

**High-level Tripartite Working Group
on Maritime Labour Standards
(fourth meeting)**Nantes
19-23 January 2004

Final report**Introduction**

1. The High-level Tripartite Working Group on Maritime Labour Standards (hereafter referred to as the “High-level Group”) met in its fourth session at the Cité des Congrès, Nantes, from 19 to 23 January 2004. This fourth session was held following an invitation of the Government of France and was generously funded through contributions of the French Ministry of Transport, the region of the Pays de la Loire, the Département of Loire-Atlantique and the City of Nantes. It 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 45 Government delegations, with a total of 126 participants, and 30 Shipowners’ and 37 Seafarers’ delegates and advisers. A number of non-governmental delegations were also present. A revised list of participants is attached to this report (Annex 9).
3. The Officers of the High-level Group were :

Chairperson: Mr. J.-M. Schindler (France)

Vice-Chairpersons: Mr. T. Teranishi (Japan)

Mr. S. Hajara (Shipowner member, India)

Mr. B. Orrell (Seafarer member, United Kingdom)

The Officers of the groups were as follows:

Government group

Chairperson: Mr. X. Zhang (China)
Vice-Chairperson: Mr. Yeong-Woo Jeon (Republic of Korea)
Secretary: Mr. G. Smeffjell (Norway)

Shipowners' group

Chairperson and spokesperson: Mr. D. Lindemann (Germany)
Vice-Chairperson: Mr. J. Cox (United States)
Secretary: Mr. D. Dearsley (International Shipping Federation (ISF))

Seafarers' group

Chairperson and spokesperson: Mr. B. Orrell (United Kingdom)
Vice-Chairperson: Mr. T. Tay (Singapore)
Secretary: Mr. J. Whitlow (International Transport Workers' Federation)

Opening of the meeting

4. The meeting was opened by Mr. Dominique Bussereau, French Secretary of State for Transport and the Sea. In his address, he stressed the ambitious task of modernizing and unifying the existing ILO maritime Conventions into a single consolidated instrument. He considered this work as crucial in ensuring that seafarers worked under decent conditions, thus playing their essential role in maritime safety. He referred to the progress of port state control in France and also to the globalized nature of the shipping industry which justified the adoption of this new Convention. France recognized the need for global maritime labour standards and had just ratified eight of the most recent ILO maritime Conventions, including the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185). This was a demonstration of France's commitment to the goals of the ILO and especially to its maritime labour standards. Mr. Bussereau therefore wished the meeting a successful conclusion of its work in preparation for the forthcoming maritime Conferences in 2004 and 2005.
5. A message from the Director-General of the ILO, Mr. Juan Somavia, was shown on the screen. He thanked the Government of France for their invitation to hold this meeting in the City of Nantes. He paid tribute to the achievements of the maritime sector in the ILO, i.e. the Geneva Accord and the support that this agreement had received from governments. He underlined the importance of the new proposed Convention for a globalized shipping industry. He concluded that this Convention would be, for the ILO, evidence of an innovative and creative tripartism. He expressed his gratitude to the Government of France for its support of the ILO's maritime activities and the invitation to hold that session of the High-level Group in Nantes.

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6. Ms. Sally Paxton, Executive Director, Social Dialogue, responsible for maritime activities in the ILO, expressed her appreciation for the work done by the High-level Group. She also thanked the French authorities for having permitted this fourth meeting of the Group which had to complete the preparation of the draft text of the proposed Convention to be submitted to the Preparatory Technical Maritime Conference (PTMC) in September 2004.
 7. The meeting was also addressed by Mr. Jean-Marc Ayrault, Deputy Mayor of Nantes, Ms. Monique Papon, Vice-President, Conseil Général, Loire Atlantique, Mr. Jean-Luc Harousseau, President, Conseil Général des Pays de la Loire, who welcomed all the participating delegates to the City of Nantes, the department of Loire-Atlantique and the region of the Pays de la Loire.
 8. The discussions were based on the preliminary second draft for a consolidated maritime labour Convention submitted by the Office (TWGMLS/2004/2), which was accompanied by a commentary (TWGMLS/2004/1). The ISF made available a trilingual version (English/French/Spanish) of the preliminary second draft (TWGMLS/2004/9), and also made a submission to the High-level Group. An example of the proposed maritime labour certificate and declaration of compliance was prepared by the Government of the United States at the request of the Office (TWGMLS/2004/8).
 9. The representative of the Government of China and Chairperson of the Government group expressed his sincere thanks to the Government of France for sponsoring this fourth High-level Tripartite Working Group and to the Office for the excellent work done in preparing the preliminary second draft. While efforts still needed to be made to attain the objective of a simple and user-friendly Convention, the Government group considered that great progress had been achieved. Governments had welcomed the opportunity to deal with identified problem areas in the working parties that had been proposed by the Officers of the High-level Group, but would be suggesting a few changes to their proposed terms of reference. He stressed that the Group had supported the principle of a level playing field of universally applicable provisions with a strong system of enforcement and had recognized that this might entail modification of national legislation.
 10. Similarly, several other Government representatives expressed their gratitude to the Government of France for hosting this meeting. They affirmed their full commitment to the proposed Convention and hoped to achieve a final outcome which would be widely ratified. A number of Government representatives expressed their support for a proposed text of the Government of Greece condemning the detention of the crewmembers of the "Tasman Spirit" by Pakistan.
 11. The Chairperson summed up the history of this High-level Group and reminded the meeting of the key priorities of this meeting. The meeting was not a drafting exercise, but should allow the Office to produce a good basis for the PTMC, to be held later in the year. Working parties would be formed to allow in-depth discussions which would shape the document. The speaker noted that wide interest both from inside as well as outside the ILO was given to this meeting and commended the delegates on their achievements so far.
 12. The Government spokesperson (China) raised a number of questions. Government representatives agreed that the working parties should concentrate on providing clear and precise instructions to the Office on substance rather than become a drafting exercise looking for a particular wording. Each working party needed to focus on the essence of the recommendations they would be providing to the plenary, rather than fine-tuning the Convention with a particular wording at this stage. Government representatives would make a number of comments at the appropriate stage in each of the working parties. For example, there would need to be coordination between Working Party B on Social Protection and Working Party D on Title 4. With respect to Working Party C, he noted that

“seafarers’ employment agreements” should have been in square brackets and that other wording would be preferable in Standards A5.1 and A5.2. There was also a need to ensure a distinction between the nature of port and flag state responsibilities. With respect to Working Party D, the main concern was to avoid overlap with Working Party B on Social Protection and take account of the work of the IMO-ILO joint working group on shipowner liability for abandonment, death and disability.

- 13.** The Shipowner spokesperson referred to the seven key issues and principles contained in the submission of the ISF. These were: that the text would be useless unless widely ratified; that the text was too long containing superfluous obligations; that the relationship between the Regulations and Part A and Part B should be clear and unambiguous; that more work was needed on the definition of a seafarer; that the Shipowners’ group were unconvinced about repeating references to Conventions and had reservations on several Articles; that there was still major work to do on social protection; and that many Titles still needed further refinement.
- 14.** The Seafarers’ group thanked the IMO and the ILO for sending letters to the Government of the United States requesting that consideration be given to the special needs of seafarers with regard to facilitating shore leave and transit to and from ships. It was hoped that this would receive sympathetic consideration in the United States and that a satisfactory solution could be found.
- 15.** The Seafarers remained committed to the original objectives: the adoption of a new Convention which was clear, easy to ratify and implement, an instrument that would contain meaningful minimum standards which would be effectively implemented in practice and the establishment of a level playing field in shipping. A seafarer’s bill of rights should secure decent living and working conditions for seafarers. Seafarers were currently enjoying the rights and principles which are established by the mandatory instruments which are in force. The consolidation process should not deprive them of those rights. If the new Convention was to further the Organization’s Decent Work Agenda, it needed also to improve the current situation and could not merely legitimate the status quo in which many seafarers are marginal workers and subject to gross exploitation.
- 16.** The Shipowners have recognized the Seafarers’ group’s “preparedness to allow a considerable amount of detail to be transferred to a non-mandatory status – more than the shipowners’ side expected”. The Seafarers have made substantial concessions. However, there are a number of issues which are so fundamental to us that they are not negotiable. The rights of seafarers cannot be given away and compromised on fundamental principles. The trade off for our flexibility was the establishment of a uniform standard which would in practice be enforced and which would make a real difference to the conditions of certain disadvantaged seafarers. Flexibility should not render the new Convention meaningless and unenforceable. If a satisfactory link between Part A and Part B was not found, it might be necessary to consider cascading items back up into Part A so that seafarers would not be deprived of the rights they currently enjoy. Governments needed to be prepared to make some changes to their laws. The lowest common denominator and the adoption of meaningless provisions was not acceptable.
- 17.** The High-level Group agreed to the establishment of four working parties. Their terms of reference (attached in Annexes 1-4) were adopted, although the groups were asked to consider them in a flexible manner in order to proceed as efficiently as possible.
- 18.** The High-level Group approved the officers of the working parties as follows:

Working Party A on Accommodation

Chairperson: Captain D. Bell (Bahamas)

Shipowner spokesperson: Mr. P. Sprangers
assisted by: Mr. D. Tongue

Seafarer spokesperson: Mr. T. Tay
assisted by: Mr. A. Verhoef

Working Party B on Social Protection

Chairperson: Ms. B. Solling-Olsen (Denmark)

Shipowner spokesperson: Mr. T. Springett
assisted by: Mr. G. Hollaar

Seafarer spokesperson: Mr. H. Berlau
assisted by: Ms. S. James

Working Party C on the Certification and Inspection System

Chairperson: Mr. E. Sommer (United States)

Shipowner spokesperson: Mr. S. Hajara
assisted by: Ms. N. Wiseman

Seafarer spokesperson: Mr. B. Orrell
assisted by: Mr. J. Whitlow

Working Party D on other areas of difficulty

Co-Chairpersons: Mr. M. Shinguadja (Namibia)
Mr. G. Smefjell (Norway)

Shipowner spokesperson: Mr. D. Lindemann
assisted by: Mr. D. Dearsley

Seafarer spokesperson: Mr. P. Crumlin
assisted by: Mr. J. Bainbridge

19. The representative of the Government of the United States gave an outline presentation of the document entitled *United States comments on the preliminary second draft for a consolidated maritime labour Convention*.

Working Party A: Accommodation

20. The Chairperson of Working Party A, "Accommodation, recreational facilities, food and catering", identified three problem areas concerning the scope of application: (a) grandfather clause for existing ships; (b) tonnage variations for smaller ships; and (c) variations for passenger ships.
21. The Working Party affirmed the need for a grandfather clause. As far as practicable without excessive efforts, the provisions should apply to existing ships. The Working Party agreed that during the text review the requirements would be read as only applying to new

ships. The areas where provisions could also be applied to existing ships would be specifically identified at a later stage. It was decided that a grandfather clause with a wording to be proposed by the Office should be inserted in Regulation 3.1.

22. The Working Party also agreed on the necessity of tonnage variations for smaller ships in certain cases. However, the new instrument should state that tonnage limits were not expressed in GRT (gross registered tonnage) according to the Oslo Convention on a Uniform System of Tonnage Measurements of Ships of 10 June 1947 but rather in GT (gross tonnage) under the 1969 International Tonnage Convention (ITC, 1969), which had been recognized at international level. It was suggested to introduce the transitional provisions of the SOLAS Convention for the conversion from GRT into GT according to which 1,600 GRT was equivalent to 3,000 GT. The High-level Group had already recommended a grandfather clause regarding tonnage limits. The Seafarers' group argued that every effort should be made to avoid any reference to tonnage. If any tonnage thresholds were needed, the new tonnage Convention which used the term GT should be used.
23. The Working Party further affirmed the need for variations for passenger ships in certain cases. In this context, it sought the legal advice of the Office, as to whether it was legally correct that some provisions in the mandatory Part A were valid for all ships and were thus more rigid, whereas the recommendatory Part B provided for exceptions for passenger ships and were thus more flexible. The Office informed that this was due to a drafting mistake, as the intention had always been to build more flexibility into Part A, and asked the Working Party to flag the contradictory provisions.

Regulation 3.1. – Accommodation and recreational facilities

24. The Working Party agreed that accommodation should be “provided” and “maintained”.
25. The Shipowners' group requested a change from the term “decent” in the Regulation and the Standard, since it seemed too subjective and imprecise, and suggested to use “appropriate” instead. The Working Party considered that it seemed difficult to delete it, as the term “decent” was part of the ILO terminology and was used throughout the consolidated Convention. The Shipowners' group withdrew its amendment.
26. The Shipowners' group requested that any amendment to the Code relating to the provision of crew accommodation be only applied to new ships. This proposal intended to expand the grandfather clause for amendments from the mere structure of accommodation to the provision of accommodation. A Government representative cautioned that this would imply that even issues not related to the construction of the ship would automatically not apply to existing ships. The Seafarers' group opposed this proposal, and the issue was left in square brackets.

Standard A3.1. – Accommodation and recreational facilities

27. A Government representative proposed to substitute the expression “in consultation” by “after consultation”, since the competent authority should wait for the end of the consultation of shipowners' and seafarers' organizations. The Working Party agreed to this amendment throughout the document. As to the obligation to give due consideration to Part B, the Shipowners' group proposed to add “as practicable”. The Seafarers' group opposed this proposal since this would mitigate the obligation. The issue was left in square brackets.

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28. Some Government representatives criticized that the concept of “vibration” was only raised in the list of paragraph 4 of items to implement, while in the rest of Title 3 there were neither requirements nor guidance concerning vibration. With reference to an existing ISO standard on whole-body vibration, the Working Party agreed that text relating to vibration should be inserted into paragraph 5 at a later stage.
 29. It was proposed to delete paragraph 4. The emphasis put on certain issues was superfluous, since the competent authority had to implement all issues. Paragraph 4 had become redundant with the inclusion of paragraph 5 and did not add value. On the other hand, a Government representative explained that this provision would be important for the shipbuilding industry and the classification societies as well as for the administration because it listed clearly and precisely their obligations. The Seafarers’ group cautioned that paragraph 4 constituted the obligation to implement the listed issues, while paragraph 5 was silent on implementation and paragraph 2 only required to take Part B into consideration when implementing Part A. Finally, it was proposed to merge paragraphs 4 and 5 by organizing the subparagraphs of paragraph 5 in chapters with titles taken from the list of paragraph 4. The Seafarers’ group agreed to merge the two paragraphs as long as the thrust of paragraph 4 was kept, e.g. by keeping its “chapeau”. The issue was left in square brackets.
 30. The Shipowners’ group considered that the provisions on bulkheads, insulation and fire prevention were duplicative as already covered by the SOLAS Convention. However, the meeting agreed to keep the requirement of insulation and gas-tight and watertight bulkheads, as this was not specifically provided by SOLAS. As to the reference to SOLAS concerning fire-prevention measures, the Seafarers’ group preferred to retain it for ease of reference. However, some Government representatives argued that the reference did not add value but rather created difficulties due to the recommendatory nature of the mentioned IMO codes of practice. The issue was left in square brackets.
 31. A Government representative felt that for such an important issue as lighting, which was raised in paragraph 4, the mere reference to proper lighting was insufficient, and suggested to move the first paragraph of Guideline B3.1.4 into Part A, thus introducing a requirement for natural and artificial light in sleeping rooms and mess rooms. The Working Party accepted this proposal.
 32. The Shipowners’ group invoked that not all ships could have air conditioning and proposed the deletion of the word “fresh” preceding “air conditioning”. The Seafarers’ group opposed this proposal arguing that all modern ships, whether small or big, had air conditioning. Air conditioning was essential at sea and could also provide heating. Some Government representatives underlined that only ventilation and heating were necessary on every ship, and that it would be problematic to provide air conditioning for all ships. The Chairperson recalled that the text only dealt with new ships, and that ships of less than 200 or 500 GT would be excluded from the Convention. A Government representative informed that the term “fresh” meant “recycled” as opposed to “confined” air. As a compromise, it was proposed to insert an exemption drawn from Recommendation No. 140, Paragraph 1, for ships regularly engaged in trade where temperate climatic conditions did not require air conditioning. The issue was left in square brackets.
 33. It was proposed to delete the provision concerning mosquito screens, as they were superfluous in air-conditioned ships. A Government representative and the Seafarers’ group cautioned that malaria was a major cause of mortality according to the WHO, and that air conditioning did not stop mosquitoes. The Shipowners’ group proposed to add “as far as necessary” indicating that in air-conditioned ships openings were closed and accommodation was sealed. An alternative amendment was submitted, according to which ships should be fitted “with appropriate devices, such as protective screens at any opening

to the exterior, e.g. a permanently open-side scuttle or door or intake of ventilation or air conditioning”. The rationale was that in ports side scuttles could be left open permanently. Considering that the examples enumerated in the proposal rather represented language for the recommendatory Part B, the Working party agreed to delete them and include them into Part B at a later stage, as well as to incorporate wording satisfying the Shipowners’ concern.

- 34.** The Shipowners’ group indicated problems with various requirements as regards passenger, small and specialized ships. While the default was established to be one individual sleeping room for each seafarer, an exception for passenger ships was granted by moving paragraph 1 of Guideline B3.1.6 to Part A, and flexible wording for the competent authority concerning small and specialized ships was inserted. The Working Party also accepted to grant an exemption for passenger ships with respect to the location of the sleeping rooms. Furthermore, the Working Party reached a consensus that the competent authority could, after consultations with the social partners, permit exceptions for small ships regarding the location of mess rooms apart from sleeping rooms. The Shipowners’ group proposed to add the threshold of 3,000 GT to the term “small ships” which was used in certain provisions. The threshold was clearer and essential to prepare the installations inside the vessels. This was supported by several Government representatives because the translation of this requirement into national legislation needed a figure, and shipowners had to know when they had the right to ask for an exemption. Other Government representatives and the Seafarers’ group preferred to keep the present text affirming that tonnage thresholds had been removed throughout the draft Convention, and that the term “small ships” provided for more flexibility. The issue was left in square brackets.
- 35.** The Working Party decided to delete the exemption of ships with lower tonnage from the noise level requirement, as noise was a major issue for all ships. The Shipowners’ group suggested moving the reference to IMO resolution A.468(XII) on noise levels to the non-mandatory Part B. Another suggestion was to include a general reference to the appropriate IMO resolution in the Standard, and insert a specific reference to IMO resolution A.468 in Part B. The Working Party sought advice from the IMO representative as to whether the inclusion of a recommendatory IMO resolution into the obligatory Part A of the consolidated Convention would be problematic. He answered that the resolution was in principle non-mandatory. If “should” was used when referring to it in a Convention, the resolution would remain of a recommendatory nature and, if “shall” was used, the resolution would become mandatory. Finally, he cautioned that, if an IMO resolution was referred to in an ILO Convention, the amendment procedure of the IMO would apply to it. However, all countries interested in the maritime field at the ILO were Members of the IMO and would be able to participate in the IMO amendment procedure. It would even be possible to create a joint IMO-ILO working group. A Government representative remarked that the procedures and objectives of the IMO were quite different from those of the ILO. Moreover, after studying the Preamble of the Code on noise levels, the Working Party concluded that the Code had not been designed to be incorporated by reference or repetition and become mandatory, and was not applicable to all types of ships and to ships of less than 1,600 GT. The Shipowners’ group and some Government representatives further considered that it was unacceptable to establish a separate inspection system as required by the Code on noise levels, and that the term “maximum noise levels” would lead to non-compliance in case of instantaneous exceeding of noise levels in confined spaces. Furthermore, the IMO planned to review IMO resolution A.468(XII) in order to take into account rest periods, etc. In light of these discussions, the Working Party decided to avoid the term “maximum noise levels”, and to merely add a general reference to the appropriate IMO instrument without using the word “shall”. The issue was left in square brackets.

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36. The requirement of frequent reviews and eventual updates of recreational facilities was considered to be detail which belonged to Part B. As to the permissive clause on variations, the Shipowners' group proposed to add the concept of fair application and delete the "not less favourable" clause, and the requirement that the two sides be in agreement. Since this provision was primarily an obligation to Members to arbitrate social problems, the rationale was to provide alternative text that might give rise to a solution in the case of impasse. The Seafarers' group disagreed indicating that the addition of the words "fairly applied" could not prevent the facilities from becoming less favourable. The Working Party decided to retain the "not less favourable" clause, to refer to fairly applied variations and delete the requirement of an agreement between the two sides.

Guideline B3.1. – Accommodation and recreational facilities

37. A Government representative expressed concerns about the term "approved" material used throughout the text. The approval system might be difficult, as a material approved by SOLAS might not correspond to the material approved by an ILO Convention. It was countered that a material could conform to both SOLAS requirements on fire prevention and ILO provisions. Furthermore, when used in Part B, the term "approved" did not refer to an international approval according to a universally accepted standard. The extent of approval would rather depend on the individual administration. The Working Party decided to keep the term "approved" in Part B but to avoid using it in Part A.
38. The Working Party agreed to delete references to renewal, restoring or easy cleaning. The rationale was that Regulation 3.1, paragraph 1, and Standard A3.1, paragraph 7, i.e. mandatory general requirements of decent accommodation and its maintenance, would suffice. Furthermore, Title 3 did not explicitly relate to the renewal, restoring or easy cleaning of all accommodation components, which gave the impression that the rest did not need to be maintained in a decent state.

Guideline B3.1.1. – Implementation of Standard A3.1: Construction and design

39. The Shipowners' group suggested to delete "implementation of Standard" from the title of all Guidelines, as it was of no use. The Office explained that this addition intended to distinguish Guidelines for the implementation of Standards from additional Guidelines. The issue was left in square brackets.
40. The Seafarers' group proposed to transfer the provision on the minimum headroom to Part A, since it was of utmost importance for the seafarers and a mandatory requirement of Convention No. 133. Some Government representatives warned that such transfer might have serious implications such as PSC checks concerning height and consequences in case of flag change. Moreover, Standard A3.1, paragraph 5(a), already dealt with headroom, and specific figures should stay in Part B. Other Government representatives affirmed that matters on construction should always be in the mandatory part. The Shipowners' group cautioned that the pertinent exemptions should also be transferred to Part A, as the exception to a binding requirement could not be recommendatory. The amendment was adopted.
41. The Seafarers' group suggested to increase the minimum headroom from 198 to 208 cm, reminding that the Joint Maritime Commission (JMC) had given the mandate to improve old Conventions. The Seafarers' group stated that they would try to provide statistics that would confirm that the average height had increased since the entry into force of the existing Convention and would bring these statistics to the attention of the PTMC. The Shipowners' group rejected the Seafarers' proposal stating that 198 cm was the figure originally required in Convention No. 133. While the genuine height would be 208 cm due

to the installation of sprinklers, the clear height should stay 198 cm. Some Government representatives also opposed the proposal indicating that the headroom of 198 cm required in Convention No. 133 only applied to ships over 1,000 tonnes, and that the threshold of 208 cm was definitely too high for Asian countries. The Chairperson recalled that thorough justification was needed to upgrade existing Conventions. The issue was left in square brackets.

Guideline B3.1.2. – Implementation of Standard A3.1: Ventilation

42. For hygiene purposes, a Government representative suggested that air-conditioning systems should be cleaned and disinfected easily so as to prevent the spread of disease. The relevant text was left in brackets.

Guideline B3.1.3. – Implementation of Standard A3.1: Heating

43. A Government representative suggested adding new text regarding the prohibition of the use of steam as a primary medium of heat transport within the accommodation. The issue was left in square brackets.

Guideline B3.1.4. – Implementation of Standard A3.1: Lighting

44. The Shipowners' group requested that an exemption for natural light in seafarer accommodation of passenger ships be inserted. This was accepted.

Guideline B3.1.5. – Implementation of Standard A3.1: Noise control

45. The Shipowners' group proposed only to refer to IMO resolution A.468(XII) on noise levels but not to repeat its content in an inconsistent manner, as this was duplicating IMO activities. They suggested deleting the Guideline and only including the reference. A Government representative supported the amendment and recalled that Guidelines should generally only be there to underpin and help implement Standards. Thus, at least the first three paragraphs relating to research on noise should be deleted as they were irrelevant for the implementation of Part A. The Seafarers' group rejected the proposals indicating that seafarers needed to be informed and that the text corresponded partly to the wording of Recommendation No. 141.
46. The Seafarers' group suggested adding the term "vibration" throughout the Guideline in order to deal with noise and vibration in both Part A and Part B. The Shipowners' group agreed in principle with the caveat that it was not always appropriate to add "vibration" to the initial text on noise control. However, for the purpose of consistency the two issues should also be merged in Standard A3.1 by adding the term "vibration" to Standard A3.1, paragraph 5(o). Several Government representatives preferred to have separate requirements on vibration since mixing both issues was not useful for the administrations. The issue was left in square brackets.
47. The Seafarers' group requested that the references to "research" in the first three paragraphs be changed into "review". The rationale was that Recommendation No. 141, which dealt with research, had been created at a period where there was not enough information on the issue of noise on board ships. In the meantime, the data resulting from the research undertaken had been already integrated into the IMO resolution so that an ongoing review would completely suffice. The issue was left in square brackets.

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48. A Government representative affirmed that the issues of instruction of seafarers in the noise hazards and provision of ear plugs thematically did not belong to accommodation but rather to the working area. Thus, it was proposed to transfer these provisions to Title 4, Guideline B4.3, "Health and safety protection and accident prevention". The issue was left in square brackets.
49. The Shipowners' group declared that the addition of the concept of vibration was absurd in the specific cases of use of noise-absorbing materials and insulation of workshops from engine-room noise. Vibration-absorbing materials did not exist, and workshops inside engine rooms could not be insulated against vibrations of engine rooms. The Seafarers' group countered that workshops were not always located in engine rooms. The issue was left in square brackets.
50. The Shipowners' group reiterated the inappropriateness of the term "maximum noise levels" because of its incapacity to take into account fluctuating situations. The Working Party concluded that the text of the pertinent IMO resolution referred to "limits for noise levels" which were assessed by instantaneous/fluctuating/continuous variations, and that it would be too simplistic to use "maximum noise levels". It was thus agreed to include that the limits for noise levels should be in conformity with the appropriate IMO instrument, with a wording which would include an amended IMO resolution.
51. As for the table on noise levels, the Shipowners' group and a few Government representatives requested to delete it, in view of the fact that the IMO planned to review the present resolution, and that seafarers did not have the equipment to actually measure the noise levels. The Seafarers' group opposed the amendment, considering the table necessary for easy reference and convenience of seafarers. The only alternative would be to include a requirement in Part A that the table be easily accessible on board a ship. As a compromise, a Government representative suggested to include wording in Part B according to which the IMO instrument concerned should be available on board for seafarers in an adopted working language of the ship. Due to disagreement on the mandatory or recommendatory status of such a provision and on the languages in which the instrument should be translated, a decision could not be reached. The issue was left in square brackets.

Guideline B3.1.6. – Implementation of Standard A3.1: Sleeping rooms

52. As to the issue of fitting the berths with a sliding mechanism to enable the seafarer to be accompanied by his or her partner, the Shipowners' group requested that this provision be deleted as it was already covered by the general Guideline B3.1.12, paragraph 6, according to which consideration should be given to the possibility of allowing seafarers to be accompanied by their partners where practicable. A sliding mechanism for every berth would result in a minimum width of berths of 130 cm which was unacceptable. Furthermore, the number of partners able to accompany seafarers was limited by the SOLAS requirements of lifesaving appliances. A Government representative declared that there was no need for this Guideline as it did not help implement the standard requiring a berth per seafarer. The Chairperson indicated that it had been agreed only to increase requirements if they were commonly agreed upon. The Seafarers' group countered that the JMC resolution expressly recommended to improve the existing Conventions where necessary. Moreover, the Terms of Reference of this Working Party explicitly mentioned the accommodation of seafarers with partners when referring to current needs. As a compromise, the Working Party agreed that adequate berth arrangements should be provided making it as comfortable as possible for the seafarer and his/her partner.

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53. The Shipowners' group and a Government representative considered the proposed provision of a bathroom and toilet for every sleeping room as too difficult, and underlined that the objective was a level playing field. They suggested to either stay with the original wording of Convention No. 92 or to insert a derogation for ships where the size, activity and layout made this unreasonable and impracticable. The issue was left in square brackets.
54. The proposed provision of a floor area per sleeping room of 7.5 m² entailed lengthy debates. The Shipowners' group and some Government representatives rejected the proposal, as it represented the double of the figure required in Convention No. 133 for ships of 1,000 to 3,000 tonnes (3.75 m² per rating). This Convention should set minimum standards in order to achieve widespread ratification. It was suggested to stay with the original wording of Convention No. 133 which allowed for variations according to ship size. The Seafarers' group pointed to the fact that the number of seafarers on board ships was smaller nowadays so that there would be more space for accommodation. The figure of 3.75 m² corresponded to the size of a double bed and was sometimes considered inappropriate for prison cells. It denounced that, since accommodation was fully counted in the measurement of ships, shipowners tended to reduce accommodation space even more, in order to pay less port dues. The improvement of existing instruments had been recommended in the JMC resolution and was feasible, since the new figure would only apply to new ships. A Government representative supported the proposal of the Seafarers' group indicating that the figure of 7.5 m² would only apply to ships with single-occupancy cabins according to Standard A3.1, paragraph 5(g), i.e. not to passenger, small or specialized ships but rather to big cargo ships. The issue was left in square brackets.
55. The Working Party agreed to move the provision on the minimum inside dimensions of a berth to the mandatory Part A, since it was important and prescriptive in Convention No. 133.

Guideline B3.1.7. – Implementation of Standard A3.1: Mess rooms

56. The Shipowners' group submitted an amendment according to which mess rooms might be common or separate, subject to the approval of the competent authority and after consultation of the social partners. It explained that such provision would give the flexibility to provide separate mess rooms for seafarers and officers, which was still frequent practice. The Seafarers' group preferred to stay within the limits set out in Convention No. 92. The issue was left in square brackets. The Working Party agreed to remove the provision dealing with catering personnel, as the separate treatment of seafarers and catering staff was considered outdated. While the Seafarers' group proposed to increase the floor area of mess rooms per seafarer to 2 m², the Shipowners' group preferred to stay with the wording of Convention No. 133 which referred to 1 m². The issue was left in square brackets. Similarly, there was disagreement as to whether the permissive clause for exceptions should be deleted or retained.

Guideline B3.1.8. – Implementation of Standard A3.1: Sanitary accommodation

57. The Seafarers' group proposed that a minimum of one water closet and one tub should be available for every four persons. The Shipowners' group preferred to stay with the original wording of Convention No. 133 which specified six persons. The issue was left in square brackets.

Working Party B: Social protection

58. The Chairperson introduced the agenda of the Working Party and indicated that its mandate was to give clear indications on social security to the Office for a revised draft to be submitted to the PTMC in September 2004. The Chairperson further pointed out that the social security provisions in the current Office text were based on a proposal put forward by the United Kingdom and that it was the first time that these provisions would be discussed.
59. The discussions were focussed on Regulation 4.5 on the assumption that short-term social protection would be provided for in Regulations 4.1 and 4.2, whereas long-term social protection would be dealt with under Regulation 4.5. The Working Group also noted that there was a link between the provisions of 4.5 and those in 4.1 and 4.2, particularly in relation to long-term occupational injuries and illnesses connected with employment on board.
60. The Shipowner spokesperson said that they would have preferred social security protection not to be included in this Convention at all. Although they were in favour of providing social protection to all seafarers and that shipowners would contribute to social protection schemes, they were reluctant to include complex provisions on social security in the Convention as they would be an obstacle to ratification. Moreover, he pointed out that the Social Security (Minimum Standards) Convention, 1952 (No. 102), could be the reference instrument for social security and, therefore, seafarers should be covered by this Convention. It would provide a better means, especially taking into account the low ratification rate of those Conventions which especially provide for social security for seafarers. After the explanation of the Office that Convention No. 102 excluded seafarers from its scope of application, he nevertheless preferred Convention No. 102 to be revised accordingly, rather than insert social security protection in the draft Convention. He therefore put forward for discussion the question of whether the new Convention should include provisions on social security.
61. The Seafarer spokesperson emphasized the importance of social protection for seafarers, irrespective of their nationality or place of residence. Many seafarers, however, were still unprotected. He pointed out that a Convention with wide ratification would be meaningless if it had no substance and welcomed the social security provisions of the Office text. He therefore strongly urged inclusion of social security protection in the Convention and recommended that such protection should be not less favourable than for shore-based workers.
62. The representative of the Government of the United Kingdom explained that the proposal of his Government, on which the Office text is based, aimed at guaranteeing social protection to seafarers, irrespective of the conclusion of bilateral or multilateral agreements. In order to achieve this aim, the Convention provides for the possibilities of different responsibilities for the flag State, the country of residence and the shipowner.
63. The majority of Government representatives supported the inclusion of some form of social security provisions in the Convention. Several Government representatives regarded the current Office text as a flexible instrument to satisfactorily provide social security coverage for seafarers and some even saw the need for more protection in the form of the compulsory provision of employment injury benefits in the Convention or of having a minimum of three of the nine contingencies mentioned in Standard A4.5.5 compulsory. Some Government representatives pointed out minor difficulties in the application of social security provisions in the Convention. Only a few Government representatives saw major difficulties with regard to the application of social security provisions. Although they strongly supported the need for social protection for seafarers, they saw difficulties in

the practical implementation of such provisions. After long discussions and in order to find a way forward, the Shipowner spokesperson agreed with the inclusion of social security provisions in the Convention, although his group would have preferred social security not to be covered by the Convention, other than the matter contained in Regulations 4.1 and 4.2.

- 64.** The Working Party further discussed the responsibilities which should be assigned to the flag State, the country of residence and shipowners by the new Convention with regards to short-term and long-term benefits. The Shipowner spokesperson expressed the view that the country of residence of the seafarer should be responsible for the provision of long-term social protection and that it would be unacceptable to fix social security in the employment agreement. The Seafarer spokesperson regarded social protection as the primary responsibility of the flag State and the shipowners.
- 65.** The Chairperson asked participants to reply to the following four questions:
- (1) Who should be responsible for long-term social protection?
 - (2) What was the role of the flag State?
 - (3) How to ensure that all seafarers were covered, especially those whose country of residence did not have an adequate social protection scheme?
 - (4) Which branches of social protection should be included? Should there be at least a minimum number of branches covered?
- 66.** The Shipowners' group stated that, since there seemed to be support for the inclusion of long-term social security in the Convention, it felt that the discussion of the Working Party should be on the basis of their proposed text. It reiterated its position that the responsibility for providing long-term social protection benefits should rest with the country of residence.
- 67.** The Seafarers' group rejected the Shipowners' text and the proposal to use that text as the basis of discussions. They pointed out that the primary responsibility for the supervision of such protection lies with the flag State, but saw the provision of social security as a shared responsibility between the flag State, the shipowners and the country of residence. With regard to the responsibility of short-term protection, it felt that the responsibility lay with the shipowners.
- 68.** All the Government representatives were of the view that long term social security should be provided by the country of residence of seafarers. However, many Government representatives suggested that the flag States should be responsible for requiring that all seafarers be covered by social security, especially short-term issues covered in Regulations 4.1 and 4.2, controlling the application of national law on vessels and ensuring that the appropriate contributions are paid. Some drew attention to the fact that flag States should ensure that seafarers whose country of residence did not have a system were also covered, with one Government representative suggesting that there should be an international system to cover those situations. Most Government representatives did not express clear views on the branches of social security which should be available to seafarers as a minimum. A few suggested that three branches should be a minimum. Many Government representatives described their national systems which generally provided protection to their nationals and in some cases to all seafarers aboard their vessels. Some pointed out that many countries did not have an appropriate social security system at all.
- 69.** While the role of the flag State was seen by some Government representatives as being mainly to provide for short-term protection and carrying out relevant inspections on ships,

other Government representatives saw the flag state responsibilities as also including requiring long-term social security cover for seafarers as well as the supervision and monitoring of coverage in this respect.

- 70.** The Seafarers' group stressed that it would not like to see any seafarers without long-term cover for social security and especially those whose countries of residence did not have relevant social security systems. Ships could not be simply considered as "floating factories" and the same type of system applied as for shore-based workers. Special consideration had to be given to the particular characteristics of the industry.
- 71.** The Working Party discussed at length which text should be the basis for the discussion of Regulation 4.5. It decided that the Office text would be the basis for discussion. The Shipowners' group introduced its alternative text from the paper which it had submitted to the Working Party (see Annex 5). The Seafarers' group and four Government representatives supported the Office text. The Shipowners' group and seven Government representatives supported the text submitted by the ISF. A representative of the Government of France made a compromise proposal (see Annex 6) which was supported by six Government representatives. However, the Seafarers' group and the Government representatives who had supported the Office text stated that they could also support the French proposal. The Working Party could not come to any agreement on a text for Regulation 4.5.
- 72.** With respect to Standard A4.5, the Shipowners' group introduced alternative provisions (see Annex 5) for the whole of the Office text and explained, as before, its reasons for this replacement. The Seafarers' group rejected the Shipowners' alternative text and a representative of the Government of France indicated that it would like Standard A4.5 of the Office text to be replaced by the provisions which his Government had proposed as a compromise (see Annex 6).
- 73.** Some Government representatives and the Seafarers' group supported the French proposal whereas some Government representatives agreed with the Shipowners' alternative text.
- 74.** With regard to Standard A4.5, paragraph 2, the Seafarers' group proposed moving the wording of subparagraph (d) in the Office text to the end of the first sentence of paragraph 2. The representative of the Government of the United Kingdom further developed this amendment by suggesting to delete (c) and replace the word "or" of subparagraph 2(a) by the word "and", which would make the wording of the former subparagraph 2(d) unnecessary. He further added at the beginning of subparagraph 2(b) the wording "unless a bilateral or multilateral agreement between two or more Members provides otherwise". The amendment of the representative of the Government of the United Kingdom was supported by several other Government representatives but was not accepted by the Seafarers' group. One of these supportive Governments wanted, in addition in paragraph 5 of the Office text, an explicit reference to Convention No. 102, since the social security part of the new Convention should cover the contingencies defined by Convention No. 102. The Seafarers' group and other Government representatives confirmed the necessity of a reference to Convention No. 102 and insisted that a minimum of three branches of Convention No. 102 needed to be mandatory. Several Government representatives proposed that one of these compulsory branches should be employment injury benefit (short term and long term) and one Government representative proposed that the other compulsory branches could be medical-care benefit and sickness benefit.
- 75.** Following these amendments, there was a discussion as to whether social protection should be provided, inter alia, through the employment agreement as stipulated in paragraph 2(a) of the Office text. The representative of the Government of the United Kingdom saw the need for this subparagraph due to the overlapping of the provisions of Regulations 4.1 and

4.2, on the one hand, and Regulation 4.5, on the other hand. However, it suggested that paragraph 2(a) of the Office text should be replaced by Standard A4.5, paragraph 4 of the proposal of the French Government (attached in Annex 6). The representative of the Government of France explained that in his proposal the employment contract would only specify the applicable social security system while the flag State would have to ensure that the required contributions be paid. The Shipowners' group rejected the French proposal as it should not be the responsibility of the flag State to ensure that the required contributions were paid. This would fall much more under the responsibility of the country of residence where the seafarer would be insured. The representative of the Government of France further explained that, in the proposal, in case the seafarer was not covered by any social security system, the employer would have to pay the relevant contribution to a scheme which would be selected by the ILO's JMC. To have established such an international scheme would further avoid seafarers being subject to many different social security systems. The Seafarers' group and some Government representatives welcomed the French proposal, especially as it would guarantee social security protection to seafarers who otherwise would not be covered. The Seafarers' group were not against such an international scheme; however, it would prefer more flexibility with regard to such a scheme and saw difficulties for the JMC concerning the establishment of such a scheme. It also referred to collective bargaining as an important component which may not be left out. It suggested amending Standard A4.5, paragraph 7, of the French Government's proposal (Annex 6) which covers this issue, to read: "In the case where there is no applicable national social security system, the flag State must ensure that seafarers are covered by its own scheme or one nominated by it." Several Government representatives thought that such an international scheme and its implementation needed further consideration. The representative of ICMA proposed that such a fund could be initiated under the responsibility of the Tripartite Maritime Committee referred to in Article XIII of the new Convention.

- 76.** The Shipowners' group rejected the proposal on a safeguard for seafarers who are not covered in their country of residence with the argument that not all seafarers wanted to be covered by social security and prefer to spend their income differently than paying insurance contributions. In reply, the Seafarers' group confirmed once again the urgent need for social security coverage for all seafarers.
- 77.** When discussing Guideline B4.5 of the Office text, the Shipowners' group submitted its alternative to the Office text (see Annex 5), whereas the Seafarers' group supported the Office text. It wanted the branches of social protection to be articulated in the mandatory part of the Convention – the Shipowners' group's alternative text had moved them into the Guideline. One Government representative whose country had a non-contributory social security scheme in place proposed to delete subparagraph 1(c) and, in case it would not be accepted, to insert an additional subparagraph 1(d) as follows: "All seafarers are entitled to benefits from non-contributory social security schemes (if applicable) only when residing in the territory of the Member providing the benefits, and under the conditions laid down in the legislation of that State" and to insert at the beginning of subparagraph (c): "With respect to subparagraph (d), ...".
- 78.** The difference between the Seafarers' and Shipowners' groups as to the approach and content of the text on long-term social security protection seemed so far apart that it was decided that they could not be reconciled in this Working Party. The Office was therefore requested to draft a new text taking account of the present Office text, the Shipowners' text (Annex 5) and the compromise suggestions made by France (Annex 6).

Working Party C: Certification and inspection system

79. According to paragraph 1, the regulations in Title 5 “amplify” each Member’s responsibility to fully implement and enforce the substantive rights provided for in the other parts of the Convention. It was agreed that the word “amplify” should be reviewed to avoid any sense of enlargement of the rights concerned.
80. Several Government representatives indicated that they wanted substantial equivalence to apply to paragraph 2, citing specific problems with certain provisions of the mandatory provisions in Standard A of Title 5. However, it was generally agreed that the square brackets around paragraph 2 could be deleted and the square brackets were removed. The Government representative of Germany stressed that “substantial equivalence” was absolutely essential in areas of Title 5 concerning inspection, complaint procedures and compensation.
81. Following some general remarks reflecting discussion on the relationship between Part A and Part B, the participants concentrated on general principles of the flag state responsibility (Regulation 5.1.1 of the Office text).

Flag state responsibilities – General principles

Authorization of public institutions and other competent organizations to carry out inspections and issue certificates

82. The issue of authorization by member States of public institutions and other competent organizations to carry out inspections and issue certificates was extensively discussed. Although this concept had been reflected in the Office draft text (Standard A5.1.3, paragraph 2), the participants felt that further clarification was needed. It was agreed that the issue was of such importance that it should be reflected in the Regulation 5.1.1 – “General principles” – and further developed in a stand-alone Regulation. Draft text was provided by a Government representative under Regulation 5.1.1 – “General principles” – as well as a new Regulation, “Standard and guidance concerning general principles of authorization”. The new Regulation provides, inter alia, that “A Member may authorize competent organizations to undertake certain inspection and/or certification duties *where expressly provided for* in the Code [emphasis added]”. The words “expressly provided for” were included to ensure that it was clear that not all responsibilities for enforcement and compliance in the Convention or in Title 5 could be delegated. The new Regulation and Standard text set out the criteria that must be met by another organization before the Member could authorize it to carry out inspections or issue certificates. “Further guidance” addressed the nature and content of the formal agreement for authorization. It was clearly understood that the intention was to ensure that governments will remain responsible for compliance with the Convention regardless of whether they execute control themselves or through authorized organizations. The text draws upon existing IMO requirements under the SOLAS Convention, as well as provisions in IMO Assembly resolution A.739(18) concerning guidelines for the authorization of organizations acting on behalf of the administration. A footnote making specific reference to this resolution has also been considered in the guidance text. Given the time constraints, the text was left in square brackets and the Office was asked to review it in context of the entire Title.
83. Some Government representatives indicated that they wanted to see more emphasis in the text on the responsibility of the shipowner for implementation of the Convention. It was agreed that this concern might be taken into account elsewhere in the text.

Maritime labour certificate and declaration of compliance

Renaming “declaration of compliance”

- 84.** The Shipowners’ group proposed that the term “declaration of compliance” (DoC) should be changed to “maritime labour compliance document” (MLDoC) in order to avoid confusion with the “document of compliance” issued under the International Safety Management Code (ISM Code) provisions of the SOLAS Convention, which would therefore have the same acronym, i.e. DoC. The Seafarers’ group indicated a preference for the use of the term “declaration” as proposed in the preliminary second draft. The term “declaration of compliance” therefore appears in square brackets in the text.

Model of certificate(s)

- 85.** It was generally agreed that the maritime labour certification and the “declaration of compliance” should conform to a model provided in an appendix to the Code and not be developed by each Member. This was agreed as, inter alia, it was considered that standard models would avoid confusion by port state control officers and others. The Office was requested to incorporate wording similar to that found in IMO instruments concerning model formats.
- 86.** Following the above agreement, it was further agreed that the model certificate and “declaration of compliance” should be based on the model provided in document TWGMLS/2004/8 submitted by a Government representative on behalf of the Office and subsequently redrafted following comments by the Working Party. It was suggested that certain information required on the certificate which concerned the shipowner/company should be modelled on information required on the safety management certificate issued in accordance with the ISM Code, that the certificate indicate that intermediate inspections as opposed to annual inspections had been undertaken, and that the provisions concerning the responsibilities of companies in Part III of the “declaration of compliance” should be based on the requirements of SOLAS XI-2, Regulation 5. Furthermore, one Government representative requested that the Office address the issue (perhaps in Article II, subparagraph (c)), of the situation of States that had not ratified the international tonnage Convention and how this would reflect tonnage figures indicated on the certificate. The Shipowners’ group also wanted clarification on what was meant by “distinctive number and letter”. As for the reference to company or to shipowner, it was decided to use the wording of the draft Office document (page 85). The Seafarers’ group wanted the Office, when developing the model, to take into account the information required by new Regulation 5 (Continuous synopsis record) of Chapter XI (Special measures to enhance maritime safety) of the SOLAS Convention and Regulation 10 (Specific responsibilities of companies) of Chapter XI-2 (Special measures to enhance maritime security) in as far as they are consistent with the new ILO Convention. In addition, this group was concerned about practical arrangements that would make possible identification of all pages, including of the annexes, as being part of the single document.
- 87.** The Office was requested to ensure that the precise procedure to be followed with respect to the establishment of the “declaration of compliance” was clearly reflected in the text.

Period of validity of the maritime labour certificate

- 88.** In order to compromise between proposals to make the certificate valid for three or five years, respectively, it was proposed that the maritime labour certificate should be issued for a period not exceeding five years and that the validity of the certificate should be subject to at least one intermediate inspection. Such an intermediate inspection should take

place between the second and third anniversary dates of the certificate. After some discussion, it was generally agreed that this intermediate inspection would be a *full* inspection. A Government representative assisted in the preparation of new text concerning this issue, and the Office was asked to take this into account when redrafting the Regulation, Code and Guidance concerning maritime labour certificates and the “declaration of compliance”.

- 89.** There was considerable discussion on the availability of the certificate and “declaration of compliance” on board ship and to other parties, such as seafarers’ representative organizations. Consideration was given, on the one hand, to constitutional concerns of some States over the release of information and to avoid the impression that non-governmental organizations can do supervisory functions. On the other hand, some practical aspects were taken into consideration, in particular concerns of the Seafarers’ group that their organizations should be able to obtain copies of this documentation. These matters were largely addressed through changes to the text.
- 90.** Certain detailed provisions in Guideline B5.1.2, paragraph 2, of the Office text (i.e. concerning “in terms of the size and type of ship ...”) were considered not necessary and were deleted.
- 91.** A new paragraph was added in the Guidance on the maritime labour certificate and “declaration of compliance” reflecting a proposal by a Government representative. The proposed text, which now appears in square brackets (beginning with the words “ongoing compliance should include general international requirements ...”) aims to lead to constant improvement in the level of protection of the seafarers’ living and working conditions. The Shipowners’ and the Seafarers’ groups indicated that they needed further consultations on this new issue. The Seafarers’ group also expressed some reservations as to the expression “general international requirements”, the possible additional burden on masters and that the new texts reflect collective rather than individual rights of the seafarers.

Interim certificate

- 92.** Following a proposal introduced by the Shipowners’ group concerning “provisional registration”, it was generally agreed that the Standard concerning the maritime labour certificate and “declaration of compliance” should provide for the possibility of an “interim certificate”. However, the number of situations in which issuing such provisional certificates would be appropriate would be very limited. Generally, in keeping with a submission by a Government representative of draft text concerning interim certificates, it was proposed that such a certificate would be provided: to new ships on delivery; when a ship changes its flag; or possibly when a shipowner takes on responsibility for the operation of a ship which is new to the shipowner. The idea is that this type of certificate would have a short-term validity and will be used in exceptional circumstances, given that the full inspection of the ship would be normally required before the ship could be registered by the flag State. The period of validity of such a certificate is still to be determined and the discussion mentioned periods between three and six months (left in square brackets). Text was also proposed concerning what must be verified before the interim certificate could be issued. The Seafarer’s group, however, expressed reservations concerning any reduction of the duties of flag States with respect to the inspection of ships before they were permitted to put to sea. The participants did not have sufficient time to consider in detail the proposed text on interim certificates.

Other matters related to certificates and interim certificates

- 93.** Text was proposed to the Standard on maritime labour certificates and the “declaration of compliance” that would provide that “the privileges of the Convention may not be claimed

in favour of any ship unless it holds appropriate valid certificates”. However, this issue was not discussed in detail and the matter was left in square brackets.

94. A Government representative expressed concern over a provision in Regulation 5.1.2, paragraph 3, calling for a Member to “register” a maritime labour certificate. He indicated that this might cause administrative difficulties for some Members. The Office was asked to provide further clarification on this requirement, and the word “register” was left in square brackets.
95. It was suggested that the Guidance could make reference to other more comprehensive documentation covering policies and procedures relating to other aspects of the maritime sector (e.g. the ISM Code). However, this proposal was not discussed in detail and was left in square brackets.
96. The Shipowners’ group requested that the appendices containing the model certificate and declaration of compliance should be included in the documents circulated prior to the Conference in order to give sufficient time for review.

Inspection and enforcement

97. The Shipowners’ group proposed the addition of a new paragraph 3 to the Regulation concerning inspection and enforcement. It noted that this paragraph, which concerned “compensation payable ... for any loss or damage suffered as a result of the wrongful or unjustified exercise of inspectors’ powers ...” had appeared in an earlier version of the Regulation but had since been moved to the Standard (Office text, Standard A5.1.3, paragraph 13). It inquired as to the reason this provision had been moved. The Office indicated that this was part of overall efforts to move provisions from the Regulation to the Code to help simplify the Regulations. Bearing in mind comments from some Government representatives that the issue of compensation to be paid by the flag State to a company in the State or its own state company should be left to national legislation, the provision was left in square brackets.
98. A new text of paragraph 6 of Standard A5.1.3 (concerning adequate rules to guarantee that inspectors have the status and conditions of service to ensure that they are independent ...) was added to the Standard concerning inspection and enforcement.
99. A change to the Standard A5.1.3, paragraph 7(a), of the preliminary second draft (the paragraph beginning “Inspectors, issued with clear guidelines ... shall be empowered ...”) was included to reflect concerns by certain Government representatives over the words “... and enter premises as necessary for inspection ...”. The changes aimed to avoid possible misinterpretation of what was meant by “premises”.
100. Standard A5.1.3, paragraph 7(c), of the Office text was placed in square brackets and the Office was asked to suggest new wording. Some Government representatives were concerned that the existing text would mean that all deficiencies would have to be remedied before a ship was permitted to leave port. The Seafarers’ group expressed their concern that current procedures, which generally were aimed at implementing IMO requirements and focused on the ship and its equipment, could not simply be used to inspect labour conditions. Some participants also asked the Office to look closely at the provisions of Convention No. 178 when redrafting this provision.
101. While several Government representatives favoured the setting up of state labour inspection services with regard to all the issues covered by the Convention, the representative of the Government of Germany suggested to choose the more flexible formulation “control by the administration of the Member or by courts”.

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- 102.** Guideline B5.1.3, paragraph 9(c), of the Office text, which concerned the issue of confidentiality in the context of a grievance or complaint, was moved to the Standard to take into account the views of the Working Party that this issue should be given greater emphasis. A proposal to move Guideline B5.1.3, paragraph 9, of the preliminary second draft to the Standard received considerable support. However, this was kept in square brackets as some participants need further consultations before making a final decision.
- 103.** A new subparagraph (d) was added (to the Standard) upon the request of the Seafarers' group. Given the concern of the Shipowners' group about the definition of the expression "serious breach of seafarers' rights", which did not appear elsewhere in the Convention, the text was placed in square brackets.
- 104.** There was discussion as to whether Standard A5.1.3, paragraph 11, of the Office text should be changed to replace the word "inspection" with the word "investigation". However, consensus could not be reached on this point. Another concern was expressed concerning the exact meaning of the expression "major incident". As regards paragraph 13, the representative of the Government of Germany indicated that compensation for loss or damage suffered as a result of the wrongful or unjustified exercise of inspectors' powers was payable in Germany, only under the condition that the inspectors' behaviour had been deliberate or negligent.
- 105.** Additional minor changes were made to Guideline B5.1.3 of the Office text.

On-board complaint procedures

- 106.** Two Government representatives proposed significant changes to this section. Their proposal reflected the idea of an alternative dispute settlement procedure inherent to their own national systems. However, this proposal was not supported by the Seafarers' group, which argued that there is a difference between a simple complaint and a dispute. This proposed text was left in square brackets in the Regulation.
- 107.** Changes were made to Regulation 5.1.4, paragraph 3, of the Office text reflecting the right of the seafarer to seek redress through whatever means he or she considers appropriate. The changes generally simplified the text by removing the words "including direct recourse ...".
- 108.** Some other relatively minor changes were made to the text to improve wording and eliminate redundant provisions.

Marine casualties

- 109.** Two Government representatives indicated that this Regulation should be deleted as the matter was already addressed by the IMO in the SOLAS Convention. The text was changed to limit its scope to incidents involving injury or loss of life. The Office was further asked to consult with the IMO to avoid any other duplication.

Port state responsibilities

- 110.** There was only limited time available to discuss port state control issues. The discussion revealed the need to make clear the principle that port States are under no obligation to inspect foreign ships. For this reason, paragraph 4, of the Regulation was modified to clarify that the obligation to have an effective port state inspection and monitoring system arises only where the port State decides to carry out such control.

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- 111.** Several Government representatives also expressed concern over Regulation 5.2.1, paragraph 2, which provided that: “Members shall accept the maritime labour certificate and the declaration of compliance ... as prima facie evidence of compliance with the standards of this Convention; accordingly, the inspection in their ports shall, except in the circumstances specified in the Code, be limited to a review of the certificate and declaration”. They felt that this provision was weaker than similar provisions in IMO Conventions and in IMO resolution A.787(19) on port state control as amended. They suggested that the Office should revisit this text to provide, for example, that the port state control officer should continue to look at accommodation after boarding the ship and before examining the maritime labour certificate and [declaration of compliance]. The Shipowners’ group indicated that their agreement to the idea of a certificate had been made on the condition that it would be considered prima facie evidence of compliance with the Convention, and they said they did not support changes to the text.

Other sections and issues

- 112.** The Working Party did not have sufficient time to discuss the remainder of Title 5, with the exception of a discussion of the model maritime labour certificate and [declaration of compliance] as described above.

Working Party D: Titles 1, 2 and parts of 3 and 4

Regulation 1.1. – Minimum age

- 113.** After extensive discussion and advice from the Office regarding the question of identifying the appropriate “organization concerned” for seafarers who may not have an association or may not be represented by a seafarer organization, no textual changes were made on this point. While some uncertainty may exist in a transitional period, the situation has not changed under the proposed Convention since the broad definition of “seafarer” is found in many maritime labour Conventions. The change relates more to a greater social awareness of other personnel that may also be entitled to the same protection accorded to people traditionally regarded as seafarers. In addition, the phrase is well accepted in ILO texts as a part of tripartite consultation and cannot easily be altered. The Seafarers’ group proposed three text changes to Standard A1.1, paragraphs 1, 2 and 4. The addition of “or engaged” and “in accordance with” rather than “taking into consideration” were accepted. The Office needed to look into the minimum sea service required to qualify as an able seaman.

Regulation 1.2. – Medical certificate

- 114.** A number of minor text amendments and corrections were proposed and accepted including shifting the full text of Guideline B1.2.1 from Part B of the Code to Part A and the addition of text relating to the independence of the medical practitioner. The majority of changes related to a preference for the text of Convention No. 73. The issue of the validity of expired certificates of good health (until the next port or for the whole voyage) was discussed. The concern was that the next port may not have a qualified physician. The other view presented by the Seafarers’ group was that a voyage could, in theory, be very long. Two participants recommended that a model medical certificate be prepared as an appendix to the Convention.

Regulation 1.3. – Training and qualifications

115. The entire text was square bracketed pending the outcome of the next IMO STCW meeting. Some text amendments were proposed to better ensure consistency with STCW and various minor changes proposed. There were a range of views, largely stemming from a difference of opinion as to what extent the ILO should deal with seafarer training. Views ranged from “not at all” to “retain a complementary role”. The “not at all” view proposed that, instead, the Convention should require that a State be party to STCW before it could ratify the maritime labour Convention. This would mean inserting a requirement into the Articles. The view of the Seafarers’ group was that given the revision of the STCW Convention it would be logical to move the able seaman requirements to the IMO for incorporation in the STCW Convention; however, the mandatory basis of the existing ILO Convention needed to be retained. However, some general provision for training and for it to be in accordance with national requirements (if any), as well as other safety-related training requirements for seafarers, not covered by STCW, will still be needed (much as provided in the current text). The Seafarers’ group was firmly of the view that if the certification of able seamen provisions were retained in the ILO consolidated Convention, then they should be mandatory and that the text found in Part B should be moved back to Part A. Others wanted it all removed. Since it appears unlikely that the IMO would deal with ships’ cooks, it was felt that those provisions are still needed. Pending the outcome of the IMO meeting, the Seafarers’ group felt these could possibly be moved to Standard A3.2, paragraph 2, after subparagraph (c) (catering staff); however they preferred to wait to see the IMO outcome. In either case, the qualifications list for both should be moved to Part A of the Code. The Shipowners’ group were concerned about ensuring consistency with IMO text. It was agreed to square bracket the entire provision pending the outcome of the IMO STCW meeting.

Regulation 1.4. – Recruitment and placement

116. Considerable time was devoted to this issue. Despite relatively low ratification levels for the underlying Convention (No. 179), there appeared to be little difficulty with the current text or the principle that recruitment services should be regulated. With the exception of one Government representative most seemed willing to regulate services operating in their country. One Government representative wanted to regulate services only as they relate to nationals. The main concern for both the Shipowners’ and Seafarers’ groups is that the text distinguished between public and private services. It was suggested that abuses can also occur in public services. The Office explained the view at the third meeting of the High-level Group that led to the current text on private services. The Shipowners’ and Seafarers’ groups both expressed a view suggesting that wording should be adopted to cover public and private agencies; however one Government representative was opposed. For this reason subparagraph (h) of Guideline B1.4.1(1) was square bracketed. A few minor editing queries and corrections were raised and noted.

117. The main issue that remained unresolved was whether a mandatory certification system backed up by a flag State and port state enforcement should be put in place. A proposal putting in place labour supply and flag state enforcement was presented by the Seafarers’ group. It was suggested by the Office that if the idea of mandatory certification was accepted then the flag state text might be better placed in Title 5, paragraph 1 (flag state enforcement).

118. With respect to Regulation 1.4, the issue is captured in the question of whether Standard A1.4, paragraph 2, should have “or certification” or “and certification”. In addition, a flag state responsibility provision was also proposed by the Seafarers’ group for paragraph 8 (in square brackets). There appeared to be mixed views amongst Government

representatives regarding the viability of a certification system and it did not appear that resolution could be easily reached. Most supported the idea but many did not see how it could work. It was suggested that Working Party C dealing with port state inspection should consider the issue.

119. The decision as to whether seafarers should pay for “personal travel documents” was also controversial. The Seafarers’ group agreed to the removal of square brackets from “passports” but no agreement was reached on the removal of square brackets from “personal travel documents”.

Regulation 1.5. – Seafarers’ identity documents

120. Although this issue seemed relatively uncontroversial, it was accepted that the full text of seafarers’ identity documents (SIDs) should remain in square brackets. The question as to whether there should be reference to SIDs in the Convention was not resolved.

Regulation 2.1. – Seafarers’ employment agreement

121. This provision generated a great deal of discussion over two days. Paragraph 2 retained square brackets on “sign” and “signify acceptance”. The requirement for signature was a problem for one Government representative. The Seafarers’ group were unable to accept what they viewed as a less than legally binding arrangement. It was agreed that paragraphs 3 and 4, regarding the relationship between a collective bargaining agreement (CBA) and a seafarers’ employment agreement could be collapsed into one provision and the square brackets removed around paragraph 3 and around the word “shall”. “May” is deleted as is paragraph 4. It was clarified that the term “incorporation” did not require the physical inclusion of the CBA text in the seafarers’ employment agreement but only required a reference to the applicable CBA. The term “incorporation by reference” best captures this idea.
122. Square brackets were added to subparagraph (d) of Standard A2.1 around the reference to “collective bargaining agreement” to respond to the concern some felt about translating into English collective agreements on international voyages. The Seafarers’ group proposed that only the sections of an agreement that relate to port state control be translated if it was major problem. It was decided that this was a matter for Working Party C in connection with port state control.
123. Several amendments to deal with individual situations were proposed for Standard A2.1, paragraph 2, to accommodate a country that calculates annual leave pay on a percentage basis (and therefore could not designate a specific amount and can only provide the formula for calculation). Subparagraph (h) was square bracketed because of concerns that it might require the legislation of each country to be included; however, it was agreed that the idea of including information about the shipowners’ obligations to the seafarer is not controversial and the text should be developed to make it clearer. A new item, a reference to the applicable CBA (if any), was included in the list.
124. There was an extended debate relating to the phrase “in their territory” and whether Standard A2.1 should cover both flag state obligations and labour-supply obligations to regulate the content of seafarers’ employment agreements. Several Government representatives were opposed to legislating for other than their flagships in this matter. This resulted in the deletion of the phrase “in its territory” and the inclusion in the chapeau of a phrase limiting the provision to seafarer contracts on the Members’ flagships. It also resulted in the consequential deletion of paragraph 3. The Seafarers’ group strongly supported the idea of highlighting the flag state responsibility under paragraph 1(a) in the

chapeau and of the deletion of paragraph 3. However, in their view, although their primary concern is directed to ensuring flag state responsibility, the need to also put in place an equally strong system of labour-supply responsibility is also required. There is a need to require that labour-supply governments also legislate in the same way as flag state governments to ensure that the coverage is comprehensive. For this reason the Seafarers' group did not want to delete the provision on this matter in Regulation 5.3, paragraph 3.

125. The period of notice for termination of a contract (Standard A2.1, paragraph 4) was also discussed at length. The problem arose from the consolidation of the articles of agreement with the concept of termination of a contract. Various notice provisions were suggested. It was agreed that the Office should consider splitting the text to distinguish between emergency departures from the ship and termination of contracts. This was accepted.

Regulation 2.2. – Wages

126. There was a lengthy debate on these provisions, although the Regulation and Code's provision on this point are not especially controversial. Part of the discussion related to an agreement between the social partners regarding the recommendatory text in Part B. The Seafarers' group agreed that the square bracketed text in Guideline B2.2.2 should be the same as the text of Recommendation No. 187. A question was raised by a Government representative regarding the meaning of "national extraction" in Guideline B2.2.2, paragraph 4(a), and its relationship to nationality. The ILO Legal Adviser clarified that "national extraction" does not have the same meaning as nationality. The representative of the Government of the United Kingdom asked that its question and this clarification be noted for the record. Square brackets were removed from Guideline B2.2.2, paragraph 4(j), but the word "penalties" was square bracketed because its potential scope raised concerns for the Shipowners' group.

Regulation 2.3. – Hours of work and rest

127. This section was also the subject of long debate. The Shipowners' group, and two Government representatives wanted to make sure the text did not apply to the ships' masters and chief engineers, etc. The text does apply to ships' masters; however, there are emergency and other related provisions that can provide flexibility. The Seafarers' group was strongly opposed to this exclusion and noted the number of accidents arising from fatigue. A large number of Government representatives agreed with the view of the Seafarers' group. The proposed exclusion now placed as a third paragraph in the Regulation was square bracketed.

Regulation 2.4. – Entitlement to leave

128. There was general agreement with inclusion of the current text subject to a proposal that the Office consider replacing the 30-day clause with the formula produced as result of JMC negotiation that describes leave on the basis of 2.5 days per month. This was seen as possibly solving difficulties for some Members. There was some discussion regarding the fact that public holidays were not included in paid vacation time; however, the Shipowners' group had no difficulty with the text as drafted and no change was made. It was agreed that the text in the square brackets regarding pay in advance in paragraph 3 could be deleted. The Seafarers' group noted that "other employer" in paragraph 1 of Guideline B2.4.2 should be deleted as they were opposed to employers other than shipowners being referred to in the Convention. It was agreed that text should be added to paragraph 4 requiring consent of a seafarer who is recalled on an emergency basis. A

purpose clause had been inadvertently omitted in the hard copy of the text. This was corrected.

Regulation 2.7. – Safe manning levels

129. It was agreed that “safe manning levels” should be replaced by “manning levels” as the concern was not solely related to safety. There was extensive discussion regarding the intention of these provisions. The Seafarers’ group was of the view that it should relate to security as well. It was agreed that the entire Regulation should be redrafted to take into account the IMO’s latest resolution updating A.890(21) on safe manning to take into account security and other matters. The text in square brackets relating to seafarer fatigue was retained and the text in brackets in Standard A2.7, paragraph 2, was removed.

Regulation 2.8. – Continuity of employment

130. There was a lengthy discussion on this topic. Some participants could support inclusion of the provision on the condition that it was limited to its own nationals. Other participants and the Shipowners’ group wanted it deleted entirely as it is no longer relevant in today’s market economy. A number of participants felt that a provision dealing with promotion of employment and career development could be included. The word “continuous” was a problem for most participants; however, the word “regular” might be acceptable. The Seafarers’ group noted the importance of having a maritime workforce given the essential role of trade and shipping. The shrinking workforce was noted, especially with respect to officers. The Seafarer spokesperson commented that the language was quite soft anyway. The result of the debate was that the entire text remain in brackets for further consideration with proposed revision of the language to take into account the difficulty with the term “continuity”. Perhaps “career development” could be added to the “purpose”.

Regulation 3.2. – Food and catering

131. A number of minor text amendments were proposed and accepted. It was agreed that reference to drinking water should be in the regulations, that the square brackets could be removed around “differing cultural practices, etc”. And, that “and other measures” could be added into Standard A3.2, paragraph 1, after “and regulations”. It was suggested that, in the event that ships’ cooks training was moved to Regulation 3.2, it could be placed below subparagraph (c) of Standard A3.2, paragraph 2. This was not controversial. Square brackets were also removed from Guideline B3.2.2, paragraph 4.

Regulation 4.1. – Medical care on board ship and ashore

132. Although the overall topic and text was not controversial, there were a number of concerns and discussion on this provision was extensive. The text of the Regulation was accepted with the text in square brackets in paragraph 2 deleted. A question was raised about the need to have “no less than” in paragraph 4 and as to the reference point for comparable shore workers. The representative of the Office clarified that the language comes from Convention No. 164. In this light, the language and brackets were retained pending further examination.

133. In Standard A4.1, paragraph 1, it was agreed that dental care would be qualified to relate to necessary or essential care so as to avoid abuse. “Necessary or essential” were deemed acceptable proposals for alternative language. The Office was asked to redraft to find words that capture this intention.

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- 134.** There was a concern that paragraphs 3 and 4, which relate to hospital accommodation and physician requirements to 15 and 100 seafarers, was out of date and lower numbers need to be considered. There seemed to be agreement with this view although replacement numbers were not developed. The numbers were put in square brackets. It was noted that a grandfather clause dealing with existing ships would be needed for paragraph 3 if the changed number required hospital accommodation on existing ships that did not have it.
- 135.** Paragraph 6 generated a great deal of debate. It was agreed that “medical” should qualify the word “doctor”. The square brackets were removed. It was proposed that the text that had been in brackets be moved to Part B .The text presented problems for two Government representatives. A Government representative noted that it has a serious issue with the current text if a person has to be trained and qualified; “or” was proposed. This proposal was not accepted. It was noted that STCW distinguishes between medical care and emergency first-aid training requirements, a distinction that had also been linked to tonnage in the ILO’s text. The Shipowners’ group proposed that the Working Party recommend that the Office revise the text to ensure consistency with the STCW since the ILO’s Convention text may not be up to date.
- 136.** A Government representative asked for an Office clarification as to whether governments are required to pay for the telecommunication from ship to shore as well as providing the medical advice under paragraph 9 of Guideline B4.1.1. The representative of the Office noted that the text is drawn directly from Convention No. 164. The representative of the Government of Greece noted that it may be a problem for ratification if the potential obligation had unforeseen budget implications. The Seafarers’ group proposed that paragraphs 1-4 of Guideline B4.1 be moved into the Standard as they were essential. The Seafarer spokesperson noted that they may have been better placed in Title 3; however, at minimum, they should be in the Standards not the Guidelines. There was no disagreement with this proposal. The square brackets in Guideline B4.1.5 were also removed.

Closing plenary and other matters

- 137.** The Chairperson opened the final plenary sitting by noting that the High-level Group had before it a draft declaration, a draft resolution, the reports of the Chairpersons of the four Working Parties and any other business. It was agreed that the texts of the consolidated Convention, as agreed by the Working Parties, would be sent, along with the draft report of the meeting, to all participants within three weeks. Delegates would be given the opportunity to comment on the draft report, which would summarize the decisions of the Working Parties.
- 138.** Regarding the United States paper setting out that country’s concern regarding Article III and Article VI, paragraph 4, the High-level Group agreed that it would be more appropriate for consultations on these concerns to continue with interested Government representatives and with the Shipowners’ and Seafarers’ groups. In this regard, the Office was requested to take the initiative to make the necessary contacts following the end of this High-level Group meeting and then based on those contacts prepare a proposal that would then be made to the Officers of the High-level Group with a view to inclusion of an appropriate formulation in brackets in the text being submitted to the PTMC in September.
- 139.** The High-level Group considered the status of Part B of the Code. A consensus was reached on the status as follows:

The present wording of the relevant provision – paragraph 2 of Article VI of the preliminary second draft – can be retained on the following understandings:

Question: Is Part B mandatory?

Answer: No.

Question: Can Part B be ignored by ratifying Members?

Answer: No.

Question: Is the implementation of Part B verified by port state inspectors?

Answer: No.

Question: Does the ratifying Member have to follow the guidance in Part B?

Answer: No, but if it does not follow the guidance it may – vis-à-vis the competent bodies of the International Labour Organization – need to justify the way in which it has implemented the corresponding mandatory provisions of the consolidated Convention.

These understandings would need to be clearly reflected in the Convention itself or in related documentation.

Declaration concerning the release and repatriation of the four Greek and three Filipino seafarers, crew members of the M/V “Tasman Spirit”, and the Greek salvage master, detained in Pakistan after the accident of the ship that occurred on 27 July 2003

140. The representative of the Government of Greece introduced a draft resolution co-sponsored by the representative of the Government of the Philippines concerning the release and repatriation of the four Greek and three Filipino seafarers, crew members of the M/V “Tasman Spirit”, and the Greek salvage master, detained in Pakistan after the accident of the ship that occurred on 27 July 2003. He explained that the resolution would send a message to the world that the High-level Group was committed to improving the living and working conditions of seafarers by expressing its opposition to the criminalization of seafarers involved in maritime accidents. He also thanked the Director-General of the ILO and the Secretary-General of the IMO for the letters they had sent to the Government of Pakistan concerning this situation.
141. The Seafarers’ spokesperson introduced a revised formulation of the Greek resolution, which had been prepared in consultation with the Office and the Government of Greece and was in the form of a Declaration. He expressed outrage that the crew were still being detained and that the only charges which had been brought were against one desperate seafarer who had tried to commit suicide as a consequence of the continued detention and he had been charged for attempting to commit suicide and for that alone. He also cited correspondence from the Government of Pakistan which clearly demonstrated that the crew were being held hostage against a claim for compensation for the damage caused.
142. The Chairperson noted that the Government of Pakistan was not represented at the meeting. The High-level Group agreed to the declaration which may be found in Annex 7.
143. The representative of the IMO also read a statement from the Secretary-General of the Organization concerning the treatment of seafarers involved in maritime accidents. The statement, he said, had been made at the opening of the fifth session of the Joint IMO-ILO

Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers (12-14 January 2004).

144. The Seafarers' group and several delegations thanked the IMO representative for this statement and expressed their appreciation to the Secretary-General of that Organization.
145. The High-level Group requested the Office to bring this declaration to the attention of all concerned.

Resolution concerning the text of the first draft consolidated maritime labour Convention to be submitted to the Preparatory Technical Maritime Conference (13-24 September 2004)

146. On behalf of the Officers, the Chairperson introduced the draft resolution concerning the text of the draft consolidated maritime labour Convention to be submitted to the PTMC (13-24 September 2004). The resolution recommended, in its operative paragraphs, that: the Office be requested to submit to the PTMC a draft instrument based on the results of the important preparatory work undertaken in the framework of the High-level Group; the draft instrument be considered as containing mature provisions on which consensus has been reached on a significant number of provisions; the PTMC deal, in the first place, with the provisions included in the draft instrument which are placed in square brackets; the PTMC, in the second stage, deal with proposals concerning the draft instrument which have sufficient support; it take the necessary measures for the adjustment of the Standing Orders of the PTMC.
147. The Secretary-General, responding to a question from several government delegations, said that the organization of the PTMC, the need for committees and the desired composition of delegations would be discussed by the Officers of the High-level Group and would be communicated to members of the Group in due time. However, she could already indicate that, in March 2003, the Governing Body had agreed that national delegations to the PTMC would be comprised of one Government, one Workers' and one Employers' delegate, plus any necessary advisers. She added that the draft Convention would be dispatched to member States at the end of June 2004.
148. The Secretary-General also indicated that the decision concerning whether technical committees would be established at the Conference, and the nature of such committees, if established, would be taken by the Governing Body at its March session. The Office would communicate the decision to members of the High-level Group as soon as the decision had been taken.
149. The resolution was adopted as set out in Annex 8.

Reports of the Chairpersons of the tripartite Working Parties

150. The Chairpersons of each of the four tripartite Working Parties made brief oral presentations on the work achieved in each of the Working Parties. There was no discussion on these statements.

Other business

- 151.** The representative of the Government of Germany stressed the importance of defining the scope of application of the various standards of the Convention (Part A of the Code). Substantial equivalence was especially important in Title 5 of the consolidated Convention.

Closing statements

- 152.** Both the Shipowner and Seafarer spokespersons expressed their thanks for the organization of this meeting and especially for the Government of France's financial support and hospitality. However, the Seafarers' group regretted the emergence of profound differences between the social partners. The strongly shared vision which had been encapsulated in the JMC resolution had taken a series of serious setbacks in three of the four working groups and efforts were required to restore previously held relationships and understandings. The Seafarers' group was encouraged by the participation of Governments and their commitment to ensure that seafarers have worthwhile and meaningful rights. However, it had to be accepted that domestic legislations may need to be changed to give effect to and to secure the strict implementation of the new Convention. The aim must be to ensure the protection of all seafarers and not just those employed or engaged by high-quality operators or flag States. He observed that it remains to be seen if enough has been achieved to meet that goal and the tight timetable.
- 153.** Both highlighted the progress made in drafting the new Convention.
- 154.** They were more than encouraged by the increased participation of governments. They asked governments to accept that domestic national legislation may have to change in order to provide protection for all seafarers under all flags.
- 155.** The representative of the Government of China, speaking on behalf of the Government group, expressed his satisfaction on the progress achieved in developing a comprehensive maritime labour Convention. Governments continued to support a level playing field with strong enforcement and remained committed to the process. The Government group expressed sincere appreciation to the Government of France for the support given to the High-level Group and for the hospitality given by Nantes and the Loire-Atlantique.
- 156.** Mr. François Fillon, Minister for Social Affairs, Labour and Solidarity, addressed the meeting during the closing sitting. He drew attention to the maritime character of the Pays de la Loire and especially to the dramatic maritime accidents which had taken place in the adjacent waters. He stressed the relevance of the proposed consolidated Convention to the safety of shipping and also to the integrated approach for the adoption of standards in the ILO. He saw the new Convention as progress in maritime social standards and as providing substance to the fight against abuse. As a new seafarers' Labour Code, it will be very useful for reinforcing port state control. The new Convention would also reinforce the influence of the ILO in the world of work in general, providing a model for the development of integrated standards in other areas. This was essential in the context of increased globalization. He commended the progress achieved by the High-level Group in the last two years and wished that the new instrument would benefit seafarers who deserved better protection on account of the nature of their profession. He also wished that the ILO would be recognized as the pivot of the social dimension of globalization.

Annex 1

Working Party A on Accommodation (Title 3): Proposed terms of reference

Background

The provisions on shipboard accommodation and recreational facilities are contained in Title 3, together with food and catering standards on board ships. Although these are sometimes described as “technical” provisions because of the level of detail, they are a central concern in ensuring decent working conditions for the individuals living and working on board a ship. They are also matters that can have an impact on labour costs for employers and, for some Members, may raise concerns about the ratifiability of the Convention in that the majority of the provisions affect the spatial arrangements and design of a ship and may be difficult for existing fleets. Many of the existing standards were developed a number of years ago and may be out of date or no longer relevant to contemporary ship design or to modern working standards (for example, protection from excessive noise). In addition there is now increased concern for accommodating a broader range of workers (e.g. multicultural crews, increased number of women seafarers and seafarers with partners who may wish to live on board for a period of time). In accordance with the guidance provided by the High-level Tripartite Working Group the majority of the provisions articulating the specifics that would be considered as meeting the minimum standards have been moved to Part B of the Code. However many of the provisions and their placement (in Part A or B) remain matters for discussion between the social partners. The preliminary second draft Convention text for Title 3 is in italics and primarily reflects a revision (to the first draft) proposed by the Seafarers’ group subsequent to the third high-level meeting. It is understood that a new joint proposal on Title 3 provisions may be prepared by the social partners as a reference document for the use of the Working Party. In addition there have been suggestions that many of the provisions in Part B of the Code could be more useful if presented in another format or document outside the Convention, which would facilitate easier updating in the future and provide few difficulties for ratification.

The task of the Working Party

It is proposed that the Working Party be asked to consider the provisions of the preliminary second draft and any additional proposals relating to the minimum standards and guidelines for shipboard accommodation and recreational facilities and to prepare a proposal for a revised draft Convention text for the relevant provisions in Title 3. The proposed text would be presented to the plenary of the High-level Tripartite Working Group.

In addition to a revision and agreement on the text for accommodation the Working Party should also consider the question of application to existing ships and whether any tonnage or other scope provisions are needed. It is noted that a tonnage provision is also tentatively included in Article II as well as some national flexibility for application of the Convention to particular ships.

Annex 2

Working Party B on Social Protection (Title 4): Proposed terms of reference

Background

Title 4 of the preliminary second draft combines provisions drawn from a number of Conventions addressing benefits for seafarers in case of illness, disability and death as well as the provision of access to social security systems and access to shore-based welfare facilities (e.g. Conventions Nos. 165, 164 and 55). Title 4, Regulation 4.5, dealing initially with social security when presented in the first draft, has provided difficulties for some governments, particularly in relation to the scope of coverage. At the third meeting of the High-level Group, the United Kingdom presented a proposal for Regulation 4.5 and related Code provisions which included renaming it “Social protection”. It was also suggested that advice from social protection experts be sought in order to fully consider the provisions in the first draft and the United Kingdom’s proposal. Comments submitted after the third meeting of the High-level Group indicate a concern of some Governments and the Shipowners’ group that the proposal may have the effect of “privatizing” a form of social protection that formerly has been understood as a government’s obligation. Further to the request of the third meeting of the High-level Group, the Office obtained advice from the ILO social security experts on the matter, which will be available to participants. The preliminary second draft text of Regulation 4.5 and the related Code provisions reflect the advice of the social security experts. It is in italics to indicate that the text is subject to comprehensive review and recommendations from a working party at the fourth meeting of the High-level Group. It has been suggested that any consideration of Regulation 4.5 and the Code, which now provide flexibility to allow for private sector provision of benefits, should take into account the provision of shipowner liability for medical care, death and disability, also dealt with in Title 4 under Regulations 4.1 and 4.2, in order to evaluate the overall system of coverage provided in Title 4 and Regulation 4.5 in particular. It is noted that some aspects of these two are also under discussion in a Joint IMO-ILO Ad Hoc Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers. In July 2003, the Seafarers’ group took the view that these issues should not be dealt with in the new Convention while the Shipowners’ group took the opposite view. A meeting of the Joint IMO-ILO Ad Hoc Working Group is scheduled to take place immediately before the fourth high-level meeting and may provide some further advice on this issue.

The task of the Working Party

It is proposed that the Working Party be asked to consider the current text of Regulation 4.5 and associated Code provisions in light of the advice of social security experts and taking into account relevant provisions in Regulations 4.1 and 4.2 and associated Code provisions. It would prepare a proposal regarding a draft Convention text for Regulation 4.5 and associated Code provisions and any other provisions in Title 4 deemed to be in need of revision as a consequence of this proposal. The proposed text would be presented to the plenary of the High-level Tripartite Working Group.

Annex 3

Working Party C on the Certification and Inspection System (Title 5): Proposed terms of reference

Background

The provisions on inspection and certification in Title 5, dealing with enforcement and compliance, are essentially contained in Regulations 5.1.1 to 5.1.3 and Regulation 5.2.1 and associated Code (Part A and B) provisions. In addition the Code incorporates, by reference, the content of appendices that are central to the operation of the enforcement and compliance system: Appendix A5-I, which provides a list of areas (“working and living conditions for seafarers on ships”) for which members will have flag state inspection and enforcement responsibilities; Appendix A5-II, which provides a list of general areas of seafarers’ working and living conditions on ships that are subject to inspection by Members that carry out a port state control inspection under the Convention; Appendix B5-I, which is found in the Guidelines to the Convention (Part B of the Code), provides a model or sample of the proposed maritime labour certificate and the declaration of compliance; Appendix B5-II which is, as yet, undeveloped but if it is decided to include it in the text of the Convention, would provide criteria for inspections.

There have been extensive discussions in plenary and in subgroup meetings on the provisions in Title 5 and, although there are some provisions that cause difficulty for some constituents (such as the extent of notification for breaches of the standards found in port inspection or the basis for detention) its general content seems to have been settled. The area where attention needs to be given relates to the content of both the mandatory and non-mandatory appendices and related draft Convention texts, which are the core of the certificate system. In order to allow participants to see a concrete example of how the Convention’s provisions on certification might be applied in practice, a template (see TWGMLS/2004/8) has been prepared by the Government of the United States at the request of the Office. This should also give the Working Party an experiential indication of the viability and utility of the system described in Title 5.

The task of the Working Party

It is proposed that the Working Party be asked to consider the preliminary second draft provisions relating to the inspection and maritime labour standards certification system and to prepare a proposal, including any proposals for revisions to the draft Convention text, on the content and operation of the inspection and certification systems set out in Title 5. This proposal would be presented to the plenary session of the High-level Group.

Specifically, the Working Party might consider the following matters when preparing its proposal.

The certificate system

- Should all or part of the documentation (currently a certificate and a declaration) be mandatory and uniform in format as well as content or should there be, as currently proposed, some flexibility in format provided through the use of Part B of the Code (guidance and models) to accommodate differing national preference to maritime documentation systems?
- What should be included in each document (certificate and declaration) relating to the maritime labour certification system? For example, what legislation or standards should be listed for national requirements to enable efficient and effective port state inspection and to allow for any substantial equivalence provisions?
- What is the best format for the documentation – should the declaration or certificate be one or two documents and how should deficiencies and renewals be indicated?
- What is the appropriate period of validity of a certificate and what is the relationship between that period and the minimum frequency proposed for flag state inspections?

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- In the event that a certificate or documentation for recruitment and placement agencies is included in the inspection system list (see below) what should the format and content of a certificate or other documentation for such agencies be and should it be mandatory (Part A of the Code) or a model only (Part B of the Code).

The inspection system

- What should be listed in the “inspection lists” (port and flag State) in the appendix to Title 5, Part A? In particular, a decision should be reached on the inclusion or exclusion of :
 - seafarers’ identification documentation (taking into account the fact that the inclusion of a reference or provision on seafarer identification in the draft Convention (Title 1) remains an unresolved matter);
 - seafarer employment agreements;
 - on-board complaint procedures;
 - wages (regularity of pay and level);
 - recruitment and placement services documentation/certification.
- Should the criteria to guide flag inspectors (referred to in Guideline B5.1.3, paragraph 7) be set out in a Convention or should an ILO inspection handbook be developed that contains this and other information?
- If the criteria for inspection should be in the Convention what should be included in the listed criteria?

Annex 4

Working Party D on other areas of difficulty (Titles 1 and 2 and parts of 3, 4 and 5): Proposed terms of reference

Background

Titles 1 and 2, in particular, may contain specific provisions or wording that provides difficulty for some governments. Title 1 deals with minimum requirements such as minimum age, training, fitness and seafarers' identification for working on board a ship. Although there appears to be general agreement with the text, there may be points of difficulty or concerns such as whether a provision should be in Part A or B of the Code that can be addressed through the Working Party discussion. There are also some specific issues that need a recommendation or proposal to assist plenary discussion. For example, in Title 1 the issue of inclusion (and the extent of reference if included) of seafarers' identification has not been finally decided. Similarly, there has been a proposal that a certification system be developed for recruitment and placement services (Regulation 1.4). This topic is in part under discussion in the Working Party on Certification and Inspection because it has been proposed as an addition to the list of items to be inspected; however, the view of the Working Party on the matter is subject to a more general proposal arising from this Working Party as to whether there should be a certification system. The preliminary second draft text has a tentative proposal for text to accommodate such a system if that is deemed desirable. Concerning Title 2, specific issues or concerns may arise in connection with the regulations on seafarers' employment agreements, wages, leave and repatriation. Areas in other titles that may need discussion might be Title 3, Regulation 3.2, on food and catering, and Title 4, Regulations 4.1, 4.3 and 4.4, as they pertain to the provision of on-board medical care, occupational health and safety and access to onshore welfare facilities. It is noted that the Working Party on Title 4 is addressing the financial matters pertaining to Title 4, Regulations 4.1, 4.2 and 4.5. In Title 5, a decision would need to be taken (see the possible introductory paragraph 3) on whether the Code provisions should only be amendable through the express ratification procedure (Article XIV, rather than Article XV); furthermore, onshore complaint-handling procedures as well as labour-supply responsibilities are important areas in which consensus has not yet been achieved. This includes the placing of a provision relevant to the seafarers' employment agreement (paragraph 3 of Standard A2.1 or paragraph 3 of Regulation 5.3 – see comment 13, point 5, of the Commentary on the preliminary second draft).

The task of the Working Party

It is proposed that the Working Party be asked to consider any matter which gives rise to serious difficulty for any Government or for the Shipowners' group or Seafarers' group and is not within the terms of reference of another Working Party and to prepare a proposal regarding amendments to the draft text. The proposed text would be presented to the plenary of the High-level Tripartite Working Group.

Annex 5

Proposed new wording for social security protection proposed by the Shipowners' group

Regulation 4.5. – Social security protection

Purpose: To ensure that measures are taken with a view to providing seafarers with access to Social Security Protection.

1. Members shall ensure that seafarers who are ordinarily resident in their territory and their dependants are entitled to benefit from a social security protection system not less favourable than that enjoyed by shoreworkers resident in the territory of the Member.

Standard A4.5. – Social security protection

1. Social security protection for seafarers and where applicable their dependants shall be provided through the legislation of the Member in whose territory the seafarer is resident.

2. Notwithstanding paragraph 1 above, Members may determine by mutual agreement other rules concerning the legislation applicable to seafarers in the interest of the persons concerned (C165A17 and A16).

3. Members shall establish fair and effective procedures for the settlement of disputes.

4. In their reports to the International Labour Office, pursuant to article 22 of the Constitution of the International Labour Organization, each Member shall provide information regarding the realization of social security protection as applicable to the residents of its territory. The International Labour Organization shall maintain a register of this information and shall make it available to all interested parties.

Guideline B4.5. – Social security protection

Guideline B4.5.1. – Implementation of Standard A4.5

1. Members should consider the following branches of social security protection in the systems provided under their national legislation:

- medical care;
- sickness benefit;
- unemployment benefit;
- old-age benefit;
- employment injury benefit;
- family benefit;
- maternity benefit;
- invalidity benefit;
- survivors' benefit.

2. Each Member should specify at the time of its ratification in respect of which of the branches stated in paragraph 1 above it provides social security protection.

3. Each Member should subsequently notify the Director-General of the International Labour Organization that it provides social security protection in respect of one or more of the branches stated in paragraph 1 above not already specified at the time of its ratification.

Annex 6

Compromise proposal of the Government of France on social protection

Regulation 4.5 – Social security

1. Members shall ensure that seafarers and, where applicable under national legislation, their dependants, are covered by social security schemes whether statutory, whether private or established under a collective agreement in accordance with the provisions laid down in the Code.

2. Each Member undertakes to take steps, according to its national circumstances, individually and through international cooperation, to achieve progressively comprehensive social protection for seafarers.

3. The social security schemes referred to in paragraph 1 cover all national schemes, general or special, ensuring coverage of all social security branches as defined in Convention No. 102 supplementing the coverage provided under Regulations 4.1 and 4.2.

Standard A4.5 – Social security

1. Social protection for seafarers and where applicable their dependants shall be provided through the schemes laid down in the legislation of the Member in whose territory the seafarer is resident.

2. Notwithstanding paragraph 1 above, Members may determine by national legislation, mutual bilateral or multilateral agreement, other rules concerning the legislation applicable to seafarers in the interest of the persons concerned.

3. Seafarers shall, in principle, be subject to the legislation of one Member only.

4. The employment contract should identify the applicable social security system. The flag State should ensure that the obligations under the applicable social security system as identified in accordance with paragraphs 1 and 2 are fulfilled.

5. Members shall establish fair and effective procedures for the settlement of disputes.

6. Seafarers shall be covered by at least three branches of social security as defined in Convention No. 102 supplementing coverage provided under Regulations 4.1 and 4.2, including the long-term consequences of employment injuries.

7. In case there is no applicable national social security system, seafarers will be covered by a scheme selected by the ILO's JMC. The conditions and modalities of this scheme will be determined by the ILO's JMC, taking into account paragraph 6.

8. In their reports to the International Labour Office, pursuant to article 22 of the Constitution of the International Labour Organization, Members shall provide information regarding the realization of each of the branches of social protection listed in paragraph 4 above 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 this information and shall make it available to all interested parties.

9. Members shall cooperate, as appropriate, in schemes for the maintenance of social protection as provided for in this Convention.

10. Members shall ensure that seafarers who are ordinarily resident in their territory and their dependants are entitled to benefit from a social security system not less favourable than that enjoyed by shoreworkers resident in the territory of the Member.

Annex 7

Declaration concerning the release and repatriation of the four Greek and three Filipino seafarers, crew members of M/V “Tasman Spirit” and the Greek salvage master, detained in Pakistan after the accident of the ship that occurred on 27 July 2003

The High-level Tripartite Working Group on Maritime Labour Standards, established by the Governing Body of the International Labour Office (280th Session, March 2001), held its fourth session in France, at the Cité des Congrès, Nantes, from 19 to 23 January 2004. It recalled the core mandate of the International Labour Organization, which is to promote decent conditions of work, and referred to the resolution concerning decent work for seafarers, adopted at the 91st Session of the International Labour Conference. It also referred to the resolution concerning action taken against seafarers in the event of maritime accidents, adopted at the 29th Session of the Joint Maritime Commission and further noted the applicable provision of international law, including international human rights law.

The High-level Group was aware that, on 27 July 2003, the Maltese-registered M/V “Tasman Spirit” ran aground at the entrance of the port of Karachi in Pakistan whilst under pilotage, and that the incident caused pollution of the sea and coastal area adjacent to Karachi. Since the accident, four Greek seafarers and three Filipino seafarers who were members of the crew and a Greek salvage master have been denied exit from Pakistan.

The High-level Group noted that the investigation procedures by the competent Pakistani authorities, and the prolonged detention of the crew members and the salvage master for a period exceeding five months by Pakistani authorities was related to securing compensation for the pollution caused. It also considered that the detention of the crew members of M/V “Tasman Spirit” and the salvage master was detrimental to the shipping industry and, inter alia, discouraged new entrants to the seafaring profession, at a time when it was of fundamental importance for the sustainable operation of the shipping industry for it to continue to attract new entrants.

As a result of the abovementioned considerations, the High-level Tripartite Working Group on Maritime Labour Standards:

1. **expresses** its sympathy to the victims of the accidental grounding of the M/V “Tasman Spirit”; **considers** that the crew members of the ship and the salvage master are also victims and **expresses the hope** that the Pakistani authorities could release the abovementioned persons and to allow their repatriation;
2. **requests** the Director-General to raise this issue with the Government of Pakistan and to bring this declaration to the attention of the competent authorities of Pakistan;
3. **requests** the Director-General and the Governing Body to remain seized of this matter; and
4. **requests** the Director-General to raise the issue of the growing problem of the criminalization of seafarers following a maritime casualty with the Secretary-General of the International Maritime Organization with a view to promoting an appropriate response.

Annex 8

Resolution concerning the text of the first draft consolidated maritime labour Convention to be submitted to the Preparatory Technical Maritime Conference (13-24 September 2004)

The High-level Tripartite Working Group on Maritime Labour Standards,

Having been convened in accordance with a decision taken by the Governing Body of the International Labour Office at its 280th Session (March 2001), and having met in its fourth session held in Nantes, France from 19 to 23 January 2004,

Noting the decision taken by the Governing Body at its 286th Session (March 2003), to hold a Preparatory Technical Maritime Conference from 13 to 24 September 2004,

Further noting its decision that the Preparatory Technical Maritime Conference should discuss, and make recommendations concerning an instrument to consolidate maritime labour standards on the basis of a draft to be submitted to it by the Office,

Considering the considerable preparatory work that has been undertaken during the last four sessions of the High-level Tripartite Working Group and of the two sessions of its Subgroup as well as the number of reports that have been prepared by the Office to serve as a basis for discussions;

Adopts this twenty-third day of January 2004 the following resolution:

The High-level Tripartite Working Group on Maritime Labour Standards recommends to the Governing Body of the ILO that:

1. the Office be requested to submit to the Preparatory Technical Maritime Conference a draft instrument based on the results of the important preparatory work undertaken in the framework of the High-level Tripartite Working Group;
2. the draft instrument be considered as containing mature provisions on which consensus has been reached on a significant number of provisions;
3. the Preparatory Technical Maritime Conference deal in the first place with the provisions included in the draft instrument which are placed inside square brackets;
4. the Preparatory Technical Maritime Conference, in the second stage, deal with proposals concerning the draft instrument which have sufficient support;
5. it take the necessary measures for the adjustment of the Standing Orders of the Preparatory Technical Maritime Conference.

Annex 9

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