraph (4)(c), a Government representative pointed out that there would most likely be changes in the composition from one meeting to another and wondered whether these changes would possibly be of relevance to the provisions contained in paragraph (4)(c) of Article XV.
- 199.** In reply to a Government representative's question, the Legal Adviser provided clarification on the new Convention's status and its Parts A and B. The new consolidated Convention would – in a formal sense – be a regular ILO Convention. Provisions in Part A would be mandatory, while provisions in Part B were not mandatory (cf. Article VI). Such inclusion of non-mandatory provisions in a Convention did not interfere with the ILO Constitution and precedents for the inclusion of non-mandatory parts in ILO Conventions

existed. One example was Article 9 of the Occupational Health Services Convention, 1985 (No. 161). Instead of “shall”, which indicated cogent provisions, “should” had been used in this case to indicate that member States were not obliged to follow these provisions. The new Convention’s only real innovation was that in the new Convention the amount of non-binding provisions was much higher than in any earlier Convention. Furthermore, the inclusion of non-binding text in International Conventions would not be new to most national legislators, since such provisions were prominently featured in instruments, such as SOLAS, and had not raised constitutional concerns.

- 200.** Elaborating on the above, the Legal Adviser added that Parts A and B had been created in the interest of greater flexibility. Members were obliged to comply with Part A, but were given discretion in regards to Part B. The provisions contained in Part B would shed light on the mandatory provisions in Part A and be seen as the ideal way to compliance with Part A. States were free to adopt whatever measure they deemed right, as long as the mandatory provisions of Part A were fulfilled. Members, which fully implemented Part B, would automatically be held to comply with Part A. The implementation of Part B would imply that Part A had been sufficiently dealt with. Member States that did not adopt provisions in Part B were free to do so, but might have to prove to the Organization that they were in compliance with Part A, if doubts arose.
- 201.** Asked about the legal implications arising from ratification and the resulting integration of the Convention in national law, the Legal Adviser explained that this integration was not problematic, since most provisions of the Convention were not self-executing and needed legislative implementation (i.e. new national laws setting out specific rights and obligations).
- 202.** In regard to a Government representative’s question on the legal implications of “full consideration” (as suggested by Article VI, paragraph 2), the Legal Adviser noted that according to article XIX(6)(c) of the Constitution, Recommendations were to be given “consideration” by member States. The Legal Adviser deemed these two wordings interchangeable and stated that no relevant legal difference existed. Members needed to look upon non-mandatory provisions in *good faith*.
- 203.** Summing up the legal advice given, two Government representatives described the provisions contained in Part B as guidance and declared that their national legislators would thoroughly scrutinize them before taking any decisions on the best way to implement the Convention. Reference was made to SOLAS, which had similar provisions that assisted member States in their implementation efforts.
- 204.** A Government representative reminded the meeting that the content of Part B was the pool from which amendments would possibly be added to Part A in the future.
- 205.** The spokesperson of the Working Party on Tonnage Issues in the draft proposed Convention presented its report. The Working Party had been requested to look into the implication in the proposed draft Convention of using “gross tonnage” as provided in the International Convention on Tonnage Measurement of Ships, 1969 (see draft Article II(1)(d)); identify those provisions of the proposed draft Convention where tonnage is relevant; and examine the impact of tonnage thresholds in the proposed draft Convention. It considered views expressed by the plenary and took into account the resolution concerning tonnage measurement and the accommodation of crews adopted by the 29th Session of the Joint Maritime Commission (2001). The Working Party agreed that the definition of “gross tonnage” as provided in TWGMLS/2003/2, in Article II(1)(d) of the draft proposed Convention was acceptable. It also agreed to the inclusion of a “grandfather clause” for ships built before a certain date to be provided for in the Convention. However, it was up to the plenary to decide if it wanted tonnage thresholds

within the Titles (Regulations and Code) of the Convention. The full text of the conclusions of the Working Party on Tonnage Issues is to be found in Annex 1.

- 206.** The Shipowner spokesperson endorsed the results of the Working Party. He proposed that the scope should be discussed, particularly the tonnage thresholds.
- 207.** The representative of the Government of the United Kingdom introduced a paper proposing a new text on social protection for Title 4 (see Annex 2). Since the Office text on this issue was largely based on Convention No. 165, which had only been ratified by two countries, he felt that the text presented significant hurdles for many countries. He stressed that “social protection” was the preferred term to be used instead of “social security” which was only provided by governments. The draft foresaw that social protection could be provided for in the seafarers’ employment agreement and/or through legislation (either in the member State or the flag State). Section III dealt with member States reporting to the ILO about their nationals and others residing on their territory. The speaker asked whether the new draft could be considered for further development, or rejected outright; in which case the High-level Group would have to come up with something entirely different.
- 208.** The Chairperson of the Government group indicated that, while there was wide support for social security protection, many countries would not be able to ratify the Convention in its present form. Many countries did not offer the full range of benefits mentioned. Some were provided free of charge, whereas others were available on a contributory basis. He went on to say that the majority of countries were in favour of removing the square brackets around the word “nationals” in paragraph 1 of Regulation 4.5. Many countries felt that the term “social protection” was preferable to “social security” since this term better reflected the concept and such social protection could also be guaranteed through contractual arrangements. On other aspects of the United Kingdom draft, many countries would still have to consider them further, although it was generally recognized to be a step in the right direction. On the whole the Government group felt that there was balance between Parts A and B of the Code, with substantial equivalencies only applying to Part A and not to the regulations. With respect to Regulation 4.1 there were reservations regarding the provision of emergency dental care and the role of flag and port States and labour suppliers. Clarification was also needed about comparable shore-based workers. With respect to Regulation 4.2 there was a discussion about the coverage provided by shipowners. There was concern about the availability of insurance for a wide range of “other misfortunes” (e.g. piracy). There was also concern by many Government representatives about the range of seafarers covered under Regulation 4.2. And there was the question of whether other employers should also be required to provide insurance if the seafarer was not employed by the shipowner. Under Regulation 4.3 it was necessary to clarify whether the obligation was applicable on board ship or ashore and who had to provide for it. Under Regulation 4.4 it was questionable whether welfare was a government responsibility and whether this was the place to deal with shore leave. The new paragraph 3 under Regulation 4.4 could be better treated under “seafarers’ rights”.
- 209.** The Shipowner spokesperson stated that some aspects of Title 4 should be restricted to a narrow definition of seafarers and not apply to musicians, self-employed or concessionaries who might be on board ship. He welcomed the proposal by the representative of the Government of the United Kingdom. He indicated that more time was needed for its study before commenting on it. He made reference to the few ratifications that Conventions Nos. 165 and 55 had received. He said that existing text prepared by the Office could be used in many cases, such as the text on medical care.
- 210.** The Seafarer spokesperson recognized the United Kingdom proposal as a serious attempt to address the problems of social protection and therefore it should not be dropped.

However, its consideration should best be left until the end of the discussion when dealing with Regulation 4.5. He referred to the International Covenant on Economic, Social and Cultural Rights that had been widely ratified. In addition, he made a general comment regarding the texts relating to medical care which he would like to be harmonized with the STCW Convention.

- 211.** A Government representative referred to his country's social security system which required shipowners to have an insurance coverage for seafarers. He stated that the United Kingdom proposal was moving in the right direction but the basic responsibilities of the State to the seafarer should be clarified.
- 212.** A Government representative described the text proposed by the United Kingdom as excellent but indicated that responsibilities should be defined, and referred to responsibilities of minimum protection.
- 213.** A Government representative had some concerns regarding the United Kingdom proposal to shift responsibilities from governments to shipowners emphasizing the policing role that flag States should have for safeguarding seafarers' social protection on a stable and long-term basis, referred to the possibility of shipowners going bankrupt, reminded of the usual cases of seafarers changing ships and stressed that seafarers should not have less favourable social protection than that enjoyed by shoreworkers. Finally, he added that he could go along with the progressive approach taken by the Office text in securing effective protection for seafarers.
- 214.** A Government representative considered the United Kingdom proposal an excellent contribution. However, she indicated that consultations were first necessary with her country's appropriate government departments since its adoption might affect the national system. The social security system was mainly financed by the Government but in some areas also by the shipowners. She provided some examples of its provisions pertinent to injury benefits, the right to a pension in some cases without the contribution of workers, benefits to families of seafarers, the different areas of responsibilities between the flag State and State of residence, etc., and supported that minimum social security protection should be given regardless of place of domicile. She then referred to bilateral agreements between States and finally touched on the issue of the definition of seafarers.
- 215.** A Government representative firmly believed that the social security responsibilities of the flag State and the labour-supplying State should be identified. The flag State, which employed crews from other countries, should provide in its legislation that seafarers should not be employed unless they had social protection. Similarly, the agreed salary plus the distribution and conditions of the contributions to the social protection system should be stipulated in the contracts of employment. Labour-supplying States should have a social security system in place, which covered all the points agreed upon in the present Convention. It should be provided in national legislation that seafarers should not be employed on foreign-flag vessels unless they were covered by social protection. Similarly, the funds to be remitted to the social security system should be stipulated in the contracts of employment. Bilateral agreements were not an effective way of covering all seafarers. Moreover, if the social protection was institutionalized in the present ILO Convention, seafarers would be better protected, and bilateral agreements would not be necessary. Finally, he declared that the paper submitted by the Government representative of the United Kingdom was a good basis to build upon.
- 216.** A Government representative stressed that the long-term social protection of seafarers should be provided for. Assuming that the brackets were removed, the Office text foresaw that the State of nationality should provide long-term social protection. It aimed to ensure that the responsible Member had a long-term interest in its seafarers. The social protection

could then be expanded to permanent residents. His delegation's problem with the United Kingdom paper was that it put the sole responsibility on the flag State, for both short-term (e.g. medical care, usually provided by shipowner and flag State) and long-term benefits. However, the flag State could not directly influence long-term medical care. A seafarer often moved from flag to flag and was subject to changing legal regimes; therefore, another State ought to take over the long-term responsibility. The emphasis on the flag State was incorrect, as it could not have long-term commitments. Nonetheless, he agreed with the introduction of more responsibility being placed on the seafarers' employment agreement, which was usually supervised by the labour-supplying State, because those agreements ensured that the long-term benefits also continued while the seafarer was on board ship. However, the balance of responsibilities was wrong and he preferred the Office text, according to which the labour-supplying State was responsible for its nationals.

- 217.** A Government representative announced that his delegation had major problems with Regulation 4.5. In his country, there was a social security system in place but not all the benefits listed in the present ILO Convention were provided for. In general, as seafarers were in the private sector, the social security services were contributory and participatory. Contributions were made partly by the seafarer and partly by the shipowner. He mentioned many difficulties in terms of implementation, e.g. non-payment by shipowner, non-contribution by seafarer, or abandonment of seafarers. Unemployment benefit represented a major problem for his country, as it did not exist in any sector. Thus, the requirement of such benefit exclusively for seafarers would represent an obstacle for ratification. He welcomed the change from "social security" to "social protection".
- 218.** A Government representative stated that her country had not ratified Convention No. 165 but had legislation on social security for workers. The system in place foresaw contributions shared by employer and worker and covered injury, disability, pensions, health insurance, maternity protection, etc. In the absence of an unemployment benefit in her country, its requirement would constitute a problem. She appreciated the submitted paper and welcomed the change from "social security" to "social protection", but she still had to study it and consult her Government on some points. In particular, the extension of the scope to permanent residents and temporary workers who did not wish to be subject to the national system would seem problematic, as the laws were only enforceable with regard to citizens.
- 219.** Several Government representatives agreed that it was essential that responsibilities would be clearly set out. The United Kingdom proposal discussed in the Government group was seen as very helpful, but Government representatives felt a need to consult with their respective governments.
- 220.** Some Government representatives also suggested more importance be given to articles of agreement which should contain social security protection. They stressed that unemployment benefits also presented problems.
- 221.** A Government representative stressed the need to have a universal solution as he recalled that many seafarers had no permanent employers. They worked on ships flying different flags but with usually only one constant point of reference, the permanent residence, home of his family.
- 222.** The representative of the Government of the United Kingdom, in further clarification, stressed that flag States were assigned a supervisory role under his proposal. They should check to ensure that seafarers working on ships flying their flag had access to protection, but were not necessarily obliged to provide it.

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- 223.** A Government representative also reminded the meeting of regional arrangements such as the specific EU provisions on seafarers.
- 224.** The Seafarer spokesperson stressed the need for a thorough examination of the proposal discussed, but stated that it would not suffice if only inspections were made into social security matters, because the right to these benefits had actually to be delivered. Recalling the decision of the Subgroup to exclude pension benefits from the Convention to avoid a barrier to ratification, the speaker suggested that a working group should be constituted during the next High-level Group's meeting to discuss social security protection. The Office should provide further information on the International Covenant on Economic, Social and Cultural Rights and compile information on the impact which bilateral agreements had on seafarers. A comprehensive list of bilateral agreements, which covered seafarers, should be prepared as well as an estimate on the number of seafarers thus protected. Furthermore, efforts by labour-supplying States to provide protection to their nationals working abroad should be taken into account. It was clear that there would be a need to differentiate long and short-term benefits and where the responsibility lay for their provision.
- 225.** The Shipowner spokesperson suggested that a careful review of the International Covenant showed that it did not contain any detailed provisions dealing with social security protection and therefore had very little relevance to the discussion of Title IV. The ISF submission had highlighted problems in the draft instrument concerning jurisdiction and enforcement and social security protection was a good example of these problems where a number of different entities based in different countries could have a responsibility for the provision of certain benefits. The Seafarers' proposal to establish a working group on social security was welcomed, but the issue was extremely complex and it would be necessary for this group to start work as soon as possible.

Regulation 4.1 and related Code

- 226.** The Seafarer spokesperson noted that to bring Regulation 4.1 and Standard A into harmony, the words "and ashore" should be included in Standard A.4.1.1(d) after the words "on board ship". There was a need to reconsider the references in A.4.1.2 to tonnage thresholds and the number of seafarers. Paragraphs 4.1.3 through 4.1.5 reflected ILO Convention No. 164, but these should be harmonized with STCW. Standards A.4.1.7, 4.1.8 and 4.1.10 could be placed in Part B.
- 227.** The Shipowner spokesperson indicated satisfaction with the wording.
- 228.** A representative of the ICMA warned against a possible erosion of seafarers' rights in 4.1.4, since it was the rights of seafarers to medical care that were generally far superior to those of shoreworkers, for example, with regard to employers' liability to cover all cases of injury and illness, not merely those that were clearly job related. The Convention should not offer governments the opportunity to reduce the rights of seafarers to those of workers on shore. It could instead refer to the provision of a comparable quality of care.
- 229.** Noting the risks of exposure to HIV/AIDS, one Government representative asked whether the reference to health promotion and health education programmes in A.4.1(e) would require extensive information provision on HIV/AIDS.
- 230.** The Seafarer spokesperson recommended that a reference to the ILO code of practice on HIV/AIDS and the world of work be placed in Part B, as this was a major issue and would help in ensuring that the existence of the code was widely disseminated.

Regulation 4.2 and related Code

- 231.** The Shipowner spokesperson suggested that the title of Regulation 4.2 be shortened to “Shipowner’s liability”. The words “as provided for in the Code” should be added to Regulation 4.2.1, since the current wording was too broad. Regulation 4.2.3. was superfluous and should be eliminated, indeed if it were to stay in, amendments to the Code could be prevented because of the static nature of the wording. The ISF submission had proposed that the substance of the joint IMO/ILO resolutions on abandonment and crew claims should be incorporated in Part B of the text in order to ensure that the new instrument was comprehensive and covered all labour standards in one instrument. In the case of crew claims this could be accommodated in this section of the text.
- 232.** The Secretary-General explained that Standard A.4.2.3 had been included in the proposed consolidated Convention as a means to lend authority to all that was contained in Part A of the Code. Otherwise, there would be no authority within the Convention to add new elements to the Code. The word “include” offered the possibility for other items to be added.
- 233.** The Seafarer spokesperson could accept the shortening of the title as proposed by the Shipowners. In Standard A.4.2.1(b) the brackets could be removed from “long-term” as this would assist with regard to compensation for such illnesses as asbestosis. The speaker queried the justification for reducing liability to 12 weeks in Standard A.4.2.2 and A.4.2.4, when 16 weeks of coverage was provided in other ILO instruments. Standard 4.2.5 should be moved to Part B of the Code. The speaker strongly objected to the Shipowners’ suggestion to bring into this Convention the issues of death and disability currently being dealt with in the ILO/IMO Working Group. He asked the Shipowners to withdraw their proposal and emphatically urged Governments to be cognizant of the seriousness of the work done in the ILO/IMO Working Group and the difficult issues involved and not to mix the two processes together.
- 234.** The Chairperson indicated that, as the Seafarers said, the Joint ILO/IMO Working Group continued the work on the subject and evaluated the situation. The fundamental question arose of whether the cases of death and personal injury of seafarers should be regulated in a separate instrument or integrated in the consolidated Convention. He suggested a meeting of the Joint ILO/IMO Working Group before the next meeting of the High-level Group.
- 235.** The Seafarer spokesperson concurred, but reiterated that the subject matter should not be included in the framework Convention at this stage. He stressed that the issues involved and the need to ensure the provision of an equitable financial security system would slow down and complicate the adoption of a revised Convention.
- 236.** Many Governments welcomed this initiative.
- 237.** The Shipowner spokesperson agreed to postpone the discussion of their proposal.
- 238.** A Government representative stressed that according to Standard A.4.2, the responsibility of the shipowner was limited to a certain period of time, and questioned what would happen afterwards to the seafarer in need of protection and what would be the responsibility of the labour-supplying State.
- 239.** A Government representative pointed out that Standard A.4.2, paragraph 1(a), lacked a definition of “employer”, and that the new definition of “shipowner” was not sufficient. He recalled the results of the High-level Group on the subject (May 2002) and the proposal of joint responsibility of shipowners and manning agencies. It should be decided whether “employers other than shipowners” should be added.

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240. A Government representative made reservations on the definition of “employer”, bearing in mind that the definition of “seafarer” was very wide and included self-employed persons. Briefly evoking a necessary definition of the term “lodging” in Standard A.4.2, paragraph (2), she asked whether the provision also protected seafarers while away from home.
241. Since the definitions of “seafarer” and “shipowner” and the introduction of the term “employer” were still a concern of many Government representatives, the Chairperson suggested that any related proposals should be handed to the Office in writing.
242. All Government representatives agreed on the seafarers’ need for protection as contained in Regulation 4.2, and some felt that the shipowner should have sole responsibility in this regard.
243. Two Government representatives proposed that the shipowner should be liable for every person working aboard. The seafarer could always turn to the shipowner who might recoup the expenditures from the “real employer”. Such a rule would provide for a clear route for the seafarer in case of dispute, whilst not forcing the shipowner to be financially liable in all cases.
244. Other Government representatives did not agree with this view, because seafarers were often not only employed by shipowners, but ship operators or manning agencies. The shipowner should only pay if he was de facto the employer of the respective seafarer and should not be held liable in all cases. Different employment situations had to be considered to avoid unfair results.
245. A Government representative suggested changing the title to seafarer’s entitlement.
246. The Seafarer spokesperson agreed with the original draft and supported the Chairperson’s suggestion to only deal with changes to the definitions of a “seafarer” and a “shipowner”, if these were officially handed in. Government representatives would most likely agree with the current draft.
247. A Government representative pointed out that there were three types of contractual situations concerning the employment of seafarers. The seafarer was not a commodity and he had a fundamental right to choose his employer.
248. Another Government representative noted that it was sometimes difficult to ascertain who the employer was. In his country they passed the Migrant Workers Act that made the manning agency jointly liable for the abuse of seafarer rights.
249. The representative of the ICMA suggested replacing “wilful act” in Standard A.4.2.5(b) with “wilful misconduct”. In addition, he suggested that the Shipowners’ Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), should be used as guidance to elaborate on A.4.2.5(a).

Regulation 4.3 and related Code

250. The Seafarer spokesperson sought clarification on A.4.3.1(a) regarding ships in ports. He also proposed to include suitable references and key aspects of the ILO code of practice on accident prevention on board ship at sea and in port, in particular those aspects which provided for the establishment of safety and health committees on board, in Code B.

251. A representative of the Office stated that this was included since accidents could happen on the ship while it was in port. The High-level Group agreed that the definition of a seafarer would have the broadest scope here and that it would only be abridged in a few specific areas of the entire instrument.

Regulation 4.4 and related Code

252. The Shipowner spokesperson suggested, in 4.4.3, the deletion of the square brackets and the use of the words “in accordance with international law”. He also expressed the opinion that B.4.4 could be taken out of the instrument and become separate guidelines.

253. The Seafarer spokesperson requested a definition of the expression “welfare facilities”, based on Convention No. 163. In Regulation 4.4.1, he suggested to end the sentence after “shore leave”, since the rest of the sentence was not, in his opinion, very clear. He supported the Office wording in 4.4.3, whilst recognizing that it could be made clearer.

254. The representative of the ICMA expressed his appreciation for existing seafarers’ welfare facilities. He was of the opinion that the provisions should stay as they exist in Convention No. 163, and, since some Governments thought that it would cost them some disbursement, a sentence could be added in Part B to state that these facilities should be at no cost to public authorities. This was supported by some Governments.

255. The Seafarer spokesperson said that if moving parts of the Code (Part B) to the guidelines made any difference from a legal point of view to their status, he would want them to stay in the Code.

256. The Shipowner spokesperson stated that his group did not wish to change the nature of B.4.4, but merely to reduce the volume of the consolidated Convention. He agreed with the ICMA that a mention about the financing of welfare facilities at no public cost would be helpful.

257. The Secretary-General recalled that B.4.4.4 was clear in this respect, and said that the Office would attempt to draft guidelines, provided the legal status of the provisions were not changed.

258. The representatives of two Governments said that reference to “under international law” in Regulation 4.4.3 was vague and would cause concern, since detention was always made under national law.

Title 5

259. A member of the Shipowners’ group stated that Title 5 contained superfluous text and needed to be simplified and clarified. His group would make a submission for Title 5.

260. The Seafarer spokesperson stated the provisions for amendments in paragraph 2, after the title, should be under the simplified amendment procedure. He stressed the need for the opportunity to exist for a speedy amendment on the basis of how the enforcement sections functioned in practice. He illustrated his point with examples by referring to paragraph 4(b) and (c) of Regulation 5.2.1 and indicated that the Seafarers would be suggesting that the simplified procedures should be applied for any amendments to the provisions of Part A.

Regulation 5.1 and related Code

- 261.** The Chairperson of the Government group, reporting on a detailed discussion that took place within the group pertinent to Regulation 5.1, indicated the group's concern over the amount of detail in the Regulation and the related Standard. Some Government representatives suggested that they should be moved to the Code. These provisions would become subject to substantial equivalence, which would not be desirable.
- 262.** The Seafarer spokesperson reminded the Meeting that the voting procedures under Article XV that had been discussed earlier and provided security to governments even if the simplified amendment procedures would apply to Code A.
- 263.** The Shipowner spokesperson stated that the Shipowners did not have strong views on whether or not the simplified amendment procedures should apply to Part A of Title V. But the Shipowners did not have a strong view that the concept of substantial equivalent should not apply in this as it was most important that control and enforcement procedures were implemented strictly in accordance with the agreed provisions. He therefore proposed that the preamble to Title V should be amended accordingly.
- 264.** A Government representative said that one view was that all parts of Part A should be subject to the tacit amendment procedure and all elements of Part A subject to explicit amendment procedures should then be moved up into the to Regulations.
- 265.** A Government representative said that the issue should be looked at over the entire Convention and explained that Title 5 covered the administrative requirements for various countries, while Titles 1 through 4 covered technical requirements of shipowners and seafarers. Therefore Title 5 should be treated as Articles and hence square brackets should be retained. However, he had no strong feelings if it was moved into the Articles.
- 266.** A Government representative referred to paragraph 2 of the introduction of Title 5. The Government group had discussed whether Part A of Title 5 should be treated differently from the other provisions of Part A. She had considered that Part A should have the tacit amendment procedure, except for inspections. The inspection periodicity, whether five, three or one year(s), belonged to the administrative provisions, and had budgetary implications. Therefore, it should not be in the tacit amendment procedure. Of course, according to Article XV, member States could express their disagreement with regard to an amendment. However, she actually believed that inspection periodicity should be the same in all States, since this would equalize the validity of the certificates, facilitating port state control. Finally, she suggested that the square brackets should be retained until further discussions, if there was not agreement on the issue.
- 267.** A Government representative stated that Title 5 was important for governments with responsibilities for flag, port and labour-supplying States and amendments should be made difficult. He preferred, however, to postpone the discussion on the matter.
- 268.** A Government representative elaborated on the tacit amendment procedure and substantial equivalence. He favoured avoiding the use of substantial equivalence in key provisions of Title 5 for universal application of requirements on inspection and certification.
- 269.** The Seafarer spokesperson commented that it would be simpler if substantial equivalence did not apply to Title 5 of Part A. If so, a large part of the Regulation could be moved down to Part A. As to the latter interventions on the administrative nature of Title 5, he wondered whether the considerations arose from the ISPS Code or elsewhere. He also wished uniform application in the enforcement area. Although his group had formerly opposed it, it had accommodated wording such as "serious breaches and hardship and

serious violations” in order to move the process forward. Thus, he felt that this should be respected and put into Part A, where it can be amended if necessary.

270. The Seafarer spokesperson indicated that the Preamble of Part A provided that consideration should be given to Appendix A-I relating to Standard A.5.1.2 “Certificates and documents of compliance”. He questioned the need to use the term “shipboard conditions of employment and living arrangements” because it led to confusion with regard to the difference between “shipboard conditions of employment” and “conditions of employment”. As long as the “conditions of employment and living arrangements” were identified, there was no need for the word “shipboard”. He felt that the square brackets around “seafarers’ identity documents” in Appendix A-I could be removed. Furthermore, the list of Appendix A-I should include “wages” according to Regulation 2.2. The regular payment of wages and ensuring that their level was above the ILO recommended minimum wage could be checked at the inspection before issuing the certificate of compliance. As to Guideline B.1.1, paragraph 2, the term “central coordinating authority”, if retained, required the insertion of a definition or additional text explaining it. As to Regulation 5.1.2, paragraph 2, eighth line, the term “ships within its jurisdiction” should be standardized into the more commonly used term “ships flying its flag”. As to Standard A.5.1.2, paragraph 3, it required a model for the document of compliance to be developed by each Member, which meant that the documents of compliance would have different structures and appearances. For the purpose of uniformity, which aided inspection, his group suggested the deletion of the first sentence and the provision of an international model provided in the Convention. Clarification was sought on the meaning and impact of “to the extent applicable on the ship concerned” in Standard A.5.1.2, paragraph 4(a) and on paragraph 1(b) as well. As to Standard A.5.1.2, paragraph 7, the period of validity provided for was three or five years. He believed that the validity period should ideally be less than three years and certainly not five years. As to Regulation 5.1.3, paragraph 3 should be either deleted or moved to Part B or left to national law. In this context, he questioned whether it was appropriate to include a provision addressing compensation payable to shipowners for any loss or damage suffered as a result of the wrongful or unjustified exercise of the inspectors’ powers, presumably for the detention of a ship, as there was no similar provision for compensation payable to seafarers for regular persistent breaches or serious violations of their rights. As to Standard A.5.1.3, paragraph 3, it foresaw inspections at intervals not exceeding three years. He believed this interval was too big and preferred 18 months because it would be more in line with the SOLAS Convention and equivalent to the intermediate survey. As to Standard A.5.1.3, paragraph 13, his group felt that the concept of a record of the exercise of discretion should be retained. As to B.5.1.3, paragraph 10(d), he favoured the second alternative, namely requiring Members to have statistics on all seafarers serving on vessels flying their flag. As to B.5.1.3, paragraph 10(f), the word “reported” in square brackets should be deleted, as the flag State should be aware of all occupational injuries and diseases affecting seafarers serving on vessels which flew its flag. In this context, he noted that IMO Assembly resolution A.847(20), Guidelines to assist flag States in the implementation of ILO instruments, which provided for the investigation of an accident, where the seafarer was unable to work for more than three days. He further recalled the joint submission by the Shipowners and the Seafarers concerning the provision of grievance procedures at the last Subgroup meeting, which would be relevant to revise the existing text. However, the actual text of the joint submission was not provided in Annex 3. It should also be noted that not all the provisions had been agreed, especially the inclusion of a human and trade union rights clause.

271. The Seafarer spokesperson considered that Regulation 5.1.4 was open to misinterpretation and too restrictive. He suggested to replace “where necessary” with “where they are considered necessary”. In order to prevent that the right of a seafarer to seek immediate legal redress was restricted, the speaker suggested the insertion of: “The provisions in this

Regulation and related sections of the Code are without prejudice to an individual's right to seek redress through whatever legal means he/she considers appropriate, including direct recourse to external authorities or through any competent judicial, administrative or legislative authorities, or by any other competent authority." Standard A.5.1.4(4) should be moved to Code B and "representative" should be inserted between "with" and "organizations" in B5.1.4(1). Guideline B5.1.4(2)(b) should be replaced by: "In order to help avoid problems of [victimization] of seafarers making complaints about matters under this Convention, the procedures should encourage the election of a shipboard trade union representative." Finally, it was suggested that Regulation 5.1.5 should contain references to SOLAS and the IMO Code for the Investigation of Marine Casualties and Incidents (A.849(20) as amended by A.884(21)).

272. The Chairperson of the Government group stated that there was need for clarification regarding the implementation of Regulation 5.1.1, since some aspects of employment were not under the control of flag States. Paragraph 2 raised concerns, because the draft suggested that a State could not register a ship until it had issued a certificate of compliance and document of compliance. So far, no possibility of issuing interim documents existed. It was felt that the need for an interval between registration and issuing the documents should be taken into account, especially since some countries required ships to be registered *before* inspection and issuance of documents. The requirement for ships to carry such complex documentation (as required in Regulation 5.1.2) had been questioned. In particular, the need to have two documents was questioned. While States agreed on the need for an effective enforcement regime and were generally supportive, there was disagreement as to whether national standards should be contained in these documents. It was also noted that some States would implement many of the provisions through collective bargaining agreements, which were subject to frequent change and would make the document of compliance difficult to update. A few Government representatives had noted in their group meeting that the terms used (certificate and document of compliance) in Standard A.5.1.2, paragraph 10, were similar to the ISM Code and asked for those to be amended. Concern was expressed over paragraph 2 of Regulation 5.1.3, since it called for the appointment of a sufficient number of inspectors. Concern was expressed over paragraph 3 concerning compensation as a result of the wrongful or unjustified exercise of inspectors' powers. A Government representative suggested that the wording might be changed to reflect compensation in cases of "wrongful action". Another Government representative suggested that the language in Convention No. 178, Article 5(2), should be used. Attention had also been drawn to paragraph 5 of Standard A.5.1.3 and the concerned delegation of inspections. This issue was important and it had been suggested that it should be reflected in the Regulation rather than in the Standard. Finally, the Government group had discussed the on-board complaint procedures in Regulation 5.1.4 whether complaints concerning contracts should be directed to the appropriate national authority and suggested the reduction of details in A.5.1.4 by moving parts to Part B, but had not reached a common understanding.

273. The Shipowner spokesperson stressed the importance of the concept of ongoing maintenance of standards contained in the second part of the second sentence in paragraph 2 of Regulation 5.1.2. The speaker stressed that it was particularly important that the references to "shipboard conditions of employment and living arrangements should be used consistently throughout the text. Regarding the document of compliance required under Regulation 5.1.2, the speaker proposed that these documents should be drafted in such a fashion that they would not need to be changed for every voyage. The amount of detail required so far therefore needed to be reduced. The complaints procedures in Regulation 5.1.4 were welcomed by his group and were seen as an option for the seafarer to resolve a conflict, but not a mandatory procedure he would always have to go through – a clarifying amendment was suggested. It was also felt that paragraph 2 needed redrafting. There was clearly need for protecting the seafarers, but the current wording was perceived

to be too strong. Standard A.5.1.4 contained excess detail and paragraph 4 could be moved to Part B. It was also questioned whether there was indeed a need for the shipowner to provide contact details to legal service providers as envisaged in 4(b). No changes to B.5.1.4 were suggested.

- 274.** The Seafarer spokesperson pointed out that seafarers needed to have access to courts when their rights had been violated. Jurisdiction was an issue and there should be a mechanism for seafarers sailing under a foreign flag to exercise their rights. A Government representative felt that jurisdiction for complaints procedures needed to remain with the flag State. There were other mechanisms, within the ILO and other organizations, that could deal with those instances where a seafarer could not get recourse through the national system.
- 275.** Two Government representatives suggested that they might have a problem with ratification when considering the issuance of certificates. If the Convention would contain the certification requirement, then they suggested it should be in line with the periods established by the IMO. Inspections should not be carried out by a recognized competent authority, as stated in A.5.1.3.5; they should be the responsibility of the flag State. In addition, one representative suggested that A.5.1.3.5 be dealt with in A.5.1.2.
- 276.** A Government representative recalled the summary of the Government group's issue with A.5.1.1.2 regarding ships that were not registered. She felt that they should not be allowed to operate. A number of Government representatives had a problem with this and suggested a grace period to enable a ship to operate until formalities are completed. On A.5.1.3.5, another representative explained that they might wish to delegate the inspection and the certification to a recognized organization (RO), though his administration would still be monitoring every ship every year. The certification procedure was in fact a combination of an inspection and an audit.
- 277.** The Government representative of the United States believed the Office put forth an excellent text, but he had a few suggestions. As regards A.5.1.2.2, he believed that it was not necessary for an administration to issue two certificates. Therefore, he proposed that a ship be issued a certificate of compliance, but the details currently contained in the document of compliance should be attached to the certificate as a supplement with the same status since the certificate needed to reflect what the treaty required. A few Government representatives supported this. He believed that 5.1.3.3 could be deleted. If it remained, the contents should reflect the wording entailed in Convention No. 178, Article 6, paragraph 2, concerning the delay of a ship. He also stated that Regulation 5.1.5 was acceptable as written, but that a definition of "serious marine casualty" should be added to Part B of the Code and the language contained in IMO resolution A.849(21) could be used as the basis for such a definition.
- 278.** A Government representative, alluding to Regulation 5.1.1.2, explained that his administration would have problems with the inspection of social and labour conditions, though a mere inspection of all appropriate documents could be performed on board by an inspector.
- 279.** A Government representative agreed on the issue of the publicity of the inspection, but requested more details in this regard. He suggested to use the Equasis system for this purpose, but was open to other possibilities. This could also be detailed in Part B of the Code.
- 280.** A Government representative felt that the ILO should be requested to set up a technical cooperation programme, in order to train future inspectors accordingly. This suggestion was supported by other member States. Regarding the resolution of disputes, she pointed

out that one could envisage the setting up of a contact point, as per ISM recommendations, but that, if the dispute took place in a port, the competent authority, i.e. the port state control, should deal with it adequately.

- 281.** A Government representative made it clear that his delegation could not accept the relegation of the attached provisions to Part B of the Code on the certificate of compliance and the document of compliance.

Regulation 5.2 and related Code

- 282.** The Seafarer spokesperson suggested that the square brackets should be moved from Appendix A.II to A.5.2.1. New entries relative to the ILO minimum wage and the control of recruitment agencies should be included. The following should be added to Regulation 5.2.1.3(a): “Information on the deficiencies and the measures needed to rectify them shall be brought to the attention of a representative seafarers’ organization.” Paragraphs (a), (b) and (c) of Regulation 5.2.1.4 should be deleted. The following should be added to the end of the first sentence of A.5.2.1.2: “although they may provide clear grounds for an expanded inspection”. A new subparagraph (c) should be included after A.5.2.1.4(b) that read: “The authorized officer may also inform an appropriate representative seafarers’ organization.” B.5.2.2.5 should be deleted.
- 283.** A member of the Shipowners’ group preferred the longer delay with regards to the square brackets in 5.1. Regarding Regulation 5.2.1, he thought that the appropriate wording should be: “A ship subject to this Convention calling ...”. The wording should be brought into conformity with that which existed in Convention No. 147 through the use of “the ship may be inspected”. The principle of prima facie evidence should be included into the issues related to port state control inspections. He also requested definitions of “serious material hardship, serious violation and several recent occasions” be moved to Part A. He requested a definition of “clear grounds”. Another member speaking on Regulation 5.2.2 believed that it was not the role of an ILO Convention to require port States to open their judiciary system to seafarers who were nationals of other States. The Regulation introduced a new right about judicial records, and about the resolution of shipboard disputes. It should be amended to reflect the language found in Convention No. 147. He suggested that B.5.2.2.5 should be deleted.
- 284.** The Chairperson of the Government group made some comments on the issue of port state responsibility. Port state control procedures for this Convention should be linked to other Port state control requirements. Both port state procedures and responsibilities should be amended in the Regulations. They should also deal with the role of flag and other States. A matter of concern was the list of items to be inspected by flag States and port States as provided in Appendix A.I and Appendix A.II. There was also a concern that the difficulty of establishing “clear grounds” for more detailed inspection of labour conditions could result in more detailed port state control inspections taking place only upon receipt of a complaint.
- 285.** A Government representative pointed out that Convention No. 147 spelt out the responsibility incumbent on port state control duly authorized officers. The draft text under consideration should not restrain the degree and scope of their responsibility. The text needed to be modernized and to be given more teeth. With reference to Regulation 5.2.1, paragraph 1, the notion of a “no more favourable” clause needed to be introduced, so that a port State which had ratified a Convention would also apply it to ships of States which had not ratified it. It was paramount that the new instrument secured that requirement, closing the net on lower standards. The speaker could not agree that inspection be carried out solely as a result of lodging a complaint. The notion of prima facie documentary evidence

as giving exemption from inspection was inappropriate and did not correspond to modern-day practices. It was the privilege of the officer to have an overall look at the conditions and not merely limit his/her inspection to the scope of the complaint. If any other forms of non-compliance came to the fore it was the officer's duty to take action. The wording of paragraph 3(a) had been taken from Convention No. 147, Article 4.2, but such a wording set up an endless diplomatic ballet solving nothing. The wording needed to be more robust to ensure that appropriate action could be taken when an element of non-conformity was found. As for paragraph 4, the Government group suggested that it be deleted; it was merely a provocation both to seafarers and control officers. The link between paragraphs 3 and 4 needed to be better articulated to ensure that appropriate action could be taken when deficiencies occurred with regard to compliance. A working group should be established to look into port state control and enforcement at the next meeting.

- 286.** The Seafarer spokesperson concurred with the statement in 285 and stressed that the certificate of compliance should not constitute an exemption from inspection.
- 287.** A Government representative proposed that a provision be introduced in the draft instrument to ensure that the text of the consolidated Convention was made available to all, both in flag States and other States, since it would carry more stringent provisions than earlier instruments.
- 288.** A Government representative pointed out that the Chairperson, in introducing Regulation 5.2, had indicated then that the responsibility of port States should include access to on-board welfare provisions and medical facilities. The Government group had considered the question of the measures for enforcement of such requirements, and had concluded that there were no obstacles to enforcement: representatives of the social partners of the different flag States would lodge complaints either with the competent national authorities or the ILO. It was important that the section referred to encompassed fully the authority of port States.
- 289.** A Government representative strongly called for guidelines to the third pillar of the maritime industry. The speaker referred to Convention No. 180 and the 1996 Protocol whereby the Paris memorandum had adopted guidelines on the verification of hours of work and rest as the ILO had failed to do so. Now it clearly fell within the mandate of the ILO to produce similar guidelines for inspectors relating to the new Convention. The speaker agreed with the proposal to introduce a "no more favourable" clause in the Regulation in question. Concerning Regulation 5.3.2, he added that some members of the Government group had expressed the view that the instrument should focus on private services and not public services, since public recruitment and placement services were already regulated by a law covering all economic sectors, not only seafarers.
- 290.** A Government representative, referring to Title 4, raised the question of the validity of certificates, an issue not considered in the draft text. Should a vessel change ownership or management, the validity of certificates automatically expired. That was an issue which in any case would have to be dealt with in January 2004. As for Regulation 2.1, a linkage needed to be established between inspection in ports and the port state control regime. In paragraph 1, the language should be changed so that inspection in ports be integrated into the port state control regime. Regulation 5.2.1, paragraph 2(b), needed to define the meaning of "clear grounds" as well as ensure that the authority of port state control was not limited. The IMO had elaborated clear instructions on the meaning of "clear grounds". He was not prepared to accept the text as drafted in Regulation 5.2.1, which opened the way for a number of abuses.

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- 291.** Several Government representatives agreed that there was a need for the ILO to adopt port state control guidelines, which would be especially useful when inspectors were not so experienced and required training.
- 292.** The Seafarer spokesperson agreed that such guidelines would prove helpful, as would the provision of suitable training for port state inspectors once the Convention was in force.
- 293.** The Shipowner spokesperson reminded the meeting of Annex 2 to the Subgroup's report on its meeting in February 2003 which was a joint submission with the Seafarers' group concerning enforcement measures. Paragraph 7 of that joint submission contained the basis on which it had been agreed that ships should be issued with certificates attesting to their compliance with the standards set by the Convention, and this stated quite clearly that if a ship had a valid certificate then this should be regarded as prima facie evidence of compliance. Only if clear ground existed for an inspecting officer to suspect that standards were not being maintained on a particular ship should an enhanced inspection be necessary. If views on this fundamental issue had now changed, the Shipowners' group would reconsider its position on the whole question of ship certificates.
- 294.** The Seafarer spokesperson agreed with the principles contained in the joint statement (Annex 2 of the Subgroup's report), but questioned whether such documentary evidence would not be rendered useless after some time. Conditions changed so fast that a document attesting compliance over years was not practicable. Further discussion was necessary, but he had not changed his position.
- 295.** A representative of ICMA reminded the meeting about crew member fears of retaliation for registering complaints. In these cases the authorities were often tipped of on another matter, so that the inspectors could go on board without disclosing the identity of the complainant. This would only work, however, if the focus of port state control was not artificially limited to the original complaint. It was therefore important to examine all possible lacks of compliance and not limit the scope of control to officially reported ones.

Regulation 5.3 and related Code

- 296.** The Secretary of the Seafarers' group pointed out that the drafting was ambiguous with regard to the responsibilities of the flag State and the labour-supplying State. The current text appeared to dilute the primary role of the flag State and the responsibilities of the flag State should not be weakened. Unless the fundamental issues raised in this section could be resolved, it might be necessary to shift this provision to Title 2. He concluded by stating that the flag State should be responsible for ensuring that any private, and he stressed, only private recruitment and placement service which was involved in placing seafarers on board a ship was duly licensed or certificated.
- 297.** The Chairperson of the Government group stated that some Members had expressed concern over the words in paragraph 5.3.1: "Without prejudice to the principle of flag state responsibility ...", which overemphasized the role of the flag State and gave too little importance to the role of the labour-supplying State in enforcement matters. The Office had referred to the pre-eminent role given to flag States in the Law of the Sea Convention, Article 94, and might wish to provide further information on this. Paragraph 5.3.2, which concerned control of recruitment and placement services, should focus on private, not public services. With regard to paragraph 5.3.3, several Members were concerned that if a seafarer from their country travelled abroad and signed a contract for work on a foreign ship, it would be difficult for their country to exercise control over the contract. One suggestion was to bring into the Convention some of the language provided in the commentary, since it provided greater clarity on this point.

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- 298.** A Government representative stressed the importance of getting the balance of responsibilities right between the flag States and the labour-supplying States. Many Conventions had remained unratified because the responsibilities assigned to flag States were not enforceable by them. Labour-supplying countries had a major role to play in enforcement of the Convention in the initial stages of recruitment to ensure a fair deal for seafarers. By the time the flag State became involved, a contract had been signed and the seafarer was abroad. Enforcement was thus more difficult. The introductory phrase in paragraph 5.3.1 seemed to diminish the responsibilities of labour-supplying States, which should be on a par with those of flag States.
- 299.** A Government representative noted that it was easier to ensure that the provisions of collective labour contracts were adequate than it was to ensure the rights of seafarers with individual contracts. She recalled the difficulties encountered when a seafarer from her country, who had signed a contract with a foreign shipowner not subject to her nation's authority, was shipwrecked. The victim's family was then unable to benefit from the rights to which they would normally have been entitled.
- 300.** A question was raised regarding the relevance of paragraph 5.3.3, when in fact governments would face difficulties enforcing their legislation with respect to agreements between foreigners or persons domiciled abroad.
- 301.** A representative of the Office explained why it was considered useful for ratifying countries to ensure through national laws and regulations that provisions of any contracts entered into on their national territory were in conformity with the Convention, by, for example, declaring null and void any provisions of contract which were incompatible with the Convention. Even though the country adopting the legislation would not be able to enforce it in many cases, the legislation would have to be applied (as part of the "proper law of the contract") by the courts of any foreign country in which proceedings were brought.
- 302.** A Government representative asked whether union hiring halls were considered to be recruitment and placement services and, if so, of a public or of a private nature. The Office was asked to prepare a reply for the next session.
- 303.** The Shipowner spokesperson observed that union hiring halls and indeed government recruitment services would be included within the definition of "recruitment and placement service" in the Recruitment and Placement of Seafarers' Convention, 1996 (No. 179). Any agency, whether public or private, which recruited and placed seafarers was included. The intent was to ensure good operating practices and to prevent abuse and exploitation throughout the industry.
- 304.** A Government representative supported the position put forth in paragraph 298 and added that there were positive implications for seafarers if the recruiting agencies had a licence to do their job issued by the government of the country from where they did their business and were held responsible. Assigning responsibility would provide maximum protection to the seafarer. The flag States had no control in a foreign country in which the recruiting agencies operated.
- 305.** A Government representative argued that the responsibility for seafarers should not be exclusively left to the labour-supplying country but it should also be borne by the flag State and the port State. His country scrutinized the provisions of the contract so that they complied with at least the minimum ILO and national standards. However, after the departure of the seafarer they could not exercise any more control. If violations took place on board they could not intervene and therefore the flag State should be responsible. He stated that shipowners were the source of business for the recruiting agencies and added

that the State of the agency could only provide any remedy after the seafarer had been victimized and returned home.

- 306.** The Secretary of the Seafarers' group expressed disagreement with the position on licensed agencies put forth in paragraphs 298 and 299 and endorsed the reference which had been made to Article 94 of the Law of the Sea Convention and reaffirmed the need to retain the primacy attached to the role of flag States. He agreed that paragraph 3 of Regulation 5.3 was not related to enforcement and control and should be deleted or moved to another Title 4. Finally, he reminded the meeting of the poor ratification record of Convention No. 179 and that there were countries with recruiting agencies that had not ratified it. Some of the provisions and the fact that private manning agencies were found in every country had been impediments to the ratification of this Convention.
- 307.** A Government representative said that his earlier intervention in paragraph 304 might have been misunderstood and clarified that he did not imply that flag States would be relieved from their responsibilities but offered additional and better ways to maximize protection to seafarers and invited the High-level Group to assess and evaluate this and decide accordingly.
- 308.** The Chairperson declared the discussion of Regulation 5.3 completed and reminded the meeting that the deadline for the provision of any comments to the Office on issues left was 21 July 2003, clarifying that these comments should be clear and to the point and be sent by email.
- 309.** A Government representative raised a question, which was related to the draft proposal of the Seafarers' group on Article II and concerned the consultation process. The wording chosen was an ILO standard, but two ILO standard wordings existed, namely "in consultation with the shipowners' and seafarers' organizations" and "after consultation with the shipowners' and seafarers' organizations". She asked for an explanation from the Legal Adviser as to the difference between those two ILO standard phrases.
- 310.** A Government representative added that the specific wording referred to above said that the decision of a Member to exclude or include from the scope of application of the Convention ships in domestic voyages should be taken "in consultation" with the shipowners' and seafarers' organizations. In his country this decision would be taken by Parliament during the procedure of ratification, and only the members of Parliament would have the right to speak and to decide. He inquired whether the wording "in consultation" meant that there would be consultations between the representatives of the Government and the social partners and the outcome of those consultations would be presented to Parliament to decide. But if that was the case, the decision would be taken "after consultation" rather than "in consultation".
- 311.** The Legal Adviser responded to the first question raised by a Government representative in paragraph 309 that in instruments adopted by the ILO the two terms "after consultation" and "in consultation" could be found quite frequently. He advised that the two terms were not absolutely identical but that there was a difference between them in respect of the continuity of the process of consultation. In the event of the term "in consultation with the shipowners' and seafarers' organizations", it would be a continuous process of consultation. In the event of the term "after consultation with the shipowners' and seafarers' organizations", the process of consultation would be completed once the decision had been taken, and that decision would be taken once and for all. As for the second question raised by a Government representative in paragraph 310, the practice became relevant. If it was required that consultations took place, the representatives of the Government, Shipowners and Seafarers would have to consult in relation to the decision to be taken. Consultation was a participation in the decision-making process, but the decision

was to be taken by parliament. The government met the requirement for consultation when it transmitted the results of the consultations to parliament. Obviously, parliament was a sovereign body and could either not follow the recommendations made by the government or follow those recommendations, which were the result of consultations with the shipowners and seafarers.

- 312.** A Government representative asked whether she understood the meaning of continuous process correctly. Before issuing legislation, her Government sent the draft text to the social partners for comments, but only some of them were taken into account. She inquired whether, for the purpose of a continuous process, it was necessary to contact them again.
- 313.** The Legal Adviser answered that the understanding of the Government representative was correct. He explained that the continuous process did not mean that the Government had to revert to the issue, once the decision had been taken. However, the question whether to continue to exclude that category of vessels might be raised again and be re-examined depending on the developments in general and in the decision. In this way the process became a continuous process.
- 314.** A Government representative raised another question with regard to the consultation process. Sometimes parliament was not involved in the decision. If the issue was situated at a lower level, it would be up to the ministry to decide. “In consultation” meant in his country that an agreement would have to be reached during consultations, and “after consultation” meant that the ministry could decide even without an achieved agreement in the consultations. He inquired how to read the two terms in the present context.
- 315.** The Legal Adviser clarified that consultations did not represent negotiations. It was not necessary to have an agreement, but rather consultations with the social partners in good faith and with good will. The results of those consultations, i.e. the opinions expressed by the social partners, were to be considered fairly and justly, which did not mean that an agreement had to be reached. “In consultation”, therefore, did not require an agreement, but rather implied that the consultation process might continue depending on the circumstances.
- 316.** A Government representative evoked the issue of repatriation of seafarers. In the last meeting, he had suggested to include language in Standard A.2.4, which would not allow port States to treat seafarers as hostages, whenever a ship was abandoned by the shipowner, and not allow them to require that seafarers stay on the ship until the dispute between the shipowner and other entities was resolved. Due to such demands of the port States, there had been cases where seafarers had to stay in a port for more than a year and a half with poor living conditions and without salary. Thus, he suggested again to include the following new paragraph in Standard A.2.4 after paragraph 11: “Member States shall not refuse the right of repatriation to any seafarer (including the master) on account of financial obligations of the owners or the charterers or others or the inability or unwillingness to replace him.” That language was reflected in paragraph 183 of the report of the Subgroup. However, he understood that the Office found that the provision of paragraph 11 was adequate from the legal point of view. He reiterated that the language of paragraph 11 was not enough in the real world, where either the court ruled that the captain and the crew of a ship, which had been arrested on account of a civil dispute, were to be detained on the vessel, or where the port regulations did not allow crew repatriation, as long as the ship was in the port area, unless the crew was replaced.
- 317.** The Legal Adviser endorsed the statement of the Office that paragraph 11 would be legally adequate and sufficient. Further discussions of the High-level Group on the matter seemed necessary, and he did not want to anticipate or replace them by replying.

318. The Secretary of the Seafarers' group recognized that the Government representative made a good point in paragraph 316. However, the suggested text required refinement, e.g. the addition "including the master" assumed that the master was not a seafarer, which would invalidate the definition.

Titles 1, 2 and 3

319. The Secretary of the Seafarers' group advised that the Seafarers' group was looking at the issue of minimum age, especially as it might relate to Convention No. 182 and the related recommendation. He had comments on standards A.1.2 and A.1.3. He believed it appropriate for the suggested joint drafting group between the IMO and the ILO secretariat to produce a joint text since the provisions related to the STCW Convention. As to Standard A.1.4, he wished to see the wording of Article 2(1)(a) and (b) of Convention No. 179 reinstated. The reference to a travel document and an identity document, taken from Convention No. 179, should be replaced by "passport".

320. The spokesperson of the Shipowners' group indicated that his group would send a contribution on the following: competency, certification of ABs and cooks, possible inclusion of the SID Convention (though he recognized it might be early), definitions and scope, establishment of guidelines, based on some previous Conventions, on items such as crew accommodation and vocational training. He also announced that he would like to see Convention No. 145 on continuity of employment discontinued.

321. The representative of the Government of Japan indicated that he would send a contribution on training and competencies, safe manning certification, and crew accommodation. Responding to the intervention by the Shipowners and the delegate of Denmark, he indicated, regarding the possible incorporation of Convention No. 185 into the Consolidated Maritime Convention, that Japan highly considered new Convention No. 185 as a "delicately crafted masterpiece of package agreement", and a great achievement. He indicated that Japan would make every sincere effort toward ratification as, no doubt, would many other governments. However, he strongly advised against the inclusion of the new Convention No. 185 into the Consolidated Maritime Convention for a number of reasons. He considered Convention No. 185 as substantially different, by nature, from the components of the Consolidated Maritime Convention. Moreover, he objected that Convention No. 185 contained critical elements directly related to immigration policies, which most maritime authorities could not handle easily. He also observed that, whilst the Consolidated Maritime Convention was designed to ensure that flag States would discharge their responsibilities regarding seafarers' employment and living conditions in compliance with the Convention requirements, and that port States would verify this compliance through port state control, Convention No. 185 was designed to have a totally different structure of responsibilities. He remarked, for example, that flag States would not be entitled to issue seafarers' identification documents for seafarers with nationalities different from the ship's flag. He also recalled that, in the discussion of revising Convention No. 108, it was agreed, after a long debate, that port state control would not be required to arrest a ship in the case of absent or deficient seafarers' ID. He also felt that the incorporation of Convention No. 185 into the Consolidated Maritime Convention would impair the delicate balance of the structures of both Conventions, in particular regarding the repartition of their elements between mandatory parts and non-mandatory parts. He finally observed that the incorporation of Convention No. 185 into the Consolidated Maritime Convention could put at risk a wide ratification and enforcement of the new Convention.

322. A Government representative indicated that his delegation would send a document on minimum age, and insisted on the importance of reviewing the definition of a seafarer.

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- 323.** A Government representative thought that duplications with other existing instruments, such as the STCW Convention, should be avoided. The issue of the certification of cooks should be addressed in Regulation 3.2. The theme of drinking water should also be included in this same part.
- 324.** The Secretary of the Seafarers' group agreed with those delegations having expressed their reluctance to see Convention No. 185 included in the consolidated instrument. The Seafarers' group considered that the seafarers' identity document Convention should be ratified as broadly and as soon as possible. He thought that the reference to "other employer" in Standard A.2.1.1(a) should be deleted. The resolution adopted by the Maritime Labour Conference which established the relationship between Convention No. 180 and the STCW Convention had been fundamental to securing an agreement. This should be recaptured. He firmly opposed the idea of deleting Standard A.2.6. on continuity of employment.
- 325.** A Government representative was of the opinion that Regulation 1.1 on minimum age could be reformulated to take into account educational reasons. Regarding the employment agreements, he suggested that a standard ILO text should be developed. He also agreed that Regulation 2.5. on safe manning should be revisited, and expressed reservations on the continuity of employment issue. He also observed that, in his opinion, too many substantive issues had been transferred from Title 3 to Part B of the Code.

Closing of the meeting

- 326.** The Chairperson concluded the meeting setting out the way forward. Based on the comments and written submissions (to be handed in by 21 July 2003) by Governments, Seafarers and Shipowners, the Office would provide a revised draft. A meeting of the Officers of the High-level Group in September 2003 would give further indications to the Office in order to prepare the draft to be discussed in the High-level Group's next meeting in Nantes in January 2004.

Annex 1

Report of the Working Party on Tonnage Issues in the draft proposed Convention

The Working Party had been requested to:

- look into the implication in the proposed draft Convention of using the term “gross tonnage” as provided in the International Convention on Tonnage Measurement of Ships, 1969 (see draft Article II(1)(d));
- identify those provisions of the proposed draft Convention where tonnage is relevant;
- examine the impact of tonnage thresholds in the proposed draft Convention.

The Working Party was comprised of:

Governments

Mr. Yeong-Woo Jeon (Republic of Korea)
Mr. Dae-Yul Chong (Republic of Korea)
Mr. Leif Remahl (Sweden)
Mr. Joseph Angelo (United States)

Seafarers

Mr. Arie Leendert Verhoef (Netherlands)
Mr. Thomas Tay (Singapore)
Mr. Goran Hansson (Sweden)

Shipowners

Captain Koichi Akatsuka (Japan)
Ms. Natalie Wiseman (ISF)

Observers

Captain Andrew Winbow (IMO)

The Working Party considered views expressed by the plenary. It also took into account the resolution concerning tonnage measurement and the accommodation of crews adopted by the 29th Session of the Joint Maritime Commission (2001).

The Working Party agreed:

1. The definition of “gross tonnage”, as provided in TWGMLS/2003/2, in Article II(i)(d) of the draft proposed Convention, that is, the reference to the definition from the International Convention on Tonnage Measurement of Ships, 1969, adding the words “or any successor Convention”, was acceptable.
2. With regard to the Titles (Regulations and Code) of the Convention that would include tonnage thresholds, the proposed draft Convention should include a “grandfather clause” for ships built before a certain date to be provided in the Convention. A possible date could be [2005]. In addition, consideration might be given to including special provisions addressing substantial modification to crew accommodation.
3. It is up to the plenary to decide if it wants tonnage thresholds within the Titles (Regulations and Code) of the Convention. If so, consideration should be given to establishing gross tonnage thresholds that are equivalent, to the extent possible, to the gross registered tonnage thresholds in the existing ILO Conventions, to ensure as much equity as possible between new and existing ships under the Convention.

The Working Party did not agree on whether the scope of the Convention in Article II, paragraph 3, should include a minimum gross tonnage threshold.

The plenary should further debate the question of whether Article II should include a tonnage threshold for the entire Convention. There was a need for greater understanding of why – or why not – such a figure, as currently provided in Article II(3)(a), was needed and, if so, what specific figure should be included.

Annex 2

Proposal from the representative of the Government of the United Kingdom

Social security provisions – To be retitled “Social protection provisions”

Regulation

A. Members shall ensure that seafarers on ships flying its flag and, where applicable, their dependants, shall be entitled to benefit from a social protection system.

Code, Part A

I. The social protection system that a seafarer is entitled to participate in and benefit from shall be:

- (i) addressed in the seafarers' employment agreement; and/or
- (ii) the subject of legislation of:
 - (a) the Member in which the seafarer is resident; or
 - (b) the Member of the flag the ship is flying.

II. After consultation with representative organizations of shipowners and seafarers, the branches of social protection to be considered are: medical care; sickness benefits; unemployment benefits; pensions or provident funds; employment injury benefits; family benefits; maternity benefits; invalidity benefits; and survivors' benefits.

III. Members shall submit reports to the Director-General of the International Labour Office regarding the realization of each of the branches of social protection listed in section II of this Code, as they apply to the residents of its territory and under what, if any, circumstances these entitlements can be extended to non-residents of its territory. The International Labour Office shall maintain a register of these reports and shall make it available to all interested parties.

Code, Part B

1. The social security system afforded to seafarers resident in the territory of a Member should not be less favourable than that enjoyed by shoreworkers resident in the territory of that Member, in respect to each of the branches of social protection.

2. A seafarer resident in the territory of a Member, but serving on a ship registered in the territory of another Member, should be entitled to participate in and benefit from the social security system of the territory of the Member in which the seafarer is resident.

3. In principle, and as far as practicable, all seafarers serving on a ship registered in the territory of a Member, should be entitled to participate in and benefit from the same branches of social security entitlement as seafarers resident and insured in the territory of that Member.

Comment on provisions relating to social security

Article IV, Regulation 4.5, Standard A.4.5 and Guidance B.4.5 deal with the right of every seafarer to appropriate social security measures for themselves and their families. However, social security systems are only operated by governments and not all governments have such systems. It is therefore proposed that the words “social security” be replaced by “social protection” to cover the introduction of a new concept into the Convention, and that is guaranteed provision of social protection through the seafarers' employment agreement. Under this proposal, seafarers would be

guaranteed social protection in some or all of the standard areas of classic social security by one of three methods:

- (1) contractual arrangements agreed between the social partners or provided by employers in individual employment contracts;
- (2) a social security scheme operated by the member country of residence of the seafarer; or
- (3) a social security scheme operated by the Member whose flag the vessel, on which the seafarer is serving, is flying.

Each Member would notify the ILO of the social security benefits available to residents and resident seafarers in each member State to enable the level of social security available to each seafarer to be readily determined. These details could be accessed by employers and other interested parties to enable it to be ascertained whether they were in compliance with the Convention and, if not, what additional measures need to be taken by the employer to ensure compliance with the requirements of the Convention.

This would relieve the need for flag States to negotiate countless bilateral agreements. It would therefore simplify procedures for the verification of acceptable social security arrangements and be more transparent than the proposals as currently drafted in the Office text.

It is also anticipated that this alternative proposal, not least the reporting requirements to the ILO, will facilitate the progressive realization of social protection arrangements in accordance with the Economic Covenant.

Annex 3

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

At the Second Session of the High-level Tripartite Working Group which met in Geneva from 14 to 17 October 2002 there appeared to be a general consensus that the new consolidated Convention should contain a mechanism to ensure that grievances raised by seafarers concerning breaches of Convention requirements applicable to the ship on which they were serving should be properly investigated and resolved.

During the discussions, a number of references were made to the complaints procedure currently contained in the ILO Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), which provides for complaints to be made to port state authorities. In addition, several Government representatives emphasized that the first stage in any such grievance procedure should normally be to the master of the ship on which the seafarer was serving and then, if necessary, to the employer ashore. Government involvement should be limited to an intervention if internal mechanisms failed to resolve the problem.

It was agreed by the High-level Group that the Seafarers' and Shipowners' groups should be invited to discuss how such a grievance mechanism might work and that they should report back to the Subgroup with any progress that had been made.

The two groups exchanged papers setting out their views on the issue, and an informal meeting was arranged on 15 January 2003 to discuss the extent to which it might be possible to reach a common position. Further discussions took place during the current Subgroup meeting.

It is fair to say that the position of both groups was very similar with regard to the procedures for dealing with grievances on board. Different views were expressed, however, with regard to the procedures for dealing with grievances that could not be resolved at the level of the ship or the employer and were therefore referred to government officials or agencies or to a legal system.

The Seafarers' group highlighted the outcome of the tripartite experts meeting in May 2002 which, inter alia, concluded that 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 should be provided by all member States.

On the other hand, the Shipowners' group emphasized that many flag States provided very effective mechanisms for resolving grievances over labour standards from seafarers serving on their ships, irrespective of the nationality of the seafarers. The Shipowners' group also maintained that an ILO maritime Convention could not be used to oblige a port State to change its national legal system to allow foreign seafarers to raise grievances over labour standards if such a system did not already apply.

After discussion, both groups agreed that it would be best at this stage to develop a procedure that included all the various options for resolving grievances but which avoided establishing a hierarchy or order of precedence as to the order in which the options should be applied.

[Both groups acknowledge that when flag state laws or labour-supplying state laws provide for exclusive jurisdiction for settlement of disputes between a seafarer and his/her employer such laws will be upheld.]

The following represents the views of both the Seafarers' and the Shipowners' groups, and they are mindful that completion of this procedure will require further input from governments, particularly with regard to the shore-based procedures.

Definition of “grievance”

It was considered that the term “grievance” as used in the Convention should refer to breaches, or allegations of breaches, of the matters specifically covered in the Convention, as accepted and applied by the flag State of the ship on which a seafarer was serving.

The groups did not discuss the actions that might be taken in the event that a particular breach or breaches were “proven”, but clearly this is a matter that must be resolved in due course.

Internal procedures

Grievances should be resolved on board whilst the seafarer raising the grievance is still serving on board. The on-board procedures need to be completed expeditiously and should not delay the seafarer’s normal discharge from the ship.

The on-board procedures for dealing with grievances should normally:

- (a) require the seafarer, in the first instance, to direct any grievance to his head of department;
- (b) the head of department shall then attempt to resolve the matter within prescribed time limits appropriate to the seriousness of the issue;
- (c) if the head of department cannot resolve the grievance to the satisfaction of the seafarer it shall be referred to the master who shall handle the matter;²
- (d) the seafarer should at all times have the right to be accompanied by a friend or wherever practicable union representative;¹
- (e) all grievances and the decision should be recorded and a copy provided to the seafarer;
- (f) if a grievance cannot be resolved on board then it shall be referred ashore to the employer who shall endeavour to resolve the matter within a prescribed time limit and in consultation with the seafarer’s representative;¹
- (g) adequate safeguards on confidentiality should be provided and the seafarers should be protected from victimization for raising grievances in accordance with this procedure.¹ Further consideration of how to achieve this in practice will be required.

It is considered that the procedures should also be available for the resolution of disputes that are not related to standards and requirements of the Convention, e.g. those relating to contracts of employment and collective bargaining agreements.

External procedures

The seafarer has the right to raise a grievance relating to standards and requirements of the Convention with appropriate government officials or agencies or through an appropriate legal system.

If a grievance is raised with a government official or agency the official concerned should inquire whether the on-board procedures have been exhausted. The extent to which the on-board procedures have been utilized should be taken into account when determining how to handle the seafarer’s grievance.

[The relevant government official or agency, or the legal system, which is requested to deal with the grievance will depend upon the circumstances of the case. In addition, the scope of the applicable laws and the effectiveness of the enforcement mechanisms of the flag State, the port State and the seafarer’s country of residence must be taken into account by the seafarer and the seafarer’s representative in deciding on the most appropriate mechanism to use to resolve a grievance.]

² Indicates principles which should be inserted in the mandatory sections of the Convention, i.e. the Regulations or Part A.

[Nothing in these procedures shall in any manner prejudice the ability of the seafarers to exercise basic human rights including trade union rights.]

General comment

A full statement of both the internal and external procedures should be posted on board, in order that all seafarers have the opportunity to familiarize themselves with the procedures. The statement should be in English and the working language of the ship, if different.

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Liste des participants
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