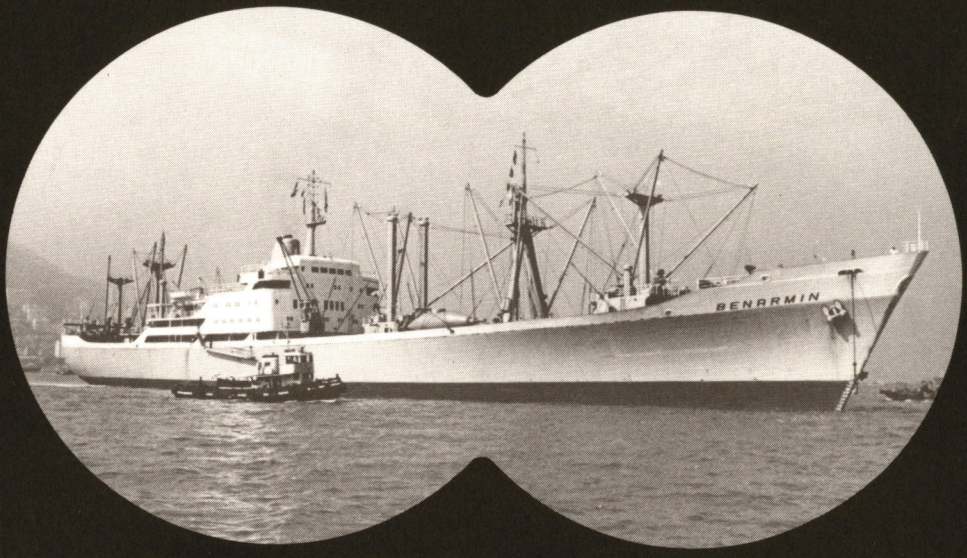
Labour standards on merchant ships

General Survey by the Committee of Experts
on the application of Conventions and Recommendations



International Labour Office, Geneva

International Labour Conference
77th Session 1990

Report III
(Part 4 B)

Third Item on the Agenda:
Information and Reports on the Application
of Conventions and Recommendations

General Survey of the Reports on the Merchant Shipping (Minimum Standards) Convention (No. 147) and the Merchant Shipping (Improvement of Standards) Recommendation (No. 155), 1976

Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)

International Labour Office

ISBN 92-2-107060-3
ISSN 0074-6681

First published 1990

d in Switzerland ATA

SUMMARY

Abbreviations

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ABBREVIATIONS

CHS:	Convention on the High Seas (1958).
COLREG:	Regulations for Preventing Collisions at Sea (1960); Convention on the International Regulations for Preventing Collisions at Sea (1972).
GRT:	Gross register (or registered) tons.
IMO (IMCO):	International Maritime Organization (formerly Inter-Governmental Maritime Consultative Organization).
JMC:	ILO Joint Maritime Commission.
LOS Convention:	United Nations Convention on the Law of the Sea (1982).
MOU:	Memorandum of Understanding on Port State Control (1982) (the "Paris Memorandum").
PTM Conference:	ILO Preliminary Technical Maritime Conference.
SOLAS:	International Convention for the Safety of Life at Sea (1960); International Convention for the Safety of Life at Sea (1974).
STCW Convention:	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (1978).
Vienna Convention:	Vienna Convention on the Law of Treaties (1969).

INTRODUCTION

I. Background to the survey

1. In accordance with article 19(5)(e) and (6)(d) of the ILO Constitution, the Governing Body of the International Labour Office decided at its 238th Session (November 1987) to request governments of member States which have not ratified the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), to supply reports on it in 1989, and to request governments of all member States to supply reports on the accompanying Merchant Shipping (Improvement of Standards) Recommendation (No. 155). These reports are additional to the reports under articles 22 and 35 of the Constitution from countries bound by the Convention. Following the Governing Body decision and its usual practice, the Committee has prepared a general survey.

2. This is the first general survey to deal with Convention No. 147 and Recommendation No. 155 and only the third in 40 years of article 19 general surveys made by the Committee to deal with maritime standards. In 1950, in the very first article 19 exercise, reports on five maritime Conventions and one Recommendation were examined by the Committee.[1] Those instruments - and particularly the standards they contain as to food and catering, medical examination, competency and vocational training, given that these are specifically referred to in Convention No. 147 and Recommendation No. 155 and their Appendices - are all of relevance to the present survey, although, 40 years on, the reports contain little useful information. The reports examined in 1972 dealt in part with the two 1958 Recommendations recited in the Preamble to Convention No. 147 and reflected in its substantive provisions: the Recommendation concerning the Engagement of Seafarers for Service in Vessels Registered in a Foreign Country (No. 107), and the Recommendation concerning Social Conditions and Safety of Seafarers in Relation to Registration of Ships (No. 108).[2] It was precisely the ILO's ongoing examination of the question of substandard vessels, of which that 1972 general survey formed part, which led to the adoption of Convention No. 147 and Recommendation No. 155 at the 62nd (Maritime) Session of the International Labour Conference in 1976.

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[1] 1950 RCE: General Remarks. [For the complete references to ILO publications cited in this general survey, see Bibliography (Appendix I). For the titles of ILO maritime Conventions and Recommendations, see Appendix II.]

[2] 1972 RCE: General Survey. See also 1984 Report JMC/24/3, Review of the application, etc.

3. The two 1958 Recommendations are, then, the leading precursors of the two 1976 instruments. In Recommendation No. 108, the Conference noted that labour conditions have a substantial bearing on the safety of life at sea and placed this fact in the context of the large tonnage being registered in countries not traditionally regarded as maritime nations: in view of the provisions of the Convention on the High Seas adopted by the United Nations Conference on the Law of the Sea in April 1958 that there must exist a genuine link between a State and ships flying its flag, and that the State - being under the obligation to take measures necessary to ensure safety at sea with regard, inter alia, to manning and labour conditions for crews taking into account applicable international labour instruments - must effectively exercise jurisdiction and control over such ships, it elaborated on the matters in respect of which the State of registration should thus exercise effective jurisdiction and control in aid of the safety and welfare of seafarers. Recommendation No. 107 was rather addressed to maritime countries whose nationals tend to serve on vessels of other countries without the benefit of the protection and standards applicable as a result of properly negotiated collective agreements in their own country: in it, the Conference called for the active discouragement of seafarers from joining vessels registered in a foreign country unless the conditions of engagement are "generally equivalent" to those applicable under collective agreements and social standards accepted by bona fide organisations of shipowners and seafarers of maritime countries where such agreements and standards are traditionally observed. Together, Recommendation No. 107 and Recommendation No. 108 identify several individual needs later to be given greater substance in Convention No. 147: inspection of ships, control of signing-on, freedom of association and collective bargaining for seafarers, proper repatriation arrangements, sickness and injury protection, and satisfactory arrangements for the issuing of certificates of competency.

II. Contents of Convention No. 147 and Recommendation No. 155

4. Convention No. 147, briefly, embodies further proposals adopted by the Conference with regard to substandard vessels, particularly those registered under flags of convenience.[3]

[3] The International Transport Workers' Federation (ITF) have in their communication stated that they define flag of convenience vessels by emphasising the lack of genuine link in terms of the place where beneficial ownership lies: where beneficial ownership and control of a vessel is found to lie elsewhere than in the country of the flag the vessel is flying, the vessel is considered as sailing under a flag of convenience. On this basis, and in conjunction with the Rochdale criteria, the ITF has designated the following as flag of convenience registries (terminology is that of the ITF): Antigua and

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Ratification of the Convention is premissed on adherence to specified standards within the auspices of the International Maritime Organization (IMO).[4] It involves a commitment to (1) safety standards (including standards of competency, hours of work and manning), (2) social security measures and (3) established shipboard conditions of employment and living arrangements. Though some of the last of these matters may be dealt with by collective agreements or decisions of courts if these are equally binding, others must under Convention No. 147 be the subject of legislation which is substantially equivalent to the Conventions or Articles of Conventions referred to in its Appendix. Effective jurisdiction or control must be exercised over home-registered vessels. There must be adequate procedures (including for the investigation of complaints) relating to the engagement of seafarers. Seafarers must be properly qualified or trained. Maritime labour standards must be enforced, principally by inspection; and there should be an official inquiry into any serious marine casualty. Where practicable, advice is to be given to the nationals of States which have ratified the Convention as to the possible problems of working on a ship registered in a State not bound to or not applying the same standards. Furthermore, where a complaint is received or information obtained that a ship in port does not conform to the standards of the Convention, a report may be made by the authorities of the port State to the government of the country of registration of the ship, and measures to rectify clearly hazardous conditions on board may be taken by the port State. Recommendation

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Barbuda, Bahamas, Bermuda, Cayman Islands, Cyprus, Gibraltar, Honduras, Lebanon, Liberia, Malta, Marshall Islands, Netherlands Antilles, Panama, Saint Vincent, Sri Lanka, Vanuatu. According to the ITF, the status of the following registries is decided on a ship-by-ship basis depending on the place of beneficial ownership and control: Hong Kong, Kerguelen, Isle of Man, Norwegian International Ship Register, Philippines dual register, Singapore. As to the "genuine link", see below, para. 240. As to the Rochdale criteria, see 1975 PTMC Report V, pp. 33-34: these refer to (i) ownership or control by non-citizens; (ii) access to the registry is easy, as is deregistration; (iii) local taxes on the ship are low or non-existent; (iv) the country of the registry is a small power with no national requirement of large numbers of ships, but receipts from registry fees may substantially affect national income; (v) manning by non-nationals is freely permitted; (vi) the country of registry has no power or wish to impose regulations or control the responsible companies. [A "dual register" is understood to be one existing under special international arrangement and is for purposes of international labour standards a registry of the country indicated. The Kerguelen Islands are part of the French Southern and Antarctic Territories.] See also para. 283, below. Saint Vincent and the Grenadines and Vanuatu are independent non-member States of the ILO.

[4] Known before 1982 as the Inter-Governmental Maritime Consultative Organization (IMCO).

No. 155 proposes both continuing extension of the list of what should be regarded as the minimum labour standards in merchant shipping, and improvement of that minimum up to and beyond what is equivalent to the specified instruments, in order to reach a standard which is at least equivalent.

5. Having been ratified by ten member States with a total share in world shipping gross tonnage of 25 per cent, Convention No. 147 came into force in 1981. It has now been ratified by 20 member States and declared applicable to 18 non-metropolitan territories (in only one case with modifications). These 38 countries presently have a total share in world shipping gross tonnage of about 45 per cent.[5] However, with the constant transfer of ships from the register of one country to that of another, this figure fluctuates independently of the number of ratifications. The overall effect has been that the percentage of world shipping covered by the Convention has apparently remained about the same in the last two years, having earlier reached over 50 per cent. A significant number of ILO member States may in any event be regarded as "non-maritime" nations.[6] The number of ratifications must therefore be used cautiously as an indicator of the extent to which the obligations of the Convention have been accepted in respect of actual numbers of ships and seafarers in the world. Despite some cause for reflection, then, the progress made in the 13 years since adoption of the Convention and Recommendation remains impressive. The present general survey aims to assist in identifying the obstacles to ratification of the Convention by a greater number of member States as well as the difficulties of application met with by States which have ratified.

6. One of the features which make Convention No. 147 unique in the catalogue of ILO Conventions is the incorporation into it of provisions of 15 other ILO Conventions by listing them in an Appendix. It is these Conventions which contain most of the safety standards, social security measures and shipboard conditions of employment and living arrangements which have to be the subject of national provisions under Article 2(a).[7] It may be considered in

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[5] The latest available figures for the gross tonnage of each of the principal merchant fleets in the world are given in Appendix III. Comparisons are with earlier figures from the same source.

[6] The following have indicated in article 19 reports that the instruments in question are of no application, since the country is landlocked and/or has no relevant merchant shipping: Botswana, Burkina Faso, Burundi, Byelorussian SSR, Chad, Guatemala, Lesotho, Luxembourg (but see para. 14, below), Malawi, Mozambique, Nepal, Rwanda, San Marino, Uganda, Zambia, Zimbabwe. Reports concerning the following indicate there is little or no relevant shipping, and that United Kingdom legislation applies in any event: United Kingdom (Anguilla, British Virgin Islands, Falkland Islands (Malvinas), Guernsey, Jersey, Montserrat, St. Helena).

[7] Under Article 2(e), due regard is to be had also to Recommendation No. 137 concerning vocational training of seafarers. Article 2(d) contains substantive provisions as to engagement.

turn that it is the failure to meet the required level of compliance with the substantive standards referred to in Article 2(a) - plus, as regards qualifications and training, Article 2(e) - which makes a vessel "substandard", in the term used in the Preamble to the Convention. The incorporation of the Appendix Conventions is less than integral, since the relevant substantive clause of Convention No. 147 itself (Article 2(a)) talks of legislation (of a country not otherwise bound to give effect to the Conventions in question) being substantially equivalent to the provisions of Appendix Conventions rather than in complete conformity with them. Similarly appended to Recommendation No. 155 is a list of eight ILO Conventions, one ILO Recommendation and one "IMCO/ILO" Document: Recommendation No. 155 goes further than Convention No. 147 in the subject-matter and scope of the instruments appended as well as in the degree of compliance called for. Thus, Recommendation No. 155 advocates national provisions which are at least equivalent both to the instruments appended to Convention No. 147 and to those appended to the Recommendation itself; in the latter case, such compliance is to be achieved by stages, if necessary. The employment of the device of (partial) incorporation by reference creates a Convention and a Recommendation which - each in its own way - cast a wide minimum maritime labour standards net. It would be an immense task to survey in detail the extent to which each of the Appendix instruments is applied in the member States. In considering how far international obligations to ensure the application of at least certain minimum standards in merchant shipping have been undertaken and fulfilled by member States, however, reference has to be made to the record in respect of ratification and implementation of all the relevant Conventions. The size of the merchant fleet of each country is also of particular interest.

III. Developments since 1976

7. In the wider context of maritime labour standards in general, it is possible to draw further encouragement from several developments since the 62nd (Maritime) Session of the Conference in 1976 which adopted Convention No. 147 and Recommendation No. 155. First, the steady progression in ratification of the Conventions listed in the Appendices to Convention No. 147 and Recommendation No. 155 shows in itself in concrete terms that the substantive standards aimed at by these 1976 instruments continue to be formally accepted by an increasing number of countries. Such ratification involves, furthermore, a commitment to full compliance and not just substantial equivalence.

8. Secondly, the issues relating to maritime labour standards raised in one way or another at the 62nd Session of the Conference have remained very much alive in the ensuing years. The two other Conventions adopted then (the Continuity of Employment (Seafarers) Convention (No. 145) and the Annual Leave with Pay (Seafarers) Convention (No. 146)) both came into force in 1979 and have now received 17 and 11 ratifications respectively. The ILO's Joint Maritime Commission (JMC) and the Preparatory Technical Maritime (PTM) Conferences have continued the work for the improvement of maritime

labour standards, and this has led to the adoption of important new instruments at the 74th (Maritime) Session of the Conference (1987): the Seafarers' Welfare Convention (No. 163) and Recommendation (No. 173), the Health Protection and Medical Care (Seafarers) Convention (No. 164), the Social Security (Seafarers) Convention (Revised) (No. 165), and the Repatriation of Seafarers Convention (Revised) (No. 166) and Recommendation (No. 174). Of these, Conventions Nos. 165 and 166 are likely to be of direct significance for present purposes, given the suggestion in Paragraph 4 of Recommendation No. 155, that cognisance should be taken of Conventions which revise other Conventions listed in the Convention No. 147 and Recommendation No. 155 Appendices, once those revising Conventions come into force (this is not yet the case). In 1985 the Joint IMO/ILO Committee on Training put forward a revised Document for Guidance to take account of changes in the content of necessary safety training: in the terms of Paragraph 4(2) of Recommendation No. 155, cognisance should be taken of this too as a revision of the 1975 IMCO/ILO Document for Guidance included in the Appendix to that Recommendation. Convention No. 163 now has five ratifications and will come into force on 3 October 1990; Convention No. 164 has three ratifications and will come into force on 11 January 1991.

9. The contents of the Appendix to Convention No. 147 have themselves, thirdly, been the subject of proposals for revision. Periodic revision of that list of Conventions was already anticipated by the 62nd Session of the Conference in 1976, when it adopted a resolution asking the Governing Body to seise the Joint Maritime Commission of the question whether the list of Conventions continues to constitute an acceptable minimum or should be revised by a future session of the Conference. Later there were discussions of the possible revision in the Joint Maritime Commission in 1984, the PTM Conference in 1986 and the Joint Maritime Commission again in 1987. However, in November 1989 the Governing Body decided not to place the possible adoption of a Protocol to Convention No. 147, supplementing the list of Conventions, on the agenda of the 78th Session of the Conference in 1991.[8] The Joint Maritime Commission proposal had been to include the Seafarers' Identity Documents Convention, 1958 (No. 108), Convention No. 145, Convention No. 146 and possibly the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), but the adoption of this proposal preceded the adoption of further topical instruments by the 74th Session of the Conference in 1987.[9]

10. The fourth significant development since 1976 lies in the progress made in particular by one group of Western European maritime nations[10] in promoting and effecting the observance of maritime

[8] 1989 Document GB.244/205, paras. 4-5.

[9] See para. 8, above. As to revision of the Appendix to Convention No. 147, see further paras. 198-202 below.

[10] Belgium, Denmark, Finland, France, Federal Republic of Germany, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom. See further below, paras. 259-276.

labour standards (amongst others) through intervention by port States. One of the main achievements of the Memorandum of Understanding on Port State Control adopted in 1982 (the MOU - sometimes known as the "Paris Memorandum") is to commit the signatories to maintaining an effective system of port state control of foreign merchant ships, inspecting at least a minimum percentage of those calling in their ports, and taking action in cases of deficiency. The MOU thus appears as a co-ordinated measure by a group of 14 countries with busy and valuable port industries in favour of procedures which go to implement what is called for in Article 4 of Convention No. 147. All but one of the MOU countries[11] have ratified Convention No. 147. The ILO and the IMO have both participated as observers in the work of the Port State Committee responsible for promoting harmonisation of relevant procedures and practices and reviewing the operation of the Memorandum.

11. Not least of the encouraging developments is, fifthly, the technical co-operation activity undertaken by the ILO for promotion of the ratification and application of maritime labour standards. In all the ILO's maritime labour legislation projects, and national and regional seminars on maritime labour standards which the Office has organised in the last 14 years,[12] Convention No. 147 has been the focus of attention, representing as it does a compact statement of what basic standards should be guaranteed in relation to the work and employment of seafarers.[13] The Committee has noted with particular interest the adoption of Guide-lines for procedures for the inspection of labour conditions on board ship by the Meeting of Experts on Procedures for the Inspection of Labour Conditions on Board Ships (Geneva, October 1989): the Guide-lines are based on the provisions of Convention No. 147.

IV. Registration of ships

12. The question of the country of registration of a ship is crucial, because, as a matter of international law as now reflected in Article 94(1) of the 1982 United Nations Convention on the Law of the Sea (LOS Convention),[14] a State must "effectively exercise its

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[11] Ireland.

[12] The Government of Panama also refers to 20 missions of IMO experts since 1976 concerning development of the maritime sector.

[13] See also, e.g., 1983, Report on the ILO seminar for senior government officials from Asian countries on maritime labour standards; 1985, Report on the ILO seminar, etc. (Central and West African countries); 1987, Report on the ILO seminar, etc. (East African countries).

[14] See also Article 5(1) of the 1958 Convention on the High Seas (CHS). The CHS was opened for signature a few days before Recommendation No. 108 was adopted by the Conference in 1958: this provision and that referred to next are recited in the considerata of that Recommendation. As to "jurisdiction and control", see further below, Chapter VI.

jurisdiction and control in administrative, technical and social matters over ships flying its flag". Article 94(3) of the LOS Convention[15] further formulates the substantive obligation on a State to "take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to ... the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments". Under Article 94(5) of the LOS Convention,[16] in taking those measures, the State "is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance". The Committee has noted in this connection the adoption by the United Nations Conference on Conditions for Registration of Ships in 1986 of a Convention concerning the criteria by which it should be decided in which country a ship is registered.[17] The principles in question are also applied in international labour instruments and in particular in Convention No. 147, Article 2(a), (b), (c), (d)(i), (e), (f) and (g) of which is aimed at "ships registered in (the) territory" of the State which ratifies it.

13. It is precisely because of the operation of the principle of flag State duties that the practice arose of making flag transfers, i.e. re-registering ships in "open-register" countries where costs of various kinds are lower, and instead of flying the flag of the country of the ship's beneficial owner or manager (which may be an international group, financial institution or small operator) flying a flag of convenience.[18] The problems raised by this practice have occupied the ILO since as early as 1933.[19] Many transfers have been to at first a handful but later a larger and competing number of open-registry countries. In two States in particular,[20] there have

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[15] Article 10(1)(b) CHS.

[16] Article 10(2) CHS.

[17] See e.g. 1987 Report of the Director-General, pp. 28-30: the Convention, which is not yet in force, provides that flag States should have a competent and adequate national maritime administration, subject to their jurisdiction and control (Article 5); and that owners and operators should be adequately identifiable for the purposes of ensuring their full accountability (Article 6). Articles 8, 9 and 10 provide for participation by nationals of the flag State in the ownership, manning and management of the ship. Article 14 calls for measures to protect the interests of labour-supplying countries.

[18] It may be, in some cases, that a ship does not, strictly, fly the flag of the territory of registration: e.g. vessels registered in some non-metropolitan territories, which fly the flag of the metropolitan State.

[19] For a general review see 1975 PTMC Report V.

[20] France, United Kingdom. In the case of France, Convention No. 147 has been declared applicable to seven such territories, but not to the French Southern and Antarctic Territories - see the

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been considerable transfers from the metropolitan register to what are sometimes called "off-shore" registers, i.e. those of non-metropolitan territories with which the State has close economic, political, administrative and sometimes geographical connections. Various factors might motivate flag transfers and the choice of country of re-registration (for example, taxes and duties exacted, formalities observed). But the factors of direct concern to the ILO have been both that, in countries of re-registration, ships can often be serviced by foreign crews and operate under working conditions and labour standards which cost less to the owners or managers; and that such countries often fail to exercise jurisdiction and control, even in respect of provisions which should in theory be applied to those ships. The ILO has therefore given attention to the second of these factors - the degree to which the country of registration exercises or fails to exercise effective jurisdiction and control over the safety and welfare of seafarers (including their labour conditions), as already indicated in Recommendation No. 108 - as well as the first - the conditions and standards formally applying in those countries.

14. For purposes of applying international labour standards, a transfer to an "off-shore" register is a flag transfer assimilated to a transfer to the register of another State, inasmuch as the same Conventions may not apply to the ship before and after the transfer. A distinction has to be drawn, then, between the related phenomena of flag transfers and transfers to international registers. Institution of the latter may be regarded as an alternative response by some of the "traditional" maritime countries and others[21] to the reduction in size of their fleets. That reduction - aside from the recent global experience of "over-tonnaging" (surplus capacity) - has taken place when shipowners and managers no longer find the conditions governing and associated with registration in the traditional maritime countries competitive and consequently re-register in foreign countries with lower costs. The loss of employment and revenue to all concerned in the shipping industry in the "traditional" maritime countries has often been considerable. The main difference now between ships on the home register and those on the international register of those countries is that in the latter case there is exemption from taxation. This exemption may extend to personal taxation on the earnings of crew members who are not nationals of or resident or domiciled in the country of registration: the shipowner or manager may thus in practice have an added incentive to employ foreign seafarers on board those ships, and a question may arise as to some aspects of conditions of employment on such ships (such as

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Committee's general observations addressed to the Government of France - 1989 RCE, pp. 481-482, and 1990 RCE. In the case of the United Kingdom, the Convention has been declared applicable to Bermuda, Gibraltar, Hong Kong and Isle of Man.

[21] e.g. Denmark, Federal Republic of Germany, perhaps Luxembourg (the Government mentions a Bill to introduce a register) and especially Norway.

collective bargaining and the level of take-home pay).[22] Although there does not, as a matter of principle, seem to be any lowering of general labour standards laid down by ILO Conventions in force in respect of ships in the international as opposed to the home register, the situation may merit careful examination.[23]

15. It would indeed be incorrect to assume that ships which re-register or fly what may be called a flag of convenience are necessarily substandard vessels, although, equally, when it adopted Recommendation No. 107 and Recommendation No. 108 in 1958 and again Convention No. 147 and Recommendation No. 155 in 1976, the International Labour Conference certainly considered that there is likely to be a correlation. One notable feature of the 1976 instruments is that - like international and other maritime labour standards in general - they are universal in concept and aim at all "substandard vessels": their goal is the raising of standards in respect of ships of all countries, including the traditional maritime ones. At the same time, the instruments recognise that a large part - perhaps most - of the problem is in fact ships flying flags of convenience, i.e. registered in countries which have - partly by virtue of their lower costs (and especially lower crew costs, which are in turn attributable in particular to inferior labour standards) - attracted increased numbers of vessels and an increased tonnage of merchant shipping to their registers.

V. Role of the International Maritime Organization

16. The work of the ILO in the sphere of Convention No. 147 and Recommendation No. 155 is directly linked to the work of the IMO in several ways. The IMO is a specialised agency of the United Nations system which has responsibility under its Convention (Constitution) to encourage the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation: this compares with the ILO's concern for the improvement of labour conditions in general and in the maritime sphere for seafarers' conditions of employment and shipboard working conditions in particular. Under an Inter-Agency Agreement which came into force in 1959, there is ongoing co-operation and consultation between the ILO and the IMO with a view to their attaining their respective objectives. This co-operation includes arrangements for reciprocal representation at meetings. It also includes the work of the Joint IMO/ILO Committee on Training, which adopted the 1975 Document for Guidance (An international maritime training guide) referred to in the Appendix to Recommendation No. 155, as well as the updated version of 1985. The complementarity of the roles of the ILO and the IMO is further illustrated by the citation in Article 5 of Convention No. 147

[22] e.g., the case of Denmark - see discussion in 1989 RP, p. 26/66.

[23] cf. below, e.g. paras. 50, 138-139, 144, 155. Direct requests have been addressed to Denmark and Norway on this subject.

of a series of instruments adopted by the IMO relating to the safety of life at sea, load lines, and the prevention of collisions. This has to be discussed now in the context of ratification of Convention No. 147.

VI. Ratification of Convention No. 147 and other relevant Conventions

17. Details of the 20 ratifications of Convention No. 147 by member States and the 18 declarations of application to non-metropolitan territories (all but one[24] without modification) are given in Appendix IV. Under Article 2(a) of Convention No. 147, a member State which ratifies it is bound to have provisions substantially equivalent to those listed in the Appendix to the Convention "in so far as the Member is not otherwise bound to give effect to the Conventions in question" and subject in part to the roles played by collective agreements and court decisions. Clearly, there is no obligation on a State to ratify all or any of the Appendix Conventions before it ratifies or implements Convention No. 147. Equally, however, there tends as a matter of fact to be a close relationship between ratification of Convention No. 147 and ratification of the Appendix Conventions. In the case of most seafaring countries it seems natural that the commitment to maritime labour standards should manifest itself in the ratification of several of the individual technical Conventions listed, culminating in ratification of Convention No. 147. Three[25] of the States ratifying Convention No. 147 have ratified all of the Appendix Conventions (or rather at least one of the alternatives in the case of minimum age and social security respectively), but some others have ratified only a few. The extent of ratification of those Conventions by all member States is shown in Appendix V.

18. The relatively large number of declarations of application of Convention No. 147 to non-metropolitan territories is not without interest. Most - but not all - of the provisions of Convention No. 147, like those of other maritime Conventions, have to be applied by the member State which ratifies it in respect of "ships registered in its territory". In the case of maritime Conventions, it is the size of the merchant fleet of each country rather than the size of its population which gives a general idea of the scope for application of each Convention by each country, i.e. whether relatively large or small numbers of workers are affected. Thus, while most of the non-metropolitan territories to which declarations of application have

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[24] The United Kingdom's declaration of application with modifications to Hong Kong: the modifications concern the application under Article 2(a) of Convention No. 147 of provisions substantially equivalent to Convention No. 73 and the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134).

[25] France, Italy, Spain.

been made seem to have only small fleets, four[26] must rank in their own right among countries having the principal maritime merchant fleets of the world; the application of Convention No. 147 to them is on any view of some consequence.

VII. Prerequisites to ratification

(a) Relation of IMO instruments to Convention No. 147 and their contents

19. In order to be able to ratify Convention No. 147, a member State of the ILO has to satisfy the requirements laid down in Article 5(1) in relation to certain IMO instruments. Subject to the limited relaxation of these requirements allowed under Article 5(2), IMO instruments governing three vital areas of shipping practice and law must be subscribed to by any member State of the ILO which wishes to ratify Convention No. 147: the three areas are safety of life at sea; load lines; prevention of collisions.

20. Convention No. 147 is the only international labour Convention to impose requirements relating to other international Conventions before ratification by a member State. The presentation of the IMO instruments in this manner - and not alongside the ILO Conventions listed in the Appendix to Convention No. 147 - is the solution agreed by the Conference after concern had been expressed by governments that IMO Conventions should not - and indeed could not - be enforced like ILO Conventions through ILO procedures.[27] It was felt that the social and labour standards laid down in Convention No. 147 could not be dissociated from the basic safety standards contained in the IMO instruments. Moreover, the Conference considered that the basic safety standards the IMO instruments contain ought not to be attenuated by being subject to the concept of substantial equivalence. In fact, the observation made in the responsible Conference Committee that the IMO Conventions were already widely ratified and that requiring observance of them would not present a major obstacle to ratification if it were made a prerequisite[28] seems to have proved right. The IMO instruments included in Article 5 of Convention No. 147 are only ones that are both directly related to the safety of life on board ship in a narrow sense (instruments dealing with, for example, pollution not having been included) and themselves widely recognised through formal ratification or tacit acceptance or observance in law and practice at the national and international levels.[29] The best view seems moreover to be that they may all be regarded as laying down what are now "generally accepted international regulations, procedures and practices" to which

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[26] Bermuda, Gibraltar, Hong Kong and Isle of Man - see Appendix III.

[27] 1976 Report V(2), pp. 43-44.

[28] 1976 RP, pp. 188-189 and 193-194, paras. 36 and 85.

[29] 1976 Report V(2), pp. 43-44.

every State is required as a matter of international law in accordance with Article 94(5) of the LOS Convention to conform.

(i) Safety of life at sea

21. Under Article 5(1)(a), Convention No. 147 is open to ratification by a member State which is a party, first, to the International Convention for the Safety of Life at Sea (SOLAS) of 1960, or that of 1974 or any Convention subsequently revising these two. The 1974 SOLAS Convention had not come into force when Convention No. 147 was adopted in 1976, but since 1980 when it did do so it has replaced the 1960 Convention as between Contracting Governments. There have been no Conventions subsequently revising it, but a Protocol was adopted in 1978 and Amendments in 1981 and 1983, all of which have been widely adhered to and are now in force. Under the tacit acceptance procedure laid down in Article VIII of the 1974 Convention, Amendments come into force at a given time unless objections are received before then from a given number of parties. Under Article X of the 1974 Convention, it may henceforth be adhered to only in its amended form.

22. States which ratify the 1974 Convention have to ensure that nationally registered ships comply with minimum safety standards for their construction, equipment and operation laid down in the Annex to the Convention. They have to carry out initial and periodic surveys of these matters and issue certificates testifying to compliance with the standards; ships should carry such certificates with them. Under Chapter I, Regulation 19, of the Annex, every ship holding such certificates is, while in the ports of any Contracting Government, subject to control for the purpose of verifying that there is a valid certificate on board; if there are "clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate", a controlling officer may detain the ship until any danger to the passengers or crew is eliminated; the controlling officer should inform the consul of the country of registration of the circumstances of any intervention, and the fact should be reported to the IMO.[30] Under Chapter I, Regulation 21, the authorities of the State whose flag a ship is entitled to fly must investigate any casualty involving it, in order to assist in determining whether the SOLAS Regulations ought to be changed: their findings should be forwarded to the IMO, which however may not in any report or recommendation identify any ships concerned or their nationality or in any manner implicate any ship or person.[31]

23. The 1978 Protocol relates to the safety of tankers and the prevention of pollution: unscheduled inspections and/or mandatory annual surveys are introduced and the port state control arrangements are strengthened. The 1981 and 1983 Amendments take account of technical advances in the industry.

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[30] cf. paras. 259-269, below.
[31] cf. paras. 257-258, below.

(ii) Load lines

24. Under Article 5(1)(b), Convention No. 147 is open to ratification by a member State which is a party, secondly, to the International Convention on Load Lines of 1966, or any Convention subsequently revising it. The Load Lines Convention came into force in 1968. Amendments adopted in 1971, 1975, 1979 and 1983 have not yet come into force. There has been no revising Convention.

25. Limitation of the draft to which a ship may be loaded clearly makes a significant contribution to safety. States which ratify the Load Lines Convention undertake to ensure the watertight integrity of ships' holds below the freeboard deck and to see that assigned load lines are duly marked according to the specifications in the Annex to the Convention, which take account of hazards in the various zones and seasons. There is provision for initial and periodical inspection and the issue of certificates by the authorities of the country of registration. There is provision also for port state control comparable to that exercised under the SOLAS Convention. The Amendments adopted would make some changes in respect of the zoning in the 1966 Convention and would introduce a procedure of tacit acceptance.

(iii) Collision prevention

26. Under Article 5(1)(c), Convention No. 147 is open to ratification by a member State which is a party to or has implemented, thirdly, the provisions of the Regulations for Preventing Collisions at Sea of 1960 or the Convention on the International Regulations for Preventing Collisions at Sea (COLREG) of 1972, or any Convention subsequently revising them. The 1960 Regulations earlier formed part of the Annex to the 1960 SOLAS Convention. The 1972 Convention is thus the embodiment of these Regulations for the first time in independent treaty form. It had not come into force when Convention No. 147 was adopted, but did so in 1977. There has been no revision of the 1972 Convention, but 1981 Amendments came into force in 1983.

27. The 1972 Convention lays down traffic separation schemes, and deals with steering, sailing and signalling. Under the tacit acceptance procedure laid down in Article VI, the 1981 Amendment, which concerns traffic separation schemes for vessels such as dredgers and those engaged in surveying, replaces and supersedes any previous provision to which it refers for all Contracting Parties which have not objected to it.

(b) Countries not party to IMO instruments

28. Article 5(2) in addition opens Convention No. 147 to ratification by "any Member which, on ratification,[32] undertakes to fulfil the requirements to which ratification is made subject by paragraph 1 of this Article and which are not yet satisfied". On the

[32] sic.

two occasions on which the question has arisen (in all the others the member State concerned was already a party to the IMO Conventions), the paragraph has been applied so as to make registration of the ratification of Convention No. 147 possible only after an undertaking in the shape of a formal declaration has been made by the Government of the State concerned. In one such case[33] the declaration was made in two parts: in the first, the Government stated that in conformity with paragraph 2 it undertook to fulfil as soon as possible the requirements of paragraph 1 as regards prompt adherence to the 1974 SOLAS Convention; in the second, it stated that in accordance with paragraph 2 and in completion of its previous declaration it undertook to comply progressively with all the requirements of paragraph 1. In comments addressed to the Government the Committee has noted that technical assistance has been provided by the IMO in relation to the application of those instruments and has requested information from the Government as to steps being taken to fulfil its undertakings to the ILO in this respect. In the other case,[34] the declaration contained a similar undertaking to fulfil progressively all the requirements of paragraph 1 not yet satisfied: the Committee has also asked that Government for details of steps being taken.

29. Article 5 is concerned only with the question of ratification of the Convention and does not therefore deal with questions of declaration of application to non-metropolitan territories. The first such declaration of application (with modifications) was made in 1982:[35] that territory is in a different position from other non-metropolitan territories in that it is an Associate Member of the IMO; according to the Government's first report on Convention No. 147, the 1974 SOLAS Convention with its 1978 Protocol and the 1966 Load Lines Convention are extended to the territory, and the 1972 COLREG Convention is applied there. Although there is no formal requirement under Article 5 in respect of non-metropolitan territories, the Committee finds this information helpful as an indication of the Government's commitment to the essential safety standards which the Conference has formally linked to Convention No. 147. In other cases where no information has been given on this point, therefore, the Committee may make a direct request as to how far the Article 5(1) instruments are observed by a non-metropolitan territory in respect of which a declaration of application is made.[36]

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[33] Costa Rica, which was not then (1981) and is not now a party to any of the Article 5(1) instruments.

[34] Iraq, which was then (1985) a party only to the 1960 SOLAS Convention and has not yet become a party to the Load Lines or COLREG instruments.

[35] By the United Kingdom in respect of Hong Kong.

[36] e.g., France (New Caledonia); United Kingdom (Isle of Man).

(c) "Generally accepted" IMO instruments

30. The standing in international law[37] of the 1974 SOLAS Convention, the 1966 Load Lines Convention and the 1972 COLREG Convention has evolved somewhat since Convention No. 147 was adopted in 1976. The 1974 and 1972 Conventions have now come into force. The 1974 SOLAS Convention and the 1972 COLREG Convention have been ratified, acceded to, approved or accepted by a total of 106 countries each, the 1966 Load Lines Convention by 118 countries. It seems fair to say that acceptance of the provisions of these three Conventions is now regarded, for example by shipping insurers, as a basic necessity, to the extent that in practice there is almost universal recognition of the need to implement them. That is not to say that there are never any difficulties in implementing them. It may however be thought that the requirements of Article 5 should not in any case constitute an obstacle to ratification of Convention No. 147.

VIII. Coming into force of Convention No. 147

31. Article 6 provides for Convention No. 147 to come into force 12 months after the registration of ratifications by at least ten member States with a total share in world shipping gross tonnage of 25 per cent. Whilst all recent non-maritime Conventions come into force 12 months after the second ratification, it has long been the practice of the International Labour Conference to require some maritime Conventions to achieve a greater degree of acceptance (ratification) specifically by the countries with the principal merchant fleets of the world before they come into force.[38] There are indeed a number of earlier Conventions which have failed to come into force because such a requirement has not been met.[39] The figure of 25 per cent in this case is the result of a compromise reached in the responsible Committee of the Conference.[40] Convention No. 147 came into force on 28 November 1981.

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[37] See also para. 20, above.

[38] cf., e.g., Conventions Nos. 69 and 73, the Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91) and the Accommodation of Crews Convention (Revised), 1949 (No. 92).

[39] e.g., the Holidays with Pay (Sea) Convention, 1936 (No. 54), the Hours of Work and Manning (Sea) Convention, 1936 (No. 57), the Social Security (Seafarers) Convention, 1946 (No. 70), the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109) and Convention No. 133: as to the last of these, though, see paras. 175-177, below.

[40] 1976 RP, p. 194, paras. 89-92.

IX. Available information

32. Several reports received, together with other information available, indicate various governments' views on the prospects for ratification of Convention No. 147, and these are considered in the Conclusions of this general survey. It is obvious that Convention No. 147 - more than any other ILO maritime Convention - calls for such a sweeping commitment to the implementation of basic standards in merchant shipping that ratification of it can by no means be lightly undertaken. It is entirely natural that a number of developing and some other countries which have either no coastline or no merchant fleet have little interest in ratification. It is also understandable that, for a number of other developing countries which are island States or do have a coastline and indeed depend on the sea (often through the fishing industry) for much of their livelihood, ratification of Convention No. 147 is not being actively considered. Where these are countries with no sea-going merchant ships on their registers, there may be no awareness of any problem in this respect (although even here the question of port state action - Article 4 of the Convention - might arise). However, this still leaves a large number of developing and industrialised countries among the principal maritime nations of the world which have not yet indicated their willingness to adhere to the minimum standards of Convention No. 147.

33. Reports under article 22 or article 35 of the ILO Constitution where applicable or under article 19 have been communicated by 95 States and 18 non-metropolitan territories (details are given in Appendix VI). Comments made by employers' and workers' organisations have also been taken into account.[41] The Committee has as usual tried to supplement the information thus provided by taking account of legislation and collective agreements available, as well, of course, as information provided in relation to other international labour Conventions, particularly those listed in the Appendices to Convention No. 147 and Recommendation No. 155.

X. Outline of the survey

34. It is not possible in this survey to examine systematically substantive details of the issues dealt with in the instruments listed in the Appendices to Convention No. 147 and Recommendation No. 155. The aim has rather been to provide a useful review of the information available on these two instruments themselves, concentrating on their particular features and the main problems arising so far. The survey

[41] In the following cases, governments have indicated that comments on article 19 reports have been made by representative organisations: Australia (Seamen's Union of Australia); Philippines (Employers' Confederation of the Philippines, Filipino Association for Marine Employment), Switzerland (Association of Swiss Shipowners). A communication was also received from the International Transport Workers' Federation.

therefore first considers their scope (Chapter I). It then considers how far the requirements of Article 2(a) of Convention No. 147 - especially to have legislation substantially equivalent to the appended provisions - are met and what further improvements are applied in accordance with Recommendation No. 155 (Chapter II). Training arrangements (Chapter III), engagement procedures (Chapter IV), and the role of shipowners' and seafarers' organisations (Chapter V) are examined separately. Questions of jurisdiction, inspection and control are reviewed, including questions relating to foreign-registered ships (Chapter VI). Chapter VII contains some conclusions drawn by the Committee.

CHAPTER I

SCOPE OF THE INSTRUMENTS

35. Under Article 1, Convention No. 147 applies with certain exceptions, or possible exceptions, to every sea-going ship engaged in the transport of cargo or passengers for the purpose of trade or employed for any other commercial purpose. Paragraph 1 of Recommendation No. 155 is drafted in the same terms. Both publicly and privately owned ships are covered (Article 1(1)). It is for national laws or regulations to determine when ships are to be regarded as sea-going ships for the purpose of the Convention (Article 1(2)). The Convention does apply to sea-going tugs (Article 1(3)). It does not apply to ships primarily propelled by sail, whether or not fitted with auxiliary engines (Article 1(4)(a)); or to "ships engaged in fishing or in whaling or in similar pursuits" (Article 1(4)(b)). Small vessels and vessels such as oil rigs and drilling platforms when not engaged in navigation are also excluded, the decision as to which vessels are covered by this exclusion being taken by the competent authority in each country in consultation with the most representative organisations of shipowners and seafarers (Article 1(4)(c)).

I. "Ships"

36. Subject to the exceptions made in Article 1(4), all types or classes of ships or vessels are covered by the wording of Article 1(1) of the Convention. Though some of the expressions used in Article 1 are drawn directly from Article 1 of Convention No. 133,[1] the scope of Convention No. 147 is wider in several respects considered below. One type of vessel (the sea-going tug) is expressly covered by Convention No. 147 (Article 1(3)); one other type of vessel (that primarily propelled by sail) is expressly excluded (Article 1(4)(a)). Otherwise the scope of the Convention is defined essentially in terms not of types of vessels but of (i) the purpose or activity in which they are engaged and (ii) their size. It was particularly agreed in the PTM Conference which adopted the draft instrument later discussed by the 62nd Session of the International Labour Conference not to exclude two types of vessel, namely hydrofoils and air-cushion craft (these having been excluded by Article 1(4)(d) of Convention No. 133).[2]

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[1] See 1976 Report V(1), p. 15, paras. 26-28.

[2] ibid., para. 28.

II. "Sea-going"

37. In Article 1(2), Convention No. 147 (like Conventions Nos. 68, 69, 73, 91 and 92) leaves it to national laws or regulations to determine when ships are to be regarded as sea-going ships, without laying down any specification. Provisions in some countries which have ratified Convention No. 147 apply to shipping in general without discussing whether it is sea-going.[3] Others have legislation applying rather to conditions of employment of seafarers in general - which has the same effect.[4] Some earlier Conventions[5] expressly excluded vessels engaged in the coastal trade: although this is not done in Convention No. 147, it is open to a State to define sea-going ships to exclude such vessels, and this is sometimes done directly[6] or by implication. In several countries what is or is not regarded as a sea-going ship is defined by reference to the waters sailed: there may be a distinction between internal and maritime navigation;[7] or sea-going vessels may be defined as those which actually go to sea.[8] In one case,[9] "sea" is defined as waters beyond smooth or partially smooth waters, which are geographically defined (sometimes varying seasonally). Another country[10] defines sea-going ships as ones which can be used outside ports, harbours, streams, lakes or other protected water; while in another,[11] legislation defines "sea-going" to include ships habitually plying salt waters in ports, harbours, lakes, canals, parts of rivers, etc., communicating with the sea. There is not necessarily any incompatibility between these definitions. The Convention does not limit the discretion left to national laws or regulations to determine in good faith when ships are to be regarded as sea-going for present purposes:[12] but once such

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[3] e.g. France, Federal Republic of Germany, Greece, Sweden.

[4] e.g. Costa Rica, Japan, Norway.

[5] e.g. the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16), and the Seamen's Articles of Agreement Convention, 1926 (No. 22).

[6] e.g. Belgium: Act of 5.6.72 on the safety of ships.

[7] e.g., Italy.

[8] United Kingdom; United Kingdom (Hong Kong).

[9] United Kingdom - the Merchant Shipping (Smooth and Partially Smooth Waters) Rules, 1987 (SI 1987/1591).

[10] Denmark.

[11] Morocco - the Merchant Shipping Code of 31.3.19.

[12] Use of the word "when" rather than "which" in Article 1(2) implies accenting the activities of ships rather than their type. In these conditions, and subject always to the good faith requirement, the determination by a federal State that "sea-going" includes inter-state but not intra-state shipping (as proposed by Australia) might seem to be compatible with the Convention.

determination has been made the only possible exceptions are those allowed under Article 1(4).[13]

III. "Publicly or privately owned"

38. In the case of most countries bound by Convention No. 147, either they have indicated expressly that both publicly and privately owned ships are covered by the legislation (or perhaps that they are covered by separate pieces of legislation),[14] or else the legislation has seemed in any event to apply without discrimination in this respect. Since Article 1(1) is clear in providing that both publicly and privately owned ships are covered by the Convention, the Committee will raise the matter where it appears that publicly owned ships are not covered[15] or that only publicly owned ships are covered.[16]

IV. "Trade or ... other commercial purpose"

39. The Convention specifically applies to ships engaged in the transport of cargo or passengers for the purpose of trade, and in this it uses wording found in earlier maritime Conventions (for example, Nos. 68, 69, 73, 91 and 92). In the present case, however, the expression "or is employed for any other commercial purpose" clearly brings more extensive coverage. It results from an amendment proposed by the Seafarers' group in the responsible Committee of the PTM Conference in order to avoid excluding in addition to fishing vessels "those vessels which were engaged in the transport (and sometimes also in the processing) of fish from the fishing grounds to the port and to other vessels carrying out similar transport activities."[17] The effect is certainly to exclude from coverage ships of war and other governmental ships operated for non-commercial purposes (something which is done explicitly in other Conventions, for example, the Repatriation of Seamen Convention, 1926 (No. 23), and Nos. 22, 145, 146, 163. In Article 1(1) of Convention No. 147, this wording may be said to raise a presumption that any ship, when it is regarded in

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[13] cf. the view taken by the Committee as regards ships' cooks that Article 1(2) of Convention No. 69 providing for the determination of "vessels or classes of vessels which are to be regarded as sea-going" does not allow differentiation to be made on the basis of the composition of the crew (direct requests addressed, e.g., to the United Kingdom).

[14] e.g., Federal Republic of Germany, where separate instructions govern the publicly owned and commercially run DBB Ferries: the Committee has (1990) requested a copy of those instructions.

[15] e.g., Egypt.

[16] e.g., Iraq.

[17] 1976 Report V(1), p. 15, para. 26.

national laws or regulations as sea-going for the purpose of the Convention and when it is employed for a commercial purpose, is covered, such presumption being rebuttable only under Article 1(4). No distinction is made between foreign trade and home trade vessels.[18] The coverage of the Convention is clearly not limited to ships engaged in the transport of cargo or passengers: other purposes covered by the Convention might include, for example, in so far as they are commercial, activities involving surveying, scientific research, dredging, tendering, the exploration or exploitation of mineral resources, the control of pollution, salvage, and various activities (other than catching) connected with the living resources of the sea.[19]

V. "Tugs"

40. Though tugs are expressly excluded from the application of certain earlier Conventions (most notably Nos. 92 and 133, as to crew accommodation), sea-going tugs are expressly covered by Convention No. 147 (Article 1(3)). In most countries bound by Convention No. 147 tugs are covered either explicitly or implicitly by national provisions governing sea-going ships, although in one[20] they are excluded; in another[21] there are no provisions, in the apparent absence of any such vessels in the country. In response to a direct request of the Committee, one country[22] has provided information on the standards applied to sea-going tugs, which are slightly less exacting in some respects, but apparently in conformity none the less with Convention No. 147.

VI. "Sail" ships

41. As in the case of other ILO maritime Conventions, ships primarily propelled by sail are excluded from the application of Convention No. 147, whether or not they are fitted with auxiliary engines (Article 1(4)(a)). The wording was also taken from Article 1(4)(b) of Convention No. 133. No information has been provided as to any difficulties in this respect.

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[18] cf., e.g., Finland (Government's first report).

[19] See further below, para. 42, as to non-fishing fishery vessels; the activities mentioned here are referred to in IMO Conventions and the LOS Convention.

[20] Egypt: from the information provided, it appears that tugs are not regarded as sea-going.

[21] Costa Rica.

[22] Netherlands.

VII. "Fishing", "whaling" and "similar pursuits"

42. Under Article 1(4)(b), the Convention does not apply to "ships engaged in fishing or in whaling or in similar pursuits". The wording is taken from Article 1(4)(c) of Convention No. 133 and it reflects an exception found also in Convention No. 92. As regards the first limb (ships engaged in fishing), the exception is distinctly narrower than that found in certain other Conventions (for example, Nos. 91, 109 and 146) which exclude ships "engaged in fishing or in operations directly connected therewith".[23] The fishing industry comprises many types of vessels, several of which (for example, mother ships, fish carriers, hospital ships, protection vessels, survey vessels, research vessels and training vessels) have been classed by international agreement[24] as non-fishing vessels. Given that these are not "ships engaged in fishing", they would seem to be covered by Convention No. 147. In this classification, the term "fishing vessel" is generally used to distinguish fishery vessels which are engaged in catching operations.[25] Thus, it is clear that apart from ships engaged in whaling - which are themselves specifically excluded from the Convention - the "similar pursuits" referred to are catching operations involving the living resources of the sea, i.e. other aquatic animals (such as seals, walrus and mollusc or crustacean shell-fish) and possibly vegetation. It is[26] the activity in which ships are engaged rather than their type which governs their exclusion from or inclusion in the Convention. Thus in some countries which have ratified Convention No. 147 "fishing vessels" as such are excluded from relevant legislation;[27] in others, fishing vessels may in fact be covered by some provisions applicable to all sea-going ships.[28] National definitions of "fishing vessels" as apparently applied in practice tend to correspond with the international practice and understanding of the term (for example, "cargo vessel which is used for catching fish or other marine animals"[29] or reference to a ship used for catching fish or other marine animals, for harvesting marine vegetation or for exploitation of the living resources of the sea[30]).

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[23] See para. 39, above, as to "other commercial purpose".

[24] See e.g. Report of the Twelfth Session of the Co-ordinating Working Party on Atlantic Fishery Statistics (FAO Fisheries Report No. 316), Copenhagen, July-Aug. 1984, especially Appendix IV; and "Definition and classification of fishery vessel types", FAO Fisheries Technical Paper 267, Rome, 1985.

[25] cf. 1974 SOLAS Convention (Ch. I, Regulation 2(i), of the Annex), which defines a fishing vessel as one "used for catching fish, whales, seals, walrus or other living resources of the sea".

[26] See para. 36, above.

[27] e.g. Spain.

[28] e.g. Morocco, Norway.

[29] Finland: Directive on the Inspection of Vessels of 16.9.83.

[30] France: Decree of 30.8.84 concerning the safety of life at sea.

VIII. "Small vessels"

43. The exclusion or possible exclusion of small vessels by reference to their tonnage or capacity[31] is common in ILO maritime Conventions. For Convention No. 147, the decision as to which "small vessels" are to be excluded is to be taken under Article 1(4)(c) by the competent authority in each country in consultation with the most representative organisations of shipowners and seafarers. The responsible Committee of the PTM Conference preferred this formulation to that used in Article 1(4)(a) and (5)(a) of Convention No. 133, which automatically excludes ships under 1,000 tons, those between 200 and 1,000 being covered "where reasonable and practicable".[32] It is quite possible that the question as to which ships are excluded by virtue of the small vessels clause in Convention No. 147 may be answered differently for each of the matters dealt with in Articles 2, 3 and 4: in several countries[33] this follows from the fact that they are dealt with by different pieces of legislation, although one country has indicated a single definition of small vessels for purposes of Convention No. 147 corresponding to the comparatively high threshold in the legislation relating to just one of the Appendix Conventions.[34]

44. Some of the instruments included in the Appendix to Convention No. 147 themselves make[35] or allow[36] exclusions for small vessels of specified size. This is also the case for some of the further provisions of Conventions included in the Appendix to Recommendation No. 155, namely the Officers' Competency Certificates Convention, 1936 (No. 53), and Conventions Nos. 70, 91 and 133. The Committee has considered that, in determining under Article 1(4)(c) of Convention No. 147 which are the small vessels which may be excluded from the requirements of Convention No. 147, regard must be had to the provisions of the respective Conventions included in its Appendix. In the case in point, the Committee has taken the view that - whether or not shipowners' and seafarers' organisations have been consulted on the matter - the exclusion of vessels of up to 1,600 GRT from provisions for medical examination of seafarers is not consistent with the notion of substantial equivalence in Article 2(a) of Convention No. 147, since Article 1(3)(a) of Convention No. 73 (included in the Appendix to Convention No. 147 and containing the standards relating to medical examination) excludes vessels of less than only 200 GRT.

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[31] Or possibly even their length, as in the case of the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126).

[32] 1976 Report V(1), p. 15, para. 28.

[33] e.g. Norway; United Kingdom (Bermuda).

[34] United Kingdom (see following paragraph).

[35] Vessels of less than 200 gross registered tons (GRT) in Convention No. 73; vessels under 500 tons in Convention No. 92; vessels of less than 100 GRT or 300 cu. m in Conventions Nos. 22 and 23.

[36] Boats of less than 25 gross tons in the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55).

The Committee has therefore asked the Government concerned to reconsider the scope of the national regulations in consultation with shipowners' and seafarers' representative organisations, with a view to bringing them more into line with the requirements of Convention No. 73.[37]

45. To this extent, then, as well as in the requirement to consult the most representative organisations of shipowners and seafarers, the discretion left to member States to exclude small vessels is not unlimited. Although several countries have indeed made exceptions of various kinds by reference to the small size of vessels, others apparently make no such general exclusions.[38] There would appear to be no objection to the government of a State which has ratified Convention No. 147 subsequently redefining small vessels so as to lower the threshold and thus extend the scope of the Convention as applied at the national level, although, clearly, if a decision to narrow the scope by raising the threshold were to be proposed, the consultations laid down in Article 1(4)(c) would be essential.[39] Moreover, all international labour Conventions lay down in any event minimum standards and do not prevent States from going beyond the minimum.[40]

IX. "Oil rigs" and "drilling platforms", etc.

46. The Article 1(4)(c) exclusion of "vessels such as oil rigs and drilling platforms when not engaged in navigation", subject to the same requirements as to consultation as apply in respect of "small vessels", is a much narrower one than that of "specialist" vessels appearing in the first draft Convention.[41] Various governments of countries bound by the Convention[42] have indicated that such vessels are not considered as ships for purposes of Convention No. 147, at least when not engaged in navigation or at least for some matters dealt with in the Convention, though others do not seem to have made any formal decision.[43]

X. Inter-relationships of provisions as to scope

47. Article 1(5) of Convention No. 147 states "Nothing in this Convention shall be deemed to extend the scope of the Conventions

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[37] Observations addressed to the United Kingdom in 1988 (RCE, pp. 367-368) and 1990 (RCO); also direct requests to United Kingdom (Isle of Man, 1989, and Bermuda, 1990). The same question has arisen in Liberia.

[38] e.g., Morocco.

[39] As to tripartite consultations, see further below, Chapter V.

[40] cf. para. 263, below.

[41] See 1976 Report V(2), p. 48, and 1976 RP, p. 190, para. 50.

[42] e.g. Greece, Netherlands, Norway.

[43] e.g. Japan, Portugal; and Morocco (as to drilling platforms).

referred to in the Appendix to this Convention or of[44] the provisions contained therein". The effect of this seems to be, first, to confirm that Convention No. 147 does not in any sense (either formally or by implication) revise the Conventions appended to it by extending their scope. Further, a ship covered in general by Convention No. 147 may nevertheless not be covered by the particular provisions of an Appendix Convention with more restricted scope. Thus, even though ships such as sea-going tugs are prima facie covered by Convention No. 147 (Article 1(3)), the provisions of Convention No. 92 do not apply to them (Article 1(3) of Convention No. 92) either where Convention 92 is itself ratified or where, Convention No. 147 being ratified, substantial equivalence to the provisions of Convention No. 92 is to be ensured under Article 2(a). Conversely, a ship excluded from the scope of Convention No. 147 by Article 1 cannot be brought back into its scope by the fact that it is covered by an Appendix Convention. Thus, ships such as those engaged in fishing or whaling or similar pursuits are not covered by Convention No. 147, and the fact that they are or may be covered by some of the Conventions included in the Appendix (i.e. the Minimum Age (Sea) Convention, 1920 (No. 7), the Sickness Insurance (Sea) Convention, 1936 (No. 56), the Minimum Age (Sea) Convention (Revised), 1936 (No. 58), and Conventions Nos. 55 and 92) cannot bring them within the scope of Convention No. 147 in contradiction to Article 1(4)(b).

48. Care must be taken to ensure that ratified Appendix Conventions which are of general scope and not only addressed to the maritime sphere (namely the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Medical Care and Sickness Benefits Convention, 1969 (No. 130), and the Minimum Age Convention, 1973 (No. 138)) are, in accordance with Article 2(a), applied in good faith to ships covered by Convention No. 147. Conventions Nos. 87 and 98 contain no provisions as to scope which create any difficulties in relation to Convention No. 147.[45] The questions of minimum age and social security create different problems, however, and they have been treated in ways which may produce different results. The difference may be said to arise from the framing and application of Convention No. 147's scope provisions so that the standards it refers to are applied in rem (i.e. to given ships) rather than in personam (i.e. to seafarers as such).

49. Minimum age. Under Article 2(a) of Convention No. 147, a State must "in so far as it is not otherwise bound to give effect to the Conventions in question" have laws or regulations which are substantially equivalent to Convention No. 138 or Convention No. 58 or Convention No. 7.[46] Where either Convention No. 58 or Convention

[44] In reading the French version, it seems necessary to omit the words "d'aucune".

[45] A similar observation applies, mutatis mutandis, to the Workers' Representatives Convention, 1971 (No. 135), included in the Appendix to Recommendation No. 155.

[46] See also below, paras. 108-111.

No. 7 is ratified there are no problems as to scope, since these Conventions aim specifically at minimum age on board ship and must be duly applied in full. Where none of the three Conventions is ratified, the Committee will look to find substantial equivalence to the lowest admissible standards, i.e. those laid down in Convention No. 7. Where only Convention No. 138 is ratified, the application of that Convention in good faith would naturally involve the guarantee of a minimum age for employment on "means of transport registered in (the) territory" of the member State, in accordance with the compulsory declaration made under Article 2(1) of that Convention. In this way, a minimum age of at least 14 years for all seafarers employed on board ship would be applicable.

50. Social security. Under Article 2(a) of Convention No. 147 a State must similarly "in so far as it is not otherwise bound to give effect to the Conventions in question" have laws or regulations which are substantially equivalent to Convention No. 55 or Convention No. 56 or Convention No. 130.[47] Where none of the three Conventions is ratified, the Committee will look to find substantial equivalence to either Convention No. 55 or - if there is a compulsory insurance system in the country in question - Convention No. 56. Where the State has ratified one - or more - of the three, exclusions under each of those three Conventions may be made use of with an exaggerated effect on the coverage of persons who should, under Convention No. 147, be protected, i.e., on the face of it, those employed on board ships registered in the member State's territory and falling within the scope of Convention No. 147 as defined in Article 1. Thus, where only Convention No. 130 is ratified, there might be a difficulty if exclusions made under Article 5 - especially of "casual" employees and those constituting up to 10 per cent of all other employees - have a particular impact on seafarers.[48] In the case of an apparent Article 5 exclusion in this situation,[49] the Committee has solicited information from the Government to try and clarify what percentage of seafarers on nationally registered ships (including foreigners and those employed on a casual basis) are covered by the national social security scheme. There may be further cause for concern where the "persons protected" definitions used for purposes of Convention No. 130 (under Articles 10 or 11 and 19 or 20 - in particular those based on residence or those operating in countries "whose economy and medical facilities are insufficiently developed") have the effect of excluding from protection a large proportion of persons employed on board ship who are not resident in the country of the ship's registration. Under Convention No. 55 there might be a difficulty if

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[47] See also below, paras. 130-155.

[48] Under Article 4 of Convention No. 130 seafarers may also be formally excluded as such from the application of that Convention where they have "at least equivalent" protection under a special scheme. Should the occasion arise, it might be necessary to examine such a scheme in detail for purposes of both Conventions Nos. 130 and 147.

[49] Costa Rica.

the exceptions allowed under Article 1(2) (especially, perhaps, paragraph (b): "persons employed on board by an employer other than the shipowner") were used extensively. Under Convention No. 56, difficulty might arise as concerns the exception of "persons below or above prescribed age limits" (Article 1(2)(e)); but in particular the allowable exception of "persons not resident in the territory of the Member" (Article 1(2)(d)) is again potentially significant, given the number of ships now operating with the services on board of seafarers and other workers of all kinds who are not resident in the country of the ship's registration.[50] The Committee's approach to social security would thus be similar to its approach to minimum age, in that the requirements of Convention No. 147 would have to be fulfilled in good faith.[51] But this would mean that - ratification of Conventions Nos. 55, 56 and 130 notwithstanding - social security arrangements as laid down in Article 2(a) of Convention No. 147 would have to be made only for an acceptable proportion of persons on board nationally registered ships rather than for all such persons. Thus, whereas a minimum age standard would be applied to all such seafarers, not all of them would necessarily be covered by social security measures. The exclusion from social security measures of, say, foreign non-resident seafarers might in these circumstances not be compatible with the good faith application of Convention No. 147 in a country with an open register (including one with an off-shore or international register), where a large proportion of seafarers would actually not be covered.

51. The power to determine under Article 1(2) of Convention No. 147 when ships are to be regarded as sea-going ships for purposes of the Convention (such determination having in practice an excluding effect) and the power to make exclusions under Article 1(4)(c) in respect of small vessels and oil rigs and drilling platforms when not engaged in navigation reflect the Conference's wish to maintain a certain flexibility in the Convention. They are exercised in different ways: the first by national laws or regulations, the second by decision of the competent authority in consultation with the most representative organisations of shipowners and seafarers. They are independent of each other: it may well be that some vessels (for

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[50] e.g. Spain, which has ratified both Conventions Nos. 55 and 56 as well as No. 147, does not apply its Convention No. 56 sickness insurance scheme to all non-resident foreign nationals working on board Spanish-registered ships (although there is coverage of certain foreign nationals under bilateral agreements): those workers are in that case nevertheless covered by the Convention No. 55 alternative (liability on the part of the shipowner, as indicated in the Committee's respective direct requests on the two Conventions in 1987), so that in any event it can be considered that the requirements of Convention No. 147 in this respect would be met in such a case.

[51] The question is one of applying the obligations of Convention No. 147, and not in any sense of proposing to "extend the scope" of Appendix Conventions (which would in any event be contrary to Article 1(5) of Convention No. 147 - see para. 47, above).

example, coastal vessels) can be excluded under more than one head. It is noticeable that, in contrast to Article 1(2) and (4)(c), the provisions in Article 1(1), (3) and (4)(a) and (b) referring to public or private ownership, trade or other commercial purpose, tugs, sail ships, and ships engaged in fishing or whaling or similar pursuits do not allow States any additional discretion to make determinations which would have a further excluding effect. In the end, the limited flexibility allowed by the provisions as to scope in Article 1(2) and (4)(c) of Convention No. 147 must invariably operate within the bounds and constraints imposed by both the general object and purpose of the Convention and the specific requirements laid down in Articles 2, 3 and 4.

CHAPTER II

LABOUR STANDARDS TO BE APPLIED UNDER CONVENTION No. 147 AND RECOMMENDATION No. 155

52. The main substantive standards in Convention No. 147 are dealt with by Article 2(a): aside from the provision as to qualifications and training in Article 2(e),[1] and in part that as to engagement in Article 2(d),[2] the rest of Article 2 and Articles 3 and 4 are essentially concerned with procedures and ensuring the implementation of those standards. Article 2(a) contains the undertaking of a member State which ratifies the Convention first to have certain laws and regulations governing ships registered in its territory; and secondly to satisfy itself that the provisions of such laws and regulations are substantially equivalent to the provisions of the Conventions referred to in the Appendix. The second part of the undertaking applies, of course, only in so far as the State is not otherwise bound (by ratification) to give effect to those Conventions: if it is so bound, then the normal obligations arising from ratification of an international labour Convention - involving application in full[3] - apply. The laws or regulations referred to in the first part of Article 2(a) are divided into three categories: (i) safety standards, which are defined as including standards of competency, hours of work and manning, the purpose of such standards being to ensure the safety of life on board ship; (ii) appropriate social security measures; and, to a considerable extent at least, (iii) shipboard conditions of employment and shipboard living arrangements. As to (iii), the undertaking to have laws or regulations only applies in respect of matters which, "in the opinion of the Member, are not covered by collective agreements or laid down by competent courts in a manner equally binding on the shipowners and seafarers concerned". Paragraph 2 of Recommendation No. 155 adds a call for the improvement of the standards referred to in Article 2(a) of the Convention up to what is at least equivalent to the provisions appended to the Convention; it also raises the level of action to be taken since, on this point, it uses the word "ensure" rather than "satisfy themselves". Paragraph 2 of the Recommendation in addition provides for member States to satisfy themselves that provisions of collective agreements dealing with shipboard conditions of employment and living arrangements attain the level of what is at least

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[1] See below, Chapter III.

[2] See below, Chapter IV.

[3] As to application to non-metropolitan territories, see further below, paras. 62-64.

equivalent. In Paragraph 3, the Recommendation calls for "steps" to be taken "by stages if necessary" with a view to the laws and regulations or collective agreements containing provisions at least equivalent to the instruments referred to in the Recommendation Appendix. Paragraph 4 of the Recommendation anticipates revision of Convention No. 147 to take account of changes in the circumstances and needs of merchant shipping and finally calls for cognisance to be taken in the application of the Convention and the Recommendation respectively of revisions of Conventions and other instruments mentioned in the two Appendices.

I. Undertaking "to have laws or regulations"

53. Under Article 2(a) of Convention No. 147, the undertaking to have laws or regulations in respect of first safety standards and second appropriate social security measures is unqualified.[4] In respect of (other) shipboard conditions of employment and living arrangements,[5] the undertaking is a qualified one: if, in the opinion of the member State, these matters are covered by collective agreements or laid down by competent courts in a manner equally binding on the shipowners and seafarers concerned, there is no need to have laws or regulations on them, because the undertaking only operates "in so far as" they are not so covered or laid down. The turn of the phrase in Article 2(a)(iii) would seem to imply that the conditions and arrangements might be satisfactorily covered otherwise than by legislation.[6] Article 2(a)(iii) thus allows room for the establishment of standards on matters other than safety and social security through two alternative approaches (i.e. collective agreements or the competent courts). In doing so it requires an opinion to be formed by the member State in good faith as to whether those matters are or are not effectively covered by one or both of those alternatives. If such opinion is that they are not so covered, then it seems that an obligation to legislate will arise.

54. The Committee is concerned as to two kinds of gaps which may be identified by the opinion as to coverage required under Article 2(a)(iii): those in the scope and those in the content of the non-legislative provisions. If significant groups of seafarers do not fall within the scope of those provisions or if significant aspects of shipboard conditions of employment and living arrangements are not dealt with by them, the question will arise whether the member State

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[4] cf. point (a) of Recommendation No. 108 ("should ... make and adopt regulations"). Under Article 2(a) there is thus an obligation to have laws or regulations laying down the safety standards contained in Articles 4 and 7 of Convention No. 134, even though the wording of those two Articles is in itself, perhaps, more ambiguous.

[5] Article 2(a)(iii) - as to how those matters are defined, see further below, paras. 156-180.

[6] The Appendix Conventions themselves often insist on legislation, however - ibid.

is not bound in good faith to form an opinion in favour of legislation and act accordingly. Implementation by the member State of the requirement in Article 2(a)(iii) to form an opinion necessarily comes at a later stage then and is distinct from the exercise of any margin of discretion it might have in the determination of what are "shipboard conditions of employment and shipboard living arrangements" for present purposes. The member State's opinion clearly should be formed both in good faith and in the light of the object and purpose of the Convention[7] - namely to deal with "substandard vessels, particularly those registered under flags of convenience"; the State should thus duly consider how far any gaps identified in the content or scope of non-legislative measures taken might necessitate some "shipboard conditions of employment and shipboard living arrangements" or some ships and seafarers being brought within the coverage of the laws and regulations required by Article 2. In forming its opinion, the member State might also have regard to the fact that many of the Appendix Conventions contain provisions which by the very nature of their subject-matter or by their substantive requirements normally call for legislation.

55. In practice, most of the States which have ratified Convention No. 147 have provided information on legislation dealing with shipboard conditions of employment and living arrangements as well as safety standards and social security measures. These - together with available information as to the alternative approaches - are considered further below in this chapter. Other countries have also indicated the national position in article 19 reports. In the absence of any indications from, for example, shipowners' and seafarers' organisations that there are problems in this respect, the Committee has not so far had to raise any questions under Article 2(a)(iii) as to the "opinion" of a member State.

II. Application by the State to "ships registered in its territory"

56. The Article 2(a) undertaking and the substantive obligations flowing from it apply to ships registered in the territory of the member State which ratifies the Convention. The expression "registered in its territory" was preferred to "flying its flag" because of the practice in other ILO instruments, although the effect is perhaps the same in virtually all cases.[8] The jurisdiction which a State must effectively exercise over ships flying its flag[9] is of two kinds: jurisdiction to prescribe, i.e. the power of the State to

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[7] cf. Vienna Convention on the Law of Treaties, 1969, Articles 26 and 31.

[8] 1976 Report V(2), p. 41. But cf. Article 4 of the Convention (para. 268, below). cf. also Article 91 of the LOS Convention.

[9] In respect of administrative, technical and social matters in accordance with Article 94(1) of the LOS Convention and Article 5(1) CHS - see para. 12, above.

lay down legislation or other rules; and jurisdiction to enforce, i.e. the power of the State to enforce legislation or other rules.[10] Article 2(a) deals, then, with the exercise of that jurisdiction to prescribe. It indicates - for a State which ratifies Convention No. 147 - in the first place as regards what matters jurisdiction to prescribe is to be exercised in respect of ships registered in its territory.[11] Recommendation No. 155 in Paragraphs 2 and 3 and its Appendix gives further indications for all States as to what measures may be regarded as desirable.

57. Most reports examined by the Committee show that laws or regulations have been adopted on at least some matters covered by Convention No. 147 with reference to ships registered in the national territory. But Article 2(a) by no means prohibits a State from having laws or regulations relating to ships other than those registered in its territory; in many cases (for example, MOU countries), there are laws or regulations of a port State concerning the application of labour and other standards to ships registered in other territories inasmuch as they are physically present within the territory of the port State. This is precisely the situation referred to in Article 4 of the Convention.[12] Ships may thus, under the terms of the Convention, at the same time be subject to both the laws and regulations of the territory of registration and those of the port State. If, as a result of different substantive standards (concerning, for example, accident prevention) being fixed by those concurrent (prescriptive) jurisdictions in respect of a given ship in a given foreign port, any doubt arises, it would seem that in the ILO

[10] See further below, Chapter VI. In terms of Article 94(2)(b) of the LOS Convention it is the obligation of the State to "assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship".

[11] Read together with the rest of the Convention, and especially the instruments incorporated by reference, it gives some concrete indication of what measures may for those States at least be regarded, in the terms of Article 94(3) of the LOS Convention and Article 10(1)(b) CHS, as "necessary to ensure safety at sea with regard to ... the manning of ships, labour conditions and the training of crews". The question of the extent of any other State's obligation under Article 94 of the LOS Convention or Articles 5 and 10 CHS "effectively (to) exercise its jurisdiction" in respect of these matters goes beyond the Committee's terms of reference. As to training, see also Article 2(e) of Convention No. 147, and Chapter III, below.

[12] See Chapter VI, below.

framework such doubt would be resolved by applying the "more favourable conditions".[13]

III. Undertaking as to the provisions of laws and regulations

(a) "To satisfy itself"

58. The Article 2(a) undertaking by the member State to "satisfy itself" (in French "vérifier") relates to the laws and regulations in question and not to the other methods of application allowed, to a degree, in respect of the matters referred to in Article 2(a)(iii), i.e. collective agreements and binding court decisions. Article 2(a) aims at the substantial equivalence of those laws and regulations to the Conventions or Articles of Conventions referred to in the Appendix to Convention No. 147. The final version of the Convention is thus less demanding than earlier drafts, in that the State's obligation to "satisfy itself" as to the substantial equivalence of provisions of collective agreements to the provisions of the Appendix Conventions[14] no longer obtains. In fact, the "satisfy itself" clause did not in the earlier draft apply at all to the required laws and regulations, the undertaking originally being simply "to have laws or regulations ... which are substantially equivalent."[15]

59. The "satisfy itself" clause in Article 2(a), then, gives the "standard of proof" by which a Member's discharge of its undertaking to have laws or regulations substantially equivalent to the Conventions or Articles of Conventions in the Appendix is to be tested.[16] It is evident that the discharge of the undertaking in

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[13] Article 19(8) of the ILO Constitution: "In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation". The same principle applies where there is concurrent jurisdiction to enforce - below, Chapter VI.

[14] 1976 Report V(2), p. 50.

[15] 1976 Report V(1), p. 23, and 1976 Report V(2), p. 36.

[16] There would in fact appear to be at least two "standards of proof" in Convention No. 147. The higher one is that applying where the member State undertakes to ensure (in French "faire en sorte") that certain measures are taken; this appears in Article 2(d) (at the beginning) and (e) of the Convention (and also in Paragraph 2(a) of Recommendation No. 155). The other one, applying where the member State has to "satisfy itself" in some regard, seems to include a certain nuance between, on the one hand, the case where the accent may be thought to be placed on the element of subjective appreciation by the member State (viz. in Article 3, where "satisfied" in English corresponds to "acquis la conviction" in French) and, on the other

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Article 2(a) involves positive action by the government of the member State aimed at the attainment of the requisite degree of compliance. The ILO supervisory procedures triggered by ratification of the Convention involve in turn an objective examination of the steps taken by governments in this regard, and indeed in regard to all of the obligations and undertakings laid down in the Convention. Thus, in appropriate cases, the Committee requests information from governments of countries bound by the Convention in order to appreciate the steps taken by them to satisfy themselves ("vérifier") as required and the manner in which substantial equivalence has been satisfactorily established.

60. Although the second part of Article 2(a) (beginning "and to satisfy itself") links the laws and regulations required by the first part to the Conventions or Articles of Conventions referred to in the Appendix, there remain matters mentioned in the first part which are not dealt with directly in the Appendix Conventions.[17] This is in a sense explained by the elision from the Appendices of earlier drafts of the Convention of instruments dealing with hours of work and manning (specifically referred to in Article 2(a)(i)) and a more comprehensive social security regime (similarly in Article 2(a)(ii)). Further, in the very nature of the terms in which Article 2(a) is conceived, there must in any case be a grey area of what may or may not be called standards necessary to "ensure the safety of life on board ship"[18] or "appropriate social security measures"[19] or again "shipboard conditions of employment and shipboard living arrangements"[20] - an area which may not be entirely covered by the Appendix Conventions or the Recommendation Appendix instruments or indeed any other ILO instruments. For this reason, when questions arise, the Committee may request or examine information from countries bound by the Convention on the basis simply of the first part of

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hand, the cases where the objective need for positive verification seems foremost (viz. in Article 2(a) and (c), where "satisfy itself" corresponds to "vérifier", and again in Article 2(f), where the same French term corresponds to "verify" in English). In a Memorandum dated 1.10.82 addressed to the Government of the United States, the Office has further recalled the view expressed by the Legal Adviser in the responsible Committee of the 1976 Conference, according to its minutes (1976 CSV, PV2, p. 1), that under Article 2(a) States "engage themselves to assure" (sic. - in French "veiller") that the requisite standards are met - which seems to bring the "satisfy itself" standard of proof even nearer to the "ensure" standard. In the middle of Article 2(d)(ii), "ensure" is understood before "and that", where it corresponds to the reflexive "s'assurer" in the French version. In Paragraph 2(b) of the Recommendation, "satisfy themselves" corresponds to "vérifier".

[17] But see also below, as to Convention No. 22, paras. 182-186.

[18] cf. paras. 80-81, below.

[19] cf. paras. 132 and 147-148, below.

[20] cf. paras. 156-180, below.

Article 2(a), in order to determine whether those countries have the required laws or regulations (or, in the case of shipboard conditions of employment and living arrangements, collective agreements or equally binding acts of courts). The test of whether the State has satisfied itself as to substantial equivalence to the Appendix Conventions is of course not available in those cases.[21]

61. In two respects it seems that Recommendation No. 155 advocates greater activity by member States than does Convention No. 147 in relation to the Appendix to the Convention.[22] Paragraph 2(a) of the Recommendation uses the word "ensure" ("faire en sorte") where Article 2(a) of the Convention uses the expression "satisfy itself" ("vérifier"); this seems to imply a greater, objectively recognisable degree of certitude that the requisite degree of equivalence (not the same in the Recommendation as in the Convention) is achieved and, in order to attain such certitude, greater efforts on the part of the member State. The second additional activity called for in the Recommendation (Paragraph 2(b)) is for States to "satisfy themselves" ("vérifier") that the level of compliance (at least equivalent) is achieved also where shipboard conditions of employment and living arrangements are dealt with by collective agreements rather than laws or regulations (no mention being made in Recommendation No. 155 of the case where they are laid down by competent courts).

(b) "Not otherwise bound"

62. All international labour Conventions include the specification that they are binding only upon Members of the ILO whose ratification has been registered with the Director-General. Under article 19(5)(d) of the ILO Constitution, if a Member has obtained the consent of the national competent authorities, it communicates the formal ratification of a Convention to the Director-General and takes such action as may be necessary to make effective the provisions of the Convention. The obligation to make effective the provisions of ratified Conventions applies of course to the Conventions referred to in the Convention No. 147 Appendix. Thus, the inclusion in Article 2(a) of Convention No. 147 of the words "in so far as the Member is not otherwise bound to give effect to the Conventions in question" makes it clear that, where a State is bound by both Convention No. 147 and one or more of the Conventions referred to in the Appendix, the normal independent obligations under those Appendix Conventions have to be fulfilled in full and are not subject to any "abatement" by virtue of the substantial equivalence clause in Article 2(a) of Convention No. 147.

63. In practice, therefore, the Committee does not usually in the context of reports under article 22 of the ILO Constitution from countries bound by Convention No. 147 reconsider the position of those countries in respect of Appendix Conventions which have been ratified (or declared applicable without modification, in the case of

[21] See, e.g., paras. 96 and 99, below.
[22] See paras. 52 and 59, above.

non-metropolitan territories). For those countries, it is mainly in the case of minimum age and social security, where it appears that advantage may in effect have been taken of possible exclusions under Convention No. 138 and Convention No. 130 respectively to except seafarers from the application of those Conventions, that the Committee may endeavour in the framework of Convention No. 147 to seek information as to the good faith application to seafarers of the minimum age and social security requirements of Article 2(a) read together with the Appendix.[23]

64. In the case of non-metropolitan territories in respect of which declarations of application have been made under article 35 of the ILO Constitution, the words "in so far as the Member is not otherwise bound to give effect to the Conventions in question" in Article 2(a) seem to limit the operation of the "satisfy itself" clause in a similar way. That clause may not operate, then, where a declaration of application of the Appendix Convention in question to the territory in question has been made. If the declaration is one of application without modification, then the Member is "otherwise bound" for Article 2(a) purposes, and in the Convention No. 147 framework the Committee will only take up the matters referred to in paragraph 63 above. But if the declaration is one of application with modifications, then it becomes necessary for purposes of Article 2(a) to look into how far the Member is bound by such declaration to give effect to the Appendix Convention in question in the territory in question. If this were not done and the modifications went "so far" as to exclude the application of some of the essential provisions of the Appendix Convention (in other words did not "respect the general goals" of the Appendix Convention in question or did not have sufficient regard to the object and purpose of both Convention No. 147 (Article 2(a)) and the Appendix Convention in question), then the Member might not in fact be "otherwise bound" and moreover it would not be possible to tell whether the Article 2(a) requirement of substantial equivalence were met or not.[24] If it thus appears that substantial equivalence has not been demonstrated, then the application of an Appendix Convention to a non-metropolitan territory may be raised under Convention No. 147, declaration of application (with modifications) of that Convention notwithstanding.

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[23] See above, paras. 48-50, but also para. 53, and, as to freedom of association, paras. 191-194, below. As to the requirement of verification by inspection or other means, see also para. 247, below.

[24] e.g. as to the application of Convention No. 87 in United Kingdom (Hong Kong), see below, para. 192; the modifications attached to the declaration of application of Convention No. 92 in the same case and of Convention No. 58 in the case of Bermuda do not seem to cause any such difficulties. A declaration of application of Convention No. 147 could, of course, be made with modifications as to any of the provisions of Convention No. 147 itself, including Article 2(a) and the Appendix.

(c) Substantial equivalence

65. The question of the Article 2(a) requirement of laws or regulations substantially equivalent ("(qui) équivalent dans l'ensemble") to the provisions of the Conventions referred to in the Appendix to Convention No. 147 and its meaning has from time to time been raised. Although the definitive interpretation of Conventions and Recommendations is under article 37 of the ILO Constitution vested in the International Court of Justice, in order to carry out its function of determining whether the requirements of Conventions are being observed, the Committee has to consider and express its views on the content and meaning of their provisions and determine their legal scope where appropriate.[25] It is on this basis and in response to the wishes expressed by various governments that the following analysis is offered.

66. The notion of "equivalence" may be traced first to Paragraph 1 of Recommendation No. 107,[26] which referred to conditions in vessels registered in some countries not being generally equivalent to those traditionally observed under collective agreements and social standards in other countries. This term had itself evolved from the original "in conformity" (Office text) through "in accordance" (PTM Conference Committee text) and "equal" (adopted by the PTM Conference);[27] generally equivalent was agreed by the drafting committee of the responsible committee of the 41st Session of the Conference.[28] Some governments have considered this meant they should "take account" of Recommendation No. 107; others undertook more active measures where conditions were "found to be inferior" (in most cases, articles of agreement were in any event required to be identical or to conform to national provisions).[29]

67. In the first draft instrument concerning substandard vessels prepared for the 1975 PTM Conference, the expression at least equivalent was employed to describe the relation between the minimum substantive standards to be required for nationally registered ships and the "basic standards" referred to in a series of appended instruments. According to the record, the Legal Adviser considered that use of this expression meant that "deviations of detail from the terms of a Convention (referred to in the Appendix) could be admitted

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[25] See the Committee's restatement of its methods of work - 1987 RCE, para. 21; and 1990 RCE, para. 7. The International Labour Office's formal and informal interpretations of international labour instruments are also made with the reservation that the Constitution confers no special competence on the Office in this respect.

[26] See above, paras. 2 and 3.

[27] 1958 Report III, pp. 4, 8 and 10.

[28] 1958 RP, p. 235, para. 11. In Article 3 of Convention No. 147, which deals with the same problem as Recommendation No. 107, the expression used is simply equivalent - see further below, paras. 221-225.

[29] 1972 RCE: General Survey, para. 8. As to articles of agreement, see further below, paras. 182-186.

as long as the general level of protection remained the same":[30] it seems to the Committee, however, that that explanation relates to the meaning of "equivalent", without addressing the meaning of "at least". The term substantially equivalent was used in this context in the single draft instrument approved by the PTM Conference, following the decision of the responsible Committee, by a majority, where substantially was preferred by the Shipowners and at least by the Seafarers;[31] and following the failure of that Conference to retain a Shipowners' amendment using the words "standards which are substantially in compliance with the basic provisions of" the instruments referred to in the Appendix.[32] It was as a result of the comments received after circulation of the PTM Conference report that the Office proposed two instruments: a draft Convention using the words substantially equivalent and a draft Recommendation using at least equivalent.[33] This aspect of the drafts was not altered when the two instruments were finally adopted by the International Labour Conference in 1976.

68. During the elaboration of the Convention the concept of substantial equivalence was criticised by some governments, for example, as introducing "serious doubt as to what the international standards are"; "not adequate" (to permit protection of the legislative sovereignty of the member State); "too broad"; "ambiguous and undercuts the desirable standards which one would wish to see embodied in the instrument"; "quite complex ... has a wide range of flexibility being modified by economic, political, educational and social environment"; "could be interpreted as something less than the intent of the instrument". Still, it was on the whole acceptable to the majority of governments replying.[34]

69. The responsible Committee of the 62nd Session of the Conference was apparently given it as the Legal Adviser's view that substantial equivalence "implied that the State agreed to take account of the general goal[35] of those (Appendix) instruments, whose absolute conformity with national standards[36] was not required":[37] this has in turn been explained by reference to the minutes of that Committee, which give the Legal Adviser's views as that "national laws and regulations could be different in detail, but

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[30] 1976 Report V(1), pp. 5 and 14, para. 23.

[31] ibid., p. 17.

[32] ibid., p. 27.

[33] 1976 Report V(2), pp. 6-10 and 20-25.

[34] ibid., pp. 20-24: comments of the Governments of Canada, Chile, Finland, Ghana, Philippines, United States, respectively.

[35] sic.

[36] sic.

[37] 1976 RP, p. 188, para. 27; on p. 189 in para. 48 the expression quoted as used by the Legal Adviser is that a State would bind itself "to see ("veiller") that its legislation ... offered protection equivalent" to that provided by the Appendix instruments (in the minutes (1976, CSV, PV4, p. 2), containing the latter statement, the words "more or less" appear before "equivalent").

that the States should engage themselves to assure[38] that the general goals[39] intended by these instruments should be respected".[40] That Committee's report on one occasion only uses an expression which seems to be a hybrid of the English and French terms: "on the whole substantially equivalent ... within the meaning of the proposed Convention".[41] When presenting the same Committee's report to the plenary of the Conference, the Reporter indicated that "in the Convention itself it was deemed necessary to specify exactly what was meant by the term, and this is done in the Appendix in the form of a footnote to the reference to (Convention No. 53), with a view to making it clear to all States exactly what was meant by 'substantial equivalence'".[42] From the final drafting of the footnote and its presentation in the Convention, though, it seems that this provision, which was added by a working party of the responsible Committee,[43] does not clarify the concept of substantial equivalence in general, but merely restates it in the terms of Convention No. 53.

70. One government[44] has indicated in its article 19 report the conclusion reached on legal advice by its Federal Task Force on

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[38] sic.

[39] sic.

[40] Memorandum of the International Labour Office to the Government of the United States dated 1.10.1982. The same minutes record the view immediately expressed by the Seafarers' Vice-Chairman, that "the important word was 'equivalent'. 'At least equivalent' or 'almost equivalent' would indicate exactly the same idea". The same speaker then indicated that the Appendix itself constituted a list of the provisions considered as fundamental (1976 CSV, PV2, pp. 1 and 2). No other opinion on the subject is recorded.

[41] 1976 RP, p. 195, para. 99; see further below, paras. 86 and 113.

[42] 1976 RP, p. 245. The footnote itself reads: "In cases where the established licensing system or certification structure of a State would be prejudiced by problems arising from strict adherence to the relevant standards of the Officers' Competency Certificates Convention, 1936, the principle of substantial equivalence shall be applied so that there will be no conflict [in French "afin qu'il n'y ait pas conflit" - in the original version "de manière que ..." (1976 CSV, D86)] with that State's established arrangements for certification". The final words (from "so that ...") would seem to be intended to describe the manner of applying the principle rather than the purpose of applying it. The Government delegate of India also stated (1976 RP, p. 251) "In its widest context we find that, if reasonably interpreted, we have in India social standards which are 'substantially equivalent'": in its article 19 report, the Government has again indicated its view that its legislation is substantially equivalent to the Conventions or Articles of Conventions in the Appendix to Convention No. 147.

[43] 1976 RP, p. 195, para. 99.

[44] Australia.

ILO maritime Conventions, to the effect that, "while the words 'substantially equivalent' do not require national laws or regulations to be identical in every respect to the Conventions included in the Appendix to Convention No. 147, they do require those laws or regulations to have in all material respects an effect corresponding to the requirements of the Conventions. The task force recognised that this opinion was more restrictive than that provided by the ILO in a Memorandum to the United States Government, i.e. that the general goals of the Conventions in the Appendix must be respected. However, in the absence of a satisfactory objective test of the degree of departure from a Convention's requirements that will or will not be permissible, it was considered that it would be safer for Australia to adopt a more restrictive interpretation."

71. In order to try and clarify the meaning of substantially equivalent, it does also seem desirable as a matter of principle and in the spirit of Article 31(1) of the Vienna Convention to refer to the "ordinary meaning" of the words in their context and in the light of the object and purpose of Convention No. 147. This approach might tend to favour the conclusion referred to in the preceding paragraph, that the use of the expression in Article 2(a) implies laws or regulations which "have in all material respects an effect corresponding" to the requirements of the Appendix Conventions.

72. In its examination of article 22 reports from countries bound by the Convention, the Committee has necessarily had to consider whether substantial equivalence has been achieved in concrete cases. For three countries[45] the question does not arise at all, and for several others many of the Appendix Conventions are themselves ratified, so that in the end the question of substantial equivalence has in practice arisen relatively rarely. In those cases, the Committee has endeavoured to build on the obviously very helpful statements referred to in paragraph 69 above. This Chapter includes available indications in relation to each of the subjects dealt with by Article 2(a) and the Appendix Conventions.

73. Certainly substantial equivalence is the minimum standard acceptable under Article 2(a) of Convention No. 147. The term does not imply the open-endedness of the expression at least equivalent: Recommendation No. 155, clearly, from its use of the latter expression and from its very title, is concerned with promoting standards at or above the level laid down by the instruments it refers to. Substantially equivalent, then, must be something less than at least equivalent. Since "equivalent" is qualified by "substantially", the level must also be something less than simple equivalence (the notion employed in Article 3 of the Convention). On the other hand, it seems significant that the PTM Conference, in endorsing the use of the expression substantially equivalent, effectively rejected, because of very strong Seafarers' objections, a Shipowners' amendment using the expression substantially in compliance with the basic provisions (of the instruments in question). Thus, it seems that what is called for

[45] France, Italy, Spain - see para. 17, above.

must be more than merely taking account[46] and more than substantial compliance with only basic provisions, although these would no doubt be steps along the way to achieving substantial equivalence proper.[47]

74. The Committee accepts the view that there may under Article 2(a) be differences or deviations in detail as between the requisite national laws or regulations and the Appendix Conventions and that literal compliance with every provision of the Appendix Conventions is, for purposes of Article 2(a), not indispensable. Yet to say that national provisions may be different in detail is not in itself to say that they may be inferior.

75. The Committee finds it necessary in the case of each article 22 report on Convention No. 147 to look at the object and purpose of the Appendix Convention in question and the general level of protection it lays down. The Committee cannot but have regard to the general principles applying to the observance, application and interpretation of treaties embodied in the Vienna Convention, Articles 26 to 38, including the principle that a treaty in force (in this case Convention No. 147) is binding on the parties to it and must be performed in good faith. In examining article 22 reports, the Committee has in this spirit endeavoured to apply practical and objective tests to determine what are the minimum labour standards acceptable under Article 2(a) and whether national laws and regulations meet those standards.

76. The Committee endorses the emphasis placed in the Office Memorandum[48] on the "goals" of Appendix Conventions, which tends to imply that the notion of substantial equivalence in Article 2(a) involves substantial equivalence with each substantive provision of

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[46] The responsible Committee of the 1976 Conference was also given it as the Legal Adviser's view that the effect of Article 2(e) (as it now is) concerning the Vocational Training (Seafarers) Recommendation, 1970 (No. 137), was that that instrument "should be taken account of", and that that requirement varied from the one under what is now Article 2(a) - 1976 CSV, PV2, p.1. The notion of taking "account" coincides perhaps with that of taking "cognisance" in Paragraph 4 of Recommendation No. 155 (earlier drafted as "account" - 1976 Report V(2), p. 58).

[47] Interestingly, without using the word "equivalent", one of the Appendix Conventions (No. 92) may permit a comparable effect: Article 1(5) of Convention No. 92 allows variation of the substantive requirements of the Convention where the competent authority is satisfied, after due consultations, that the variations to be made provide "corresponding advantages as a result of which the over-all conditions are not less favourable" than those which would result from the full application of the provisions of the Convention. Convention No. 130 also uses the term at least equivalent - see para. 50, above.

[48] See para. 69, above.

the Appendix Conventions. The failure to adopt the Shipowners' amendment referred to suggests that this emphasis is right.[49]

77. Further, some standards in the Appendix Conventions have explicit quantifiable elements in respect of which it may be possible to determine that substantial equivalence involves a commitment to less than 100 per cent: this might apply as regards, for example, the length of a benefits period, or the rate of benefits, in Conventions Nos. 55, 56 and 130;[50] or some of the details of dimensions of sleeping rooms in Article 10 of Convention No. 92;[51] it may even apply to the periodicity of medical examinations under Convention No. 73.[52] However, in respect of non-quantifiable elements such determination would be difficult, and, especially where questions of safety are involved, it might be impossible to make. In such cases, to be faithful to the wording and spirit of Article 2(a), the Committee's view of what is required is bound to prefer more strict adherence to the provisions of the Appendix Conventions.

78. Given the way in which Article 2(a) is phrased, it must be first for the Government concerned to weigh the question whether due regard is had to the object and purpose ("general goals") of relevant Appendix Conventions. It is nevertheless the Committee's task in accordance with its terms of reference itself to examine the measures taken by member States to give effect to the provisions of Article 2(a): this means, in addition to examining whether the member State has satisfied itself ("vérifié") that there is substantial equivalence, examining in an objective manner the measures taken and the reasoning leading to a conclusion that there is substantial equivalence. In doing this, the Committee may express its view as to whether substantial equivalence seems to have been attained.

79. Where there is not full conformity with the Appendix Conventions, the test the Committee will apply will involve first determining what the general goal or goals of the Convention is or are, i.e. its object or objects and purpose or purposes. These may present themselves as one main general goal and several subordinate goals. The test for substantial equivalence may then be, first, whether the State has demonstrated its respect for or acceptance of the main general goal of the Convention and enacted laws or regulations which conduce to its realisation; and if so, secondly, whether the effect of such laws or regulations is to ensure that in all material respects the subordinate goals of the Convention are achieved. It is on this basis that the Committee has endeavoured to deal with individual cases arising in its examination of article 22 reports and with the other questions considered in this Chapter.

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[49] This is reflected in the reproduction in the article 22 report form adopted by the Governing Body of all the substantive provisions of the Appendix Conventions incorporated.

[50] cf. paras. 133-139, below.

[51] cf. paras. 174-175, below.

[52] cf. below, paras. 115 and 118.

IV. Safety standards

80. Article 2(a)(i) of Convention No. 147 formulates the undertaking "to have laws or regulations laying down ... safety standards, including standards of competency, hours of work and manning, so as to ensure the safety of life on board ship". The notion of safety standards and the obligations attached to it are, in the first place, on this wording limited neither to the three topics mentioned in this clause nor to elements of the Conventions listed in the Appendix (hours of work and manning manifestly not being substantively covered by the Appendix Conventions).[53] In the second place, no indication has been given either expressly in the Convention or indirectly in the preparatory work as to which of the Appendix instruments are to be regarded as establishing safety standards - and therefore giving rise to the obligation to legislate laid down in Article 2(a)(i) - and which of them establish shipboard conditions of employment and living arrangements which, under Article 2(a)(iii), may be the subject of collective agreements or laid down by competent courts in a manner equally binding. In the third place, the notion of safety standards in the Convention is limited to those designed to protect life on board ship.

81. The first of these observations relates to the grey area of safety standards going beyond what is given specifically in either Article 2(a)(i) or the Appendix Conventions, which is a matter initially for the good faith appreciation of the Government of a ratifying State and later, of course, for the consideration of the

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[53] They are the object of one specific obligation under Convention No. 22, especially Article 6(3), paragraphs 4, 11 and perhaps 12. The First Report of the responsible Committee of the Conference (1976 RP, p. 190, para. 55) states: "The Committee confirmed that the words 'hours of work' where used in Article 2 related to safety standards. The Committee confirmed that where the terms 'safety' or 'safety standards' were used in this Convention and this Recommendation, they referred to the standards contained in the ILO Conventions listed in the Appendices to the two instruments as well as in the two instruments themselves." The second sentence quoted (added, according to the minutes, "with a view to clarifying the sphere of competence of IMCO and ILO" - 1976 CSV, PV13, p. 5) appears to contradict the first, since the Appendix Conventions do not contain standards on hours of work. It is not clear, either, how far the words "safety" and "safety standards" when used in Convention No. 147 (they are not actually used in Recommendation No. 155) should be taken by virtue of this sentence to refer to additional standards contained in the Appendix to Recommendation No. 155. In any event, the Recommendation No. 108 considerata include the declaration that "labour conditions have a substantial bearing on safety of life at sea"; and Recommendation No. 108 also says that the country of registration should make regulations designed to ensure that "internationally accepted safety standards" are observed (point (a)).

supervisory bodies of the ILO.[54] As for the second observation, analysis of the Appendix Conventions assists in reaching a reasonable understanding of the notion of safety, although some of those Conventions include both safety and "non-safety" standards.[55] From the third observation, it appears that the required safety standards are concerned with the more urgent matters, i.e. where life is endangered: the life in question may be not only that of the persons who are the object of the relevant standards (concerning, for example, competency, minimum age or medical examination) but also that of others on board the ship in question or any other ship (the safety standards do not, it seems, extend to life on shore). This said, the Committee cannot but insist that it is bound to view all aspects of the safety of life on board ship as important ones. It is, then, in any event clear that laws or regulations on competency, hours of work, manning, prevention of accidents, minimum age, medical examination, crew accommodation, and food and catering are a requirement of Article 2(a)(i) of Convention No. 147, inasmuch as those matters concern the safety of life on board ship.

(a) Competency and qualifications

82. Article 2(a) of Convention No. 147 requires the ratifying State to have laws or regulations laying down standards in relation to "competency" (in French, "compétence de l'équipage"), so as to ensure the safety of life on board ship; and to satisfy itself that the provisions of such laws and regulations are substantially equivalent to Articles 3 and 4 of Convention No. 53, in so far as it is not otherwise bound to give effect to those Articles. The obligation in respect of officers' competency is thus fairly clear. Articles 3 and 4 of Convention No. 53 are the only provisions referred to in the Appendix to Convention No. 147 laying down standards of competency.[56] It was in the PTM Conference that "standards of competency" was subsumed under safety standards[57] and it is thus with the safety aspects of competency that Article 2(a)(i) is

[54] cf. above, paras. 59-60.

[55] See below, e.g. paras. 119-124.

[56] The Certification of Able Seamen Convention, 1946 (No. 74), was included in the draft instrument adopted by the PTM Conference, but dropped later from the draft Convention Appendix, apparently on the grounds that it lacked sufficient acceptance - 1976 Report V(2), p. 44. The responsible Committee of the 1976 Conference also decided to drop Convention No. 74 from the Appendix to Recommendation No. 155 - 1976 RP, p. 196, para. 121. At the time, the IMO's Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention) (see paras. 91-93, below) was in preparation; although the 1979 Working Party on Standards called for study of the possible revision of Convention No. 74, in 1987 this was no longer considered appropriate - see 1979 Final Report of the Working Party, p. 20, and 1987 Report of the Working Party, para. 39.

[57] 1976 Report V(1), cf. pp. 5 and 23.

concerned. However, this provision should clearly be read alongside Article 2(e), which is concerned both with ensuring the actual qualification and training of seafarers employed on ships registered in the territory; and with the due regard which should be had to the issues dealt with in Recommendation No. 137, namely, the objectives of a policy for seafarers' training, the planning and administration of it, and the methods by which it is pursued.'[58]

83. The first consideration referred to in paragraph 80, above, means in effect that there is no exhaustive indication as to what standards of competency are included in Article 2(a)(i). The English "competency" is normally of general application in the terminology of ILO maritime standards.[59] The reference in the French to competency of the crew ("de l'équipage") certainly indicates a reading not limited to officers' competency: indeed, the PTM Conference's addition of those words in the French version was associated with the assimilation of standards of competency to safety standards.[60] The elimination of Convention No. 74 from the Appendices to both the Convention and the Recommendation thus seems to leave the question of competency of the crew (other than the officers referred to in Convention No. 53) in a position analogous to that of hours of work and manning.[61] On this basis alone it would be possible to say that the laws or regulations laying down standards of competency required under Article 2(a)(i) so as to ensure the safety of life on board ship should deal with both the officers covered by Convention No. 53 and other crew members - including officers not covered by Convention No. 53, able seamen and specialised ratings. Such an approach to Article 2(a)(i) clearly accords with the logical and empirical connection between the competency of seafarers of virtually all categories on the one hand and the assurance of safety of life on board ship on the other. In supervising this aspect of the Convention, the Committee is bound to stress the safety content of the Article 2(a)(i) requirement.

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[58] All of these are referred to further below, in Chapter III. Both Recommendation No. 137 and the Document for Guidance are included in the Appendix to Recommendation No. 155. Standards of competency may also constitute an aspect of shipboard conditions of employment for purposes of Article 2(a)(iii) (see further below, para. 160): this is underlined by the references in Convention No. 22 to capacity (Article 6(3), paragraph 6) and a competent replacement (Article 13). The obligation to take measures to ensure safety at sea with regard to the training of crews, taking into account the applicable international instruments, is specifically included in Article 94(3)(b) of the LOS Convention.

[59] e.g. Recommendation No. 137, Paragraph 11, refers to "various seafarers' certificates of competency". Recommendation No. 108 calls on the country of registration to ensure satisfactory arrangements for the examination of candidates for certificates of competency and the issuing of such certificates (point (g)).

[60] 1976 Report V(1), pp. 5 and 23.

[61] See below, paras. 94-101.

84. Reading Article 2(a)(i) and Article 2(e) together moreover allows a clearer image of the entirety of the Article 2 undertaking as to competency and qualifications to emerge. The first aspect of Article 2(e) directly enhances the undertaking as to competency in Article 2(a)(i): for Article 2(e) lays down the State's undertaking "to ensure that seafarers employed on ships registered in its territory are properly qualified or trained for the duties for which they are engaged". This undertaking is not limited to national seafarers or even to those who have qualified or undergone training in the territory. It recasts, in respect of the officers covered by Convention No. 53, the requirement of Article 3(1) - read together with Article 4(1)(c) - of that Convention, that "no person shall be engaged to perform or shall perform ... the duties (of such officers) unless he holds a certificate of competency to perform such duties ..." and "no person shall be granted a certificate of competency unless ... he has passed the examinations organised ... for the purpose of testing whether he possesses the qualifications necessary for performing the (corresponding) duties". There is then a further two-part undertaking under Article 2(a) and (e): to have laws or regulations laying down standards in relation to competency of the crew so as to ensure the safety of life on board ship; and to ensure that seafarers (crew members) employed on ships registered in the territory are properly qualified or trained for the duties for which they are engaged, due regard being had to Recommendation No. 137. The latter undertaking is pitched at the high "standard of proof", i.e. to "ensure". For the first part of this undertaking, then, the test is that of ensuring the safety of life on board ship; for the second, the test is whether due regard is had to Recommendation No. 137.[62]

(i) Officers

85. Article 3 of Convention No. 53 lays down the basic requirement of a certificate of competency for masters or skippers, navigating officers in charge of a watch, chief engineers, and engineer officers in charge of a watch, exceptions being allowed only in the case of force majeure. Article 4 lays down that there should be prerequisites (not articulated by the Convention) as to minimum age, professional experience and passing exams for testing whether seafarers have the necessary qualifications, these matters being prescribed by national legislation; it also provides for an initial transition period. Other Articles of the Convention (referred to in the Appendix to Recommendation No. 155) are concerned with scope (Article 1), definitions (Article 2), inspection (Article 5) and penalties (Article 6).

86. The footnote[63] joined as an integral part of Convention No. 147 to the reference to Articles 3 and 4 of Convention No. 53 would appear to have the effect of allowing greater flexibility in respect of these two Articles than is allowed in respect of other

[62] See below, Chapter III.
[63] See footnote 42 in para. 69, above.

Conventions and provisions listed in the Appendix: it appears to permit established arrangements for certification to coexist with Articles 3 and 4 in any case where strict adherence to Articles 3 and 4 might give rise to problems. The footnote was elaborated by a working party of the responsible Conference Committee:[64] it is indicated by that Committee that the working party took the view that the system applied by India concerning officers' competency certificates was "on the whole substantially equivalent" to the text of Articles 3 and 4 of Convention No. 53, account being taken of the footnote to these Articles. That Committee's report unfortunately does not describe the Indian system. The relevant legislation examined by the present Committee[65] lays down a general requirement of a certificate of competency and specifies the various ranks: the central government should grant a certificate of competency to any applicant reported by the examiners to have passed the examination of qualifications satisfactorily and to have given satisfactory evidence of his "sobriety, experience and ability and general good conduct on board ship"; the central government has powers to supervise the system; the 1961 Rules concern only the form of certificates, which must indicate that an examination has been passed. It thus seems that in that Committee's view substantial equivalence for present purposes involves essentially a licensing system which is compulsory (Article 3 of Convention No. 53) and in which both experience - leading to demonstrable ability on board ship - and the examination of qualifications are required (Article 4(1)(b) and (c)). The present Committee's position has coincided with that view. No information is available as to any requirement in such a system in respect of minimum age or the minimum duration of the experience regarded as necessary for certification (Article 4(1)(a) and (b)). The questions of "sobriety" and "general good conduct" may well be important ones falling within the notion of "safety standards" in the broad sense, but they seem to go beyond the scope of Convention No. 53.

87. In its supervision of article 22 reports on Convention No. 147 (as in its supervision of the relevant Conventions in their own right) the Committee cannot but bear in mind current news reports of the incidence that non-observance of competency standards can have on safety. Eleven of the States bound by Convention No. 147 are also bound by Convention No. 53, and for some of these the Committee has outstanding comments. Of the others, the Committee has in one case[66] noted with satisfaction that following observations by a

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[64] 1976 RP, p. 195, para. 99. The working party included the Government and Employers' members of India - ibid., p. 185, para. 4.

[65] Part IV of the Merchant Shipping Act, 1958 - LS 1958-Ind.2 (now amended in part by Act No. 13 of 1987) and the Merchant Shipping (Certificates of Competency) Rules, 1961. One distinguished Indian writer has also concluded that the legislation substantially complies with Convention No. 53: L. Barnes in Evolution and scope of mercantile marine laws relating to seamen in India (Bombay and New Delhi, 1983), pp. 266-7.

[66] Greece - 1986 RCE, pp. 312-313.

workers' organisation previous legislation enabling some certificates of competency to be issued without an examination being passed was amended to provide for examinations. In five cases[67] it has inquired whether exceptions are limited to cases of force majeure. In another case[68] it has repeatedly requested information on the enactment of legislation proposed to establish a system of certification where none exists. The Committee has in two cases inquired as to the organisation and supervision of examinations.[69] And in another,[70] where the report stated that watchkeeping by an unlicensed seafarer under the supervision of a licence-holder was allowed, the Committee has asked for the practical meaning of "under the supervision". Where the certification system is based not on a nationally legislated system prescribing minimum age and experience and examinations as laid down in Article 4 of Convention No. 53, but on the recognition of certificates of other countries (an approach which does not seem necessarily to be contrary to the requirements of Convention No. 147),[71] the Committee has tried to ascertain how the country granting recognition ensures that substantial equivalence to Articles 3 and 4 of Convention No. 53 is guaranteed. There are other cases[72] where the Committee has not raised the question of minimum age in this context (Article 4(1)(a) and (2)(a) of Convention No. 53); or has not insisted on the need for specific legislation as to a minimum age for the grant of a certificate:[73] it seems that a provision dealing specifically with a minimum age for certification is not essential to establish substantial equivalence where the requirements of practical professional experience or training in addition to the requirements of Convention No. 147 as to minimum age for service at sea[74] mean that in effect a minimum age for the grant of a certificate of competency operates. If there is no information as to either minimum age or experience requirements, the Committee may raise both, however.[75]

88. Apart from the other countries bound by Convention No. 53 (for some of which there nevertheless remain outstanding comments of the Committee), article 19 reports have in many cases given information, and there is a national system for issuing officers' competency certificates.[76] In some cases in particular there seems (depending on the manner of application) to be a basis for concluding that there is substantial equivalence to Articles 3

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[67] Morocco, Netherlands; United Kingdom (Bermuda, Hong Kong, Isle of Man).

[68] Costa Rica.

[69] Iraq, Morocco.

[70] Japan.

[71] As in United Kingdom (Bermuda, Isle of Man).

[72] e.g. Sweden, United Kingdom.

[73] e.g. Portugal.

[74] See below, paras. 108-111.

[75] e.g. Iraq.

[76] e.g. Belize, Cameroon, Canada, Colombia, Côte d'Ivoire, Ecuador, German Democratic Republic, Nigeria, Poland, Singapore, Sudan, Switzerland, Turkey.

and 4.[77] In others, although regulations may be made, no details are available.[78]

(ii) Other crew members

89. The first part of the undertaking referred to in paragraph 84 above as to seafarers not covered by Convention No. 53 applies to any crew members (officers or ratings) employed in the radio or catering departments or for general purposes, in addition to those in the deck and engine departments (cf. Paragraph 1(2) of Recommendation No. 137). Of the States which have ratified Convention No. 147, nine are bound by Convention No. 74 and 11 by Convention No. 69. In general, the Committee considers that the question of the competency and qualifications of seafarers other than officers covered by Convention No. 53 may require closer examination in future under Convention No. 147, especially in order to establish that they are properly qualified or trained, having due regard to Recommendation No. 137 and the overall concern for the safety of life on board ship.[79] For this reason, the Committee welcomes the available information from many countries, particularly in article 19 reports, as to legislation concerning the qualifications of, for example, able seamen[80] and ships' cooks.[81]

(iii) Further guidance and information provided

90. Under Paragraph 3 of Recommendation No. 155, steps should also be taken "by stages if necessary" with a view to laws or regulations (or, if it were appropriate, collective agreements) containing provisions at least equivalent to the IMCO/ILO Document for Guidance, 1975. That Document essentially contains recommendations as to points which should be included in the training of seafarers, including what may consequently be considered as ideally forming part of the qualification for possessing a certificate of competency under Articles 3 and 4 of Convention No. 53. The Document deals in a practical way with many technical matters relating to navigation, life-saving, use of machinery and the application of modern technology - all contributing to the safety of life on board ship. Under Paragraph 4(2) of Recommendation No. 155,[82] cognisance should

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[77] e.g. Australia, Bahamas, Bangladesh, Malaysia, Malta, Mauritius, Mexico, Mozambique, Qatar, United Republic of Tanzania.

[78] e.g. Ghana, Sri Lanka, Trinidad and Tobago.

[79] See further below, Chapter III.

[80] e.g. Bahamas, Ecuador, Mauritius, United Republic of Tanzania.

[81] e.g. Bahamas, Canada, Ecuador, Trinidad and Tobago; United Kingdom (Bermuda).

[82] That Paragraph 4(2) of Recommendation No. 155 refers to the Appendix to that Recommendation itself seems clear from the French version and the earlier English version (1976 Report V(2), p. 58), as well as the context of Paragraph 4(1). The word "thereto" in Paragraph 4(2) should therefore be read as "hereto".

moreover be taken (after consultation with the most representative organisations of shipowners and seafarers) of the revised (1985) version of the Document for Guidance, which updates the contents of the 1975 Document (adding new sections on medical training; ship management for masters and officers; human relationships and social responsibilities; and maritime law: officers should have a knowledge of international maritime law as it affects their work, particularly in relation to safety and the protection of the marine environment, including a knowledge of national arrangements for implementing international agreements and Conventions). The 1985 revision, significantly, is based very largely on the STCW Convention, with its Annex and accompanying resolutions. In both its 1975 and 1985 versions the Document relates to ratings as well as officers. Finally, under Paragraph 3 of Recommendation No. 155, steps should be taken with a view to the laws and regulations - or perhaps in some respects collective agreements - also containing provisions at least equivalent to Recommendation No. 137, since that Recommendation too is included in the Appendix to Recommendation No. 155.

91. In article 19 reports, several governments have referred in this context to the STCW Convention.[83] The Committee has no competence to examine the application of the STCW Convention as such, although it notes that that Convention, which has been adhered to by 77 States, includes in its Annex and the resolutions adopted simultaneously detailed requirements for the issue of certificates to masters, officers and ratings of nearly all categories. As regards officers, it seems to the Committee that those requirements go beyond Articles 3 and 4 of Convention No. 53, so that it may at least be possible to say that where the STCW Convention is applied in full the requirement of substantial equivalence to Articles 3 and 4 of Convention No. 53 will be met.

92. As regards all categories of seafarers, the STCW Convention with its Annex and connected resolutions contains what amounts to a far-reaching statement of basic competency standards which, although in itself going beyond Convention No. 147 and Recommendation No. 155, in the form of the 1985 version of the Document for Guidance which is appended to Recommendation No. 155, is recommended to all ILO member States. In respect of able seamen, however, it is noticeable that the minimum age and periods of service required may be lower in the STCW Convention than in ILO Convention No. 74. The STCW Convention does not cover ships' cooks, dealt with in ILO Convention No. 69.

93. Several governments have indicated that in the organisation of training for seafarers the Document for Guidance is taken into account in accordance with Recommendation No. 155.[84] The Committee particularly welcomes such information and would invite all

[83] e.g. Algeria, Australia, Indonesia, Mozambique, New Zealand, Peru, Sweden. The United Kingdom Government considers that it supersedes Convention No. 53 (cf. Article V of the STCW Convention). Iceland expects to ratify the STCW Convention in 1990.

[84] e.g. German Democratic Republic, Greece, Japan, Sweden, United States.

governments to make use of the Document as an authoritative and concise statement of what goes to ensure that standards of competency are adequate, in particular to the task of ensuring the safety of life on board ship.

(b) Hours of work and manning

94. Article 2(a) of Convention No. 147 requires the ratifying State to have laws or regulations laying down standards on hours of work (in the French version "la durée du travail") and manning so as to ensure the safety of life on board ship. Recommendation No. 155 does not deal with this subject.[85] There is no further indication in Convention No. 147 or its Appendix as to the meaning of "hours of work" or "manning",[86] or the content of the requisite laws or regulations: the substantially equivalent clause in Article 2(a) thus has no application in this respect. Apparently the Conference intended[87] and the context would imply that it is as safety standards that hours of work and manning are expressly covered in Article 2(a).

95. The Wages, Hours of Work and Manning (Sea) Recommendation, 1958 (No. 109) was included in the Appendix of the original draft instrument,[88] but deleted later: it was considered that the inclusion of a Recommendation in the Appendix to the Convention was inappropriate; and Convention No. 109 was not included either since it was considered not to have received a sufficient degree of acceptance.[89] Still, the references to hours of work and manning were left in Article 2(a)(i) of Convention No. 147, the majority of the responsible Committee of the Conference considering that hours of work and safety could not be separated.[90] The Employers' members of that Committee and the Reporter stated - ostensibly in connection

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[85] Except in the wider sense of annual leave - see below, paras. 163-165.

[86] Article 2(b) only mentions them as regards the exercise of jurisdiction and control.

[87] See para. 80, above.

[88] 1976 Report V(1), p. 6.

[89] 1976 Report V(2), p. 44. There have now been 11 ratifications of Convention No. 109, the last in 1986 (Iraq). Ratification by two of the following would bring it into force, provided that the aggregate tonnage of shipping at the time of ratification by States which have ratified is not less than 15 million GRT (Article 27): Argentina, Belgium, Canada, Chile, China, Denmark, Finland, Federal Republic of Germany, Greece, India, Ireland, Japan, Netherlands, Poland, Sweden, Turkey, USSR, United Kingdom, United States.

[90] 1976 RP, p. 190, para. 55. A Shipowners' proposal to use the formula "maximum hours of work for the safety of the ship" had not been pressed after the United Kingdom Government member of the Committee made it clear that this was exactly how the expression "hours of work" should be understood - 1976 CSV, PV4, p. 4.

with Article 2(b) - that "working hours"[91] as used in the text would relate only to safety on board and not, for example, to overtime compensation.[92] The inclusion of Recommendation No. 109 in the Appendix to Recommendation No. 155 was narrowly rejected by the responsible Committee of the Conference.[93]

(i) Hours of work

96. In ILO standards[94] the expression "hours of work" is generally taken to refer to the time during which persons employed are at the disposal of the employer: in Convention No. 109, Article 12(d), it is defined as "time during which a person is required by the orders of a superior to do work on account of the vessel or the owner". Since the present provision as to hours of work is placed by the Conference in the context of ensuring the safety of life on board ship, it appears, then, that the essential requirement may be satisfied at a minimum by legislation laying down in the light of safety demands a reasonable level of normal daily hours of work at sea for all officers and ratings.[95] Such legislation should not be limited in application to watchkeepers.[96] Keeping in mind the purpose of ensuring safety of life on board, it seems to the Committee that such normal hours may be defined differently for near-trade ships than for distant-trade ships.[97] It appears also in this light that, whilst the amount of compensation for overtime may be outside the scope of Article 2(a)(i) of Convention No. 147, the length of overtime should be limited in a reasonable way. Where safety is at issue, it would naturally be a matter for national laws or regulations to determine the duties the time spent on which should be included in normal hours of work, and to regulate other aspects of hours of work than merely a daily or weekly norm - for example daily rest periods or

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[91] sic.

[92] 1976 RP, p. 191, para. 58, and p. 245. [Whilst other preparatory work uses the expressions "Shipowners" and "Seafarers" in referring to Committee members, the Record of Proceedings uses "Employers" and "Workers" respectively.]

[93] ibid., p. 196, para. 121, perhaps the main objection being the reference in that Recommendation to wage levels (cf. plenary statements of the Employers' Vice-Chairman - ibid., p. 246 - and the Government delegate of India - ibid., p. 251).

[94] e.g. the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30).

[95] Although Article 14(2) of Convention No. 109 and Paragraph 4 of Recommendation No. 109 fix such normal hours at eight per day for distant-trade ships, those provisions are of course not included in the Appendices to Convention No. 147 and Recommendation No. 155.

[96] cf. observation addressed to the United Kingdom - 1988 RCE, pp. 367-368, and 1990 RCE.

[97] cf. Article 13 of Convention No 109: for the former, the maximum would under that Convention be 24 hours in any period of two consecutive days.

maximum overtime allowable.[98] At this point the question of hours of work melds into the question of manning.

97. Of the countries bound by Convention No. 147, most have the required legislation on hours of work at sea, and in most cases normal hours are fixed at eight per day or 40 per week.[99] Some countries have indicated that hours of work are governed solely by collective agreements or administrative measures, and in those cases[100] the Committee has asked the Government to indicate legislative measures proposed to comply with the Convention. Where collective agreements are given general application by law, there need be no difficulty in this respect.[101] In several cases governments have provided information on legislation regulating other aspects of hours of work, such as mandatory rest periods[102] or compensation[103] or various aspects of the organisation of working time.[104]

98. Article 19 reports show that there is legislation as to normal working hours of seafarers in many countries, sometimes laying down a normal working day.[105] In some other countries, though there appears to be legislation as to various aspects of working time, there is no available indication of what is considered a reasonable daily limit.[106] On the other hand, as far as safety is concerned, the limitation of overtime work allowable, say, per

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[98] See also below, paras. 166-167. The French term "durée du travail" may be wider than the English expression, and in ILO standards the question of hours of work per day or per week is linked closely with the question of weekly rest, as well as annual leave: see the Committee's General Survey on Working Time - 1984 RCE, General Survey.

[99] e.g., Belgium, Egypt, Finland, Iraq, Japan, Liberia, Norway, Sweden: several of these countries have ratified Convention No. 109, which has not yet come into force, however.

[100] Costa Rica, Italy, United Kingdom and United Kingdom (Hong Kong, Isle of Man). The Government of the United Kingdom (Hong Kong) has considered that because of the nature of work of seafarers and the special working conditions on board ships it is not appropriate to introduce legislative measures to regulate the hours of work in respect of all seamen. It appears that, for the reasons given in paragraph 96 above, however, the Conference has drawn an opposite conclusion. In the case of United Kingdom (Bermuda) there appear to be neither regulations nor collective agreements on the subject.

[101] e.g. Greece, Spain.

[102] Denmark.

[103] France.

[104] Finland.

[105] Often of eight hours: e.g. Austria, Cameroon, Cape Verde, Chile, Côte d'Ivoire, New Zealand, Tunisia, United Arab Emirates. In Saudi Arabia there is a statutory limit of 24 hours per two-day period. The report from China does not indicate whether the provision is made by legislation or otherwise.

[106] e.g. Honduras, Trinidad and Tobago, USSR.

month,[107] or the granting of shorter hours for workers in arduous conditions[108] may well have a role to play. The Committee notes that one government[109] has circulated for the comments of employers' and workers' organisations draft regulations imposing monthly maximum hours and a daily rest period, in addition to the provision that the efficiency of watchkeeping officers and ratings should not be impaired by fatigue. In some countries there appears to be legislation laying down a maximum period which may be spent at sea.[110]

(ii) Manning

99. The reference to manning was added by the working party of the responsible Committee of the PTM Conference, the Shipowners emphasising their view that it meant "minimum safe manning".[111] When all reference to Convention No. 109 and Recommendation No. 109 was excised from both Appendices, a clause was drafted into the proposed Convention laying down an undertaking by the State "to ensure that ships registered in its territory are sufficiently manned to ensure the safety of life at sea".[112] The responsible Committee of the International Labour Conference deleted that clause on the ground that the provision now appeared in slightly modified wording in Article 2(a)(i).[113] It may therefore be inferred that the essential requirement of this provision is that ships should be sufficiently manned to ensure the safety of life on board.[114]

100. The requirement of legislation laying down safe manning standards seems to be met by nearly all countries whose article 22

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[107] As in e.g. Algeria, Cape Verde, Côte d'Ivoire.

[108] Such as the machine room - e.g. Romania.

[109] Ireland.

[110] e.g. Algeria (six months), Czechoslovakia (seven months).

[111] 1976 Report V(1), p. 17, para. 35.

[112] 1976 Report V(2), p. 44.

[113] 1976 RP, p. 190, para. 54.

[114] Recommendation No. 109, Paragraph 10, and Convention No. 109, Article 21(1)(c), as well as earlier ILO instruments dealing with manning, made it clear that the avoidance of excessive strain or overtime is one aspect of the sufficiency of manning; Article 21(1)(b) of Convention No. 109 makes the logical link between sufficient manning and giving effect to provisions on hours of work. Like Convention No. 109, the 1974 SOLAS Convention in Regulation 13 of Ch. 5 of its Annex, "Safety of Navigation", includes the requirement that ships should be "sufficiently and efficiently" manned for the purpose of ensuring safety of life at sea (cf. above, paras. 19 to 30). cf. also the Resolution on Principles of Safe Manning adopted by the IMO in 1981 (Resolution A.481(XII)), which embodies detailed and widely accepted guide-lines; its preamble recognises in particular the importance of Convention No. 147. Article 94(3)(b) and (4)(b) of the LOS Convention in this spirit requires measures to ensure safety at sea with regard to manning and a crew appropriate in qualification and numbers for the type, size, machinery and equipment of the ship.

reports the Committee has examined. In a fairly typical case[115] the legislation provides for each ship's manning to be fixed by the shipowner, if not already agreed between the interested parties, the shipowner then submitting it for approval by the competent authorities. In three cases where Convention No. 147 applies[116] there is no information as to the necessary legislation; in another two cases[117] the Committee has requested information whether there is legislation applying to ratings as well as officers.

101. From article 19 reports it seems that most other countries with merchant ships have some legislation on manning requirements.[118] In some, it may cover only officers.[119] Other countries have legislation enabling manning regulations to be made[120] and in one such regulations are being processed.[121]

(c) Other safety standards

(i) Prevention of accidents

102. The prevention of accidents is by definition a matter of safety standards. Article 2(a) of Convention No. 147, then, requires ratifying States to have laws or regulations laying down safety standards and to satisfy themselves that the provisions of such laws or regulations are substantially equivalent to Articles 4 and 7 of Convention No. 134, in so far as they are not otherwise bound to give effect to that Convention. Article 4 of Convention No. 134 states that there should be laid down by laws or regulations, codes of practice or other appropriate means, provisions relating to accident prevention in maritime employment, in particular including, apart from general and basic matters, provisions on eight specific topics: structural features of the ship; machinery; special safety measures on and below deck; loading and unloading equipment; fire prevention and fire-fighting;[122] anchors, chains and lines; dangerous cargo and ballast; and personal protective equipment for seafarers. Under Article 7 there should be provision for the appointment from amongst the crew of a suitable person or persons or a committee responsible under the master for accident prevention.

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[115] France.

[116] Costa Rica, Egypt, Iraq.

[117] United Kingdom (Bermuda, Hong Kong).

[118] e.g. Algeria, Argentina, Austria, Benin, Cameroon, Chile, Côte d'Ivoire, Czechoslovakia, Ecuador, Ghana, Ireland, United Arab Emirates, USSR. The report from China states there is no minimum manning laid down by the State.

[119] e.g. Bahamas and India: the latter states that no statutory manning scale for ratings has been prescribed, because such measures may lead to reduction of jobs.

[120] e.g. Sri Lanka, United Republic of Tanzania, Trinidad and Tobago.

[121] Iceland.

[122] See also para. 120, below, as to Article 6(8) of Convention No. 92.

103. Under Recommendation No. 155, Paragraph 2(a), the State should ensure that the laws or regulations are at least equivalent to Articles 4 and 7 and under Paragraph 3 should take steps to implement the rest of Convention No. 134. The rest of Convention No. 134 provides for reporting and investigation of accidents and the keeping of statistics (Article 2); research (Article 3); making sure Article 4 provisions are binding on shipowners, seafarers and others concerned (Article 5); inspection and enforcement (Article 6); accident prevention programmes and instruction (Articles 8 and 9); and the promotion of international uniformity (Article 10). It is clear also that much of what Recommendation No. 137, especially Paragraphs 2(b) and (f) and 12(f), and the Document for Guidance included in the Appendix to Recommendation No. 155 are concerned with[123] goes to improve performance in safe working practices and the prevention of accidents.[124]

104. It is evident from the opening words of Article 2(a) of Convention No. 147 that a country bound by Convention No. 147 should deal with the matters included in Articles 4 and 7 of Convention No. 134 by legislation rather than the other means foreseen in that Convention.[125] To this extent, as regards methods of application, Convention No. 147 reflects the practice of many countries bound by Convention No. 134.[126] Convention No. 147's emphasis on legislation on this point arises no doubt from the object and purpose of dealing effectively with the problem of substandard vessels, first place in Article 2 being given to safety.

105. Twelve States bound by Convention No. 147 are also bound by Convention No. 134. In its supervision of Articles 4 and 7 of Convention No. 134 under Article 2(a) of Convention No. 147, the Committee has found that, of the countries not otherwise bound by that Convention, some have satisfactory legislation on Article 4[127] and Article 7.[128] Where information has not been provided on legislation giving effect to either Article 4 or Article 7, the Committee will request it.[129] Where a modification to the declaration of application to a non-metropolitan territory[130]

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[123] See above, paras. 90-93, and below, Chapter III.

[124] The Prevention of Accidents (Seafarers) Recommendation, 1970 (No. 142), also suggests ways of applying Convention No. 134.

[125] Article 1(5) of Convention No. 147 in any event refers only to the scope of Appendix Conventions and not the methods of their application.

[126] e.g., Denmark, Finland, Federal Republic of Germany, Greece, Sweden, Uruguay.

[127] e.g. Belgium, Netherlands, United Kingdom and United Kingdom (Bermuda).

[128] e.g. Liberia, Netherlands, United Kingdom (which indicates that it is reviewing its regulations with a view to ratification of Convention No. 134) and United Kingdom (Bermuda).

[129] e.g. Belgium, Iraq, Liberia, Morocco, Portugal; France (New Caledonia).

[130] United Kingdom (Hong Kong).

stated that there were no relevant legislative provisions, the Committee has noted with interest that such provisions have been envisaged.

106. In article 19 reports, other countries not bound by Convention No. 134 have indicated in some cases that they have legislation complying with several of the items included in Article 4(3) of Convention No. 134.[131] In several countries there is also provision allotting accident-prevention responsibility on board ship.[132] In others, either no information is supplied or there appears to be no specific legislation as to accident prevention on board ship.[133] In practice, however, there are various provisions of the 1960 and 1974 SOLAS Conventions, binding on a large number of countries, which deal with safety in the same matters as referred to in Article 4(3) of Convention No. 134.

107. It seems to the Committee that the essential features of Article 2(a) of Convention No. 147 in relation to Articles 4 and 7 of Convention No. 134 are that there should be laws or regulations on the nine general and specific subjects listed in Article 4(3); and that one or more crew members should be appointed as responsible for accident prevention under Article 7.

(ii) Minimum age

108. As well as being a matter of conditions of employment the question of minimum age for employment at sea must be regarded as a matter of safety in terms of Article 2(a) of Convention No. 147, in respect of both the individual seafarer concerned and other lives on board ship: like the question of competency, it is directly connected to the individual seafarer's ability to function correctly in his employment. Article 2(a), then, requires ratifying States to have laws or regulations laying down safety standards in relation to the minimum age for employment at sea and to satisfy themselves that such laws and regulations are substantially equivalent to Convention No. 138 or Convention No. 58 or Convention No. 7, in so far as they are not otherwise bound to give effect to those Conventions.[134] The earliest of the three, No. 7, sets a minimum age of 14 years for employment on any vessel except one where only members of the same family are employed or an authorised training ship; it provides for a register of all persons under 16 to be kept by the master.[135] In Convention No. 58 the minimum age is set at 15 years (14 years for

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[131] e.g. Australia, Czechoslovakia, Ireland.

[132] e.g. Czechoslovakia, Ireland; in Australia, the practice is said to conform with Article 7 of Convention No. 134, although there is no legislation.

[133] e.g. Bangladesh, Ecuador, German Democratic Republic, Ghana, Switzerland, Trinidad and Tobago.

[134] As to the scope of these three Conventions, see para. 49, above.

[135] Under Convention No. 22, Article 6(3), paragraph 1, the seafarer's age should also be recorded in the articles of agreement - see further below, paras. 182-186.

authorised educational purposes), with the same provision as to families, training ships and registers. Ratification of Convention No. 138 involves an undertaking to pursue a national policy of abolishing child labour and progressively to raise the minimum age for any work or employment to a level where young persons' physical and mental development is assured (Article 1); it must be accompanied by a declaration specifying "a minimum age for admission to employment or work within (the State's) territory and on means of transport registered in its territory" (Article 2(1)):[136] the minimum age should be at least the school-leaving age and normally not less than 15 (it may initially be 14 in the case of countries whose economic and educational facilities are insufficiently developed - Article 2); where health, safety or morals may be jeopardised, it should be at least 18 (Article 3: this may or may not be considered the case for maritime employment - Article 10(4)(d)) or, with adequate safeguards, 16; although some exceptions are allowed under Articles 4 and 5, clearly the former may not for present purposes and the latter may not in any event be applied to maritime employment;[137] where duly authorised and controlled, exclusions for educational work, light work, artistic performances, may be possible (Articles 6, 7, and 8); there is provision for the keeping of registers and enforcement (Article 9). Given the flexibility allowed to developing countries, it appears that Convention No. 138 may thus in particular circumstances allow a lower minimum age than Convention No. 58. Under Recommendation No. 155, Paragraph 2(a), States should ensure that the laws or regulations are at least equivalent to Conventions Nos. 138, 58 or 7.[138]

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[136] Ratification of Convention No. 138 should involve the denunciation of the earlier Conventions only in so far as at least the same obligations in respect of scope and age level are accepted (see 1973 RP, p. 487, para. 50). At the same time, Article 10(4) and (5) indicates that its obligations may or may not be "accepted" in respect of maritime employment. It is therefore necessary to consider the question of maritime employment expressly under Convention No. 138 after the first article 22 report on that Convention is received, to ensure that the relevant obligations have been "accepted" and implemented. Only at that point, it seems to the Committee, can it correctly be determined whether Conventions Nos. 58 and 7 have been denounced in accordance with Article 10(4)(d) and (5)(c) respectively. It is at that point also that the Committee can consider whether the national legislation on minimum age in general does in fact cover seafarers (often maritime employment is excluded from labour codes): if necessary the question can then be raised with governments concerned under Convention No. 138. With this in mind, the Committee has at its present session addressed a general direct request to those governments under that Convention.

[137] cf. para. 49, above.

[138] See also the Protection of Young Seafarers Recommendation, 1976 (No. 153), which gives extra guidance for the working time, repatriation, safety and health, and vocational guidance and training of seafarers under 18.

109. Of the countries bound by Convention No. 147 whose reports the Committee has examined, only two[139] are not bound by one of the three, and in these cases the Committee therefore seeks information as to the application of the minimum standard acceptable under Convention No. 147, i.e. that laid down in Convention No. 7. Three of the countries bound by Convention No. 147 are bound also by Convention No. 7, eight by Convention No. 58; the others, which are bound by Convention No. 138, have all specified a minimum age of 15, although in practice it seems that a minimum age of 16 may be applied to seafarers in some countries.[140] No use has been made of Article 4 of Convention No. 138 in order to exclude maritime employment; on the other hand, no express use seems to have been made either of Article 3 to set a minimum age of 18 for maritime work on the grounds that "by its nature or the circumstances in which it is carried out (it) is likely to jeopardise the health, safety or morals of young persons".

110. A total of 87 States are bound by one or another of the three Conventions. Many article 19 reports from other countries have indicated that for seafarers a minimum age of 14,[141] 15,[142] 16[143] or 18[144] is provided for. In all of those countries, then, there is a basis for compliance with the minimum age safety standard required under Article 2(a) of Convention No. 147.

111. Given the inclusion of the Convention No. 7 alternative in the Convention No. 147 Appendix, it seems that the substantially equivalent requirement in Article 2(a) may be met where standards to ensure the safety of life on board ship include a minimum age of 14 applied by legislation except to vessels where only members of the same family are employed or on authorised school or training ships; and where laws and regulations provide also for some form of registers in order to facilitate enforcement. For purposes of Recommendation No. 155, Convention No. 138 gives the highest standards on minimum age towards which national laws and regulations should be raised.

(iii) Medical examination

112. A medical examination involves the establishment by a medical practitioner of a person's fitness for the maritime work for which he is to be employed[145] and thus affects the safety both of that person's life and of the lives of others on board ship. Article 2(a) of Convention No. 147 requires ratifying States to have laws or

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[139] Egypt, Morocco.

[140] e.g. Netherlands, Norway. Many countries have also been bound by the now virtually obsolete Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15), imposing a general minimum age of 18 for those workers.

[141] e.g. Cameroon, Ecuador, Guinea-Bissau, Singapore.

[142] e.g. Bangladesh, Benin, Côte d'Ivoire, Mali.

[143] e.g. Trinidad and Tobago.

[144] e.g. Saudi Arabia.

[145] Article 3(1) of Convention No. 73.

regulations laying down safety standards in relation to medical examination and to satisfy themselves that the provisions of such laws and regulations are substantially equivalent to Convention No. 73, in so far as they are not otherwise bound to give effect to that Convention. Convention No. 73 makes a certificate of fitness a prerequisite for employment at sea (Article 3); the nature of the examination and the particulars to be included in the certificate are to be determined by the competent authority after consultation of shipowners and seafarers, having regard to the age of persons concerned and the duties to be performed; the certificate should attest to hearing and sight plus, for the deck department, normally, colour vision, and to the seafarer's not suffering any disease likely to be aggravated by or make him unfit for service at sea or to endanger the health of others on board (Article 4); the certificate may remain in force for a period not exceeding two years (or for colour vision, six years (Article 5)); there is limited flexibility to finish or in urgent cases undertake a single voyage without a valid certificate (Article 6); and for re-examination in case of refusal of a certificate (Article 8).[146] Under Recommendation No. 155, Paragraph 2(a), States should ensure that laws and regulations are at least equivalent to Convention No. 73.

113. The responsible Committee of the Conference which adopted Convention No. 147 indicated[147] that it took note of the view of its working party[148] that the arrangements applied in Denmark for the medical examination of seafarers were "on the whole substantially equivalent" to those prescribed in Convention No. 73, within the meaning of the proposed Convention. The report does not give details of the information on which that view was based. In its first article 22 report on Convention No. 73, which it subsequently ratified in 1980, the Government indicated that new legislation had been necessary because the previous Order[149] only prescribed regular medical examination of seafarers under the age of 18. The 1952 legislation also laid down the requirement of an annual X-ray for pulmonary tuberculosis for all seafarers (a respite of six months being allowed except for catering staff). Under section 4(2) of the new legislation,[150] no one might serve on board if he has not passed the (free) medical examination prescribed; rules for medical examination

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[146] According to Paragraph 11(a) of Recommendation No. 137, medical examinations should also be required for persons entering training schemes. As to the scope of Convention No. 73, see para. 44, above.

[147] 1976 RP, p. 195, para. 99 - cf. para. 86, above.

[148] The working party included the Employers' member of Denmark - 1976 RP, p. 185, para. 4.

[149] No. 447 of 23.12.1952.

[150] The Seamen's Act, No. 420 of 13.6.1973. - LS 1973-Den.2.

were to be made by the Minister of Commerce.[151] In the absence of any information as to the arrangements - under regulations or otherwise - whereby all seafarers covered by Convention No. 73 were at the relevant time (1976) subjected to regular medical examinations, the Committee has unfortunately not been able to determine more precisely on what basis the view of what could constitute "on the whole substantially equivalent" provisions for purposes of Convention No. 147 was reached by the working party.

114. Of the States bound by Convention No. 147, six are not bound by Convention No. 73. Under Convention No. 147, the Committee has asked for specific information from two of these[152] as to the nature of their certificates of medical examination and provision for re-examination in the case of refusal of a certificate; and for general information from another[153] as to legislation on the matters dealt with in the Convention.

115. In four cases,[154] it has been considered that the exclusion of all vessels of 1,600 GRT and under is too wide. The Committee has also considered the legislation of one country[155] in relation to Article 5(1) of Convention No. 73: the Regulations lay down a maximum period of validity for medical fitness certificates in respect of seafarers between 18 and 40 years of age of five years (for those under 18 it is one year, and for those over 40, two years), whereas under Convention No. 73 a medical certificate may remain in force only for a period not exceeding two years. The Government has stated its view that it is sufficient to allow most people under the age of 40 to be medically examined every five years; no employers' or workers' representatives have asked for the period to be reduced; and a doctor has a discretion to limit the period of validity for any seafarer whose health he believes likely to decline. Nevertheless the Committee has had to conclude that the discrepancy between five years and two years is too wide for the regulations to be considered substantially equivalent for the purpose of the Convention, this being a material point.[156]

116. The modification included in the declaration of application to one territory stated: "There is no legislative provision requiring

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[151] This situation seems to correspond to a great extent to that described in the Government's article 19 report on Convention No. 73 - see 1950 Report III (Part II), p. 98. Convention No. 73 seems now to be fully applied by Order No. 378 of 22.8.1979 of the Minister of Commerce and (as to hearing and sight) Order No. 464 of 11.9.1975.

[152] Costa Rica, Iraq.

[153] Morocco.

[154] Liberia, United Kingdom and United Kingdom (Bermuda and Isle of Man), cf. above, para. 44.

[155] United Kingdom - Regulation 8(b)(5) of the Merchant Shipping (Medical Examination) Regulations, 1983.

[156] See observation addressed to United Kingdom (1988 RCE, pp. 367-368) and 1990 RCE; direct requests on the same point have been addressed to United Kingdom (Bermuda, Isle of Man). See also para. 77, above.

seafarers to be medically examined at two-yearly intervals as stipulated in (Convention No. 73)". The Committee has in that case[157] noted in direct requests that, in the absence of the laws or regulations on the subject which would otherwise be required under Article 2(a)(i) of Convention No. 147, seafarers are in practice generally examined about every two years; in the meantime, the Government has indicated that regulations being enacted would give effect to Article 8 (re-examination after refusal) and lay down the two-yearly examination requirement.

117. Apart from the countries bound by Convention No. 73, those sending article 19 reports often seem to have insufficient legislation as to medical examinations. In some cases, the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16), which requires annual examinations for under-18-year-olds, seems to be applied.[158] In others, either examinations are available only on request (usually by the shipowner),[159] or the legislation only lays down the power to make regulations on the subject, no details being available.[160] One country indicates that there is disagreement among shipowners and seafarers, in particular as to the periodicity of examinations.[161] However, a further country has three-yearly examinations;[162] and another has indicated that new legislation has reduced the periodicity of examinations from five years to two, with further legislative improvements relating to Convention No. 73 expected in the next three years.[163]

118. It seems to the Committee that the requirement of substantial equivalence in Article 2(a) of Convention No. 147 may be met in respect of Convention No. 73 where there are laws or regulations providing for compulsory regular medical examinations for seafarers, preferably every two years (six years in respect of colour vision), but certainly more frequently than every five years; the certificate issued should attest to fitness in respect of hearing and sight and, where necessary in the deck department, colour vision, and should attest that no disease (including but not limited to pulmonary tuberculosis) incompatible with service at sea or likely to endanger the health of others is suffered; there should preferably be arrangements for re-examination in case of refusal of a certificate.

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[157] United Kingdom (Hong Kong).

[158] e.g. Bangladesh, Belize, Colombia, Malta, Pakistan, Romania, Singapore, Sri Lanka, Switzerland.

[159] e.g. Ghana, Malaysia, Nigeria, United Republic of Tanzania.

[160] e.g. Bahamas, Mali, Trinidad and Tobago.

[161] New Zealand: the Government indicates that the Seamen's Union argues in favour of a five-year certificate.

[162] Hungary.

[163] Australia. For the earlier General Survey of Convention No. 73, see 1950 Report III (Part IV), p. 60; the reports are summarised in 1950 Report III (Part II), pp. 97-102.

(iv) Crew accommodation

119. From the wording and content of Convention No. 92, it can be shown that several of its provisions should be considered matters of safety for purposes of Article 2(a)(i) of Convention No. 147. In some instances it may be hard to determine whether other aspects of Convention No. 92 are questions of safety or questions of shipboard living arrangements falling under Article 2(a)(iii).[164] In practice, such a determination may not be necessary, where shipboard living arrangements in general - and safety standards in particular - are the subject of laws and regulations: it is only in cases where shipboard living arrangements are, in the opinion of the ratifying State, covered by collective agreements or laid down by competent courts in a manner equally binding on the shipowners and seafarers concerned, that such a determination might be needed. Some provisions of Convention No. 92 - especially Articles 3(2), 4, 5 and 18 (dealing with planning, control and enforcement) - do not seem to lend themselves to application otherwise than by laws and regulations; if other aspects of Convention No. 92 in a country which became bound by Convention No. 147 were dealt with not by laws or regulations but by collective agreements or laid down by competent courts in a manner equally binding, it would be for that country to form an "opinion" under Article 2(a)(iii).[165]

120. Article 2(a)(i) of Convention No. 147, then, requires ratifying States to have laws or regulations laying down safety standards in relation to crew accommodation and to satisfy themselves that the provisions of such laws and regulations are substantially equivalent to the safety standards laid down in Convention No. 92 in so far as they are not otherwise bound to give effect to that Convention. The substantive safety standards in Convention No. 92 seem to include those requiring adequate security, protection against weather and insulation in respect of the location, means of access, structure and arrangement in relation to other spaces of crew accommodation, having regard to, amongst other things, fire prevention needs (Article 6(1) and (8));[166] adequate ventilation of sleeping and mess-rooms (Article 7(1)); an adequate system of heating, avoiding the risk of fire or other danger (Article 8(1) and (6));[167] adequate lighting (Article 9(2)); the normal situation of sleeping rooms amidships or aft above the load line (Article 10(1)); sufficient sanitary accommodation, ventilated and with adequate disposal pipes (Article 13(1), (8) and (10)); an approved medicine chest and, where a crew of 15 or more is carried, separate

[164] See below, paras. 173-177.
[165] See above, paras. 53-55.
[166] cf. Convention No. 134, Article 4(3)(f) - above, para. 102.
[167] cf., again, Convention No. 134, Article 4(3)(f).

hospital accommodation (Article 14(1) and (7)).[168] It may be considered that in order to "ensure the safety of life on board ship" further requirements should also be included. The measures laid down in Convention No. 92 to ensure the implementation of those standards are of the kind laid down also in Convention No. 147, especially the enactment of legislation on substantive questions and consultation of shipowners and seafarers in the framing and administration of them (Article 3(2)(e)); and inspection of crew accommodation by the competent authority on registration or re-registration of the ship and when a complaint is received (Article 5) and by the responsible officer and crew members at least once a week (Article 17).[169] In addition, Convention No. 92 provides for the approval of plans in advance (Article 4). There are transitional provisions for application to existing ships (Article 18). And, to provide further flexibility, Article 1(5) allows variations to be made in respect of the substantive provisions if the competent authority is satisfied after consultation of shipowners and seafarers that the variations provide corresponding advantages as a result of which the overall conditions are not less favourable than those which would result from the full application of the provisions of the Convention. Under Recommendation No. 155, Paragraph 2(a), States should ensure that laws and regulations are <u>at least equivalent</u> to safety provisions in Convention No. 92.[170]

121. The preparatory work provides little guidance in respect of crew accommodation. The PTM Conference particularly included the whole of Convention No. 92 in the draft instrument it adopted,[171] although without any indication as to the safety implications. In the replies to the preparatory questionnaire, one shipowners' organisation expressly assimilated Convention No. 92 to safety questions.[172]

122. Of the countries bound by Convention No. 147 whose reports the Committee has examined in detail, four are not bound by Convention No. 92. In one of those cases[173] the Committee has requested information on various aspects of Convention No. 92 which do not seem to be covered by the national regulations, especially questions of inspection and enforcement and some aspects of sanitary

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[168] See also Convention No. 164, concerning health protection and medical care for seafarers, which elaborates on aspects of Conventions Nos. 73, 92, 133 and 134, as well as the Ships' Medicine Chests Recommendation, 1958 (No. 105), and the Medical Advice at Sea Recommendation, 1958 (No. 106).

[169] See further below, Chapters V (as to co-operation with Shipowners and Seafarers) and VI (as to inspection).

[170] Convention No. 133 (also in the Recommendation No. 155 Appendix) relates to shipboard living arrangements rather than safety matters - see below, paras. 173-177.

[171] 1976 Report V(1), p. 25.

[172] The Norwegian Shipping Federation, 1976 Report V(2), p. 14.

[173] Japan. The Committee has not yet examined a detailed report from the United States, which is also not bound by Convention No. 92. Convention No. 92 is declared applicable with modifications to Hong Kong.

facilities and hospitals, together with other questions perhaps going beyond safety matters. In another[174] it has raised the question of possible derogations under Article 1(5). In the others,[175] the Committee has asked in general for legislation on crew accommodation. In an earlier case[176] - a country which has since ratified Convention No. 92 - the Committee also raised questions as to inspection. In the case of one non-metropolitan territory,[177] the modifications attached to the declaration of application of Convention No. 92 concern provisions for consultation of shipowners and seafarers in Articles 1(5) and 10(10) and for complaints by a trade union in Article 5(c): the Government's latest report on that Convention refers to new consultative machinery in relation to crew accommodation and, given that the other substantive provisions of the Convention seem to be applied, the issue has not been raised under Convention No. 147.

123. Article 19 reports from countries not bound by Convention No. 92 have not dealt specifically with the safety aspect of crew accommodation. They have often referred to legislation along the lines of Convention No. 92.[178] In some countries, although there is a power to make regulations on the subject, no details are available.[179] In some, there is particular provision for medicines.[180] One country indicates that, while construction plans are approved before registration, such living arrangements are settled by direct negotiation (supervised by officials).[181] In another two countries, legislation seems very largely to conform with Convention No. 92.[182]

124. Given that all matters of safety of life on board ship are material ones, any view of what is substantially equivalent to the provisions of Convention No. 92 in respect of safety must bear in mind the object and purpose of both Convention No. 147 and Convention No. 92 in relation to safety. National regulations on crew accommodation should be such as to ensure the safety of life on board ship in respect of the points referred to here.

(v) Food and catering

125. The considerations referred to in paragraphs 119 and 124 above would seem to apply also in respect of food and catering on

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[174] France (New Caledonia).

[175] Morocco; United Kingdom (Bermuda).

[176] Greece.

[177] United Kingdom (Hong Kong).

[178] e.g. Austria, Canada, Honduras, Hungary, India, Mauritius, Mexico, Suriname, Switzerland, Turkey.

[179] e.g. Bahamas, Bangladesh, Cameroon, Malta, Sudan, Trinidad and Tobago (in the last of these it is laid down in the legislation that due regard should be had to Convention No. 92).

[180] e.g. Bahamas, Malta, Mauritius, Nigeria, Pakistan, Singapore, Trinidad and Tobago.

[181] Malaysia.

[182] Australia, United Republic of Tanzania.

board ship.[183] Article 2(a)(i) of Convention No. 147, then, requires ratifying States to have laws or regulations laying down safety standards in relation to food and catering and to satisfy themselves that the provisions of such laws and regulations are substantially equivalent to Article 5 of Convention No. 68 in so far as they are not otherwise bound to give effect to that Convention. The substantive safety standards in Article 5 of Convention No. 68 seem to be those requiring food and water supplies which are suitable in quantity, nutritive value and quality to secure the health of the crew.[184] Under Recommendation No. 155, Paragraph 2(a), States should ensure that the laws and regulations are at least equivalent to those safety standards.[185]

126. The PTM Conference particularly included the whole of Convention No. 68 in the draft instrument it adopted, again without any indication as to any safety implications. After it was removed from the draft Convention Appendix following replies to the questionnaire,[186] the working party of the responsible Committee of the International Labour Conference decided to bring Article 5 back (retaining the rest of it in the Recommendation Appendix).[187] Perhaps for purposes of Article 2(a)(i) of Convention No. 147 it could be said that the requirement of substantial equivalence to Article 5 may be met simply where food and water are safe for consumption, without risk to health.

127. Of the States bound by Convention No. 147, ten are not also bound by Convention No. 68. For the purposes of Convention No. 147, the Committee has considered substantial equivalence to have been shown where there is legislation even if in only the general terms of Article 5,[188] and where no legislation on the subject seems to have been enacted the Committee has asked for this to be done.[189]

128. Article 19 reports have not dealt specifically with the safety aspect of food and water provisions. Several countries not bound by Convention No. 68 but sending article 19 reports appear to have legislation along the lines of Article 5 of Convention No. 68.[190] Others seem to have legislation as to the fitness of provisions,[191] or in other general terms as to its quality or

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[183] See also below, paras. 178-180.

[184] cf. Article 6(3), paragraph 8, of Convention No. 22 - below, paras. 182-186.

[185] See also, below, paras. 178-180.

[186] 1976 Report V(2), pp. 52-54.

[187] 1976 RP, pp. 195, para. 99, and 196-197, para. 121.

[188] e.g. Finland, Federal Republic of Germany, Japan, Liberia, Sweden.

[189] e.g. Costa Rica, Iraq.

[190] e.g. Australia, Austria, Bangladesh, Ghana, United Republic of Tanzania, Tunisia.

[191] e.g. Benin, Mexico; Mauritius has draft regulations to the same effect.

quantity.[192] In other cases, though there is a power to make regulations on the subject, no details are available.[193]

129. The Committee's consideration of article 22 reports on Convention No. 68 where it is ratified has shown that vigilance is required to ensure that standards of hygiene in relation to food and water are maintained: without such vigilance, there can be no doubt that it is not a luxury which is at stake but indeed the health and thus the safety of crew members. For this reason, regular inspection and an active interest on the part of crew members and union representatives may guarantee the safety standards aimed at by Convention No. 147, Article 2(a), are applied.[194]

V. Social security

130. Article 2(a)(ii) of Convention No. 147 formulates the undertaking "to have laws or regulations laying down ... appropriate social security measures" ("un régime approprié de sécurité sociale"); and for the State to satisfy itself that the provisions of such laws and regulations are substantially equivalent to the Conventions or Articles of Conventions referred to in the Appendix, in so far as the member State is not otherwise bound to give effect to the Conventions in question. The meaning of "appropriate social security measures" is not given, nor is it indicated which of the Appendix instruments are to be regarded as establishing them - thus giving rise to the obligation to legislate.[195] The Appendix lists three alternative Conventions which naturally fall within the term "appropriate social security measures" - Nos. 55, 56 and 130 - plus another one - No. 23 - which is often assimilated to social security standards.[196]

131. Under Paragraph 2(a) of Recommendation No. 155, States should ensure that their laws or regulations are at least equivalent

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[192] e.g. Canada, Malaysia, Suriname.

[193] e.g. Cameroon, Sri Lanka, Trinidad and Tobago, Turkey.

[194] cf., e.g., the case of Peru: observation under Convention No. 68 following receipt of the communication of a trade union concerning standards of hygiene in food and water supplies (1989 RCE, p. 114), and 1990 RCE).

[195] cf. para. 80, above.

[196] Such is the case in e.g. 1951 International Labour Code, Book IX, Title V, and 1986 PTMC, Report II, which also includes repatriation as a social security contingency, although 1979 Final Report of the Working Party and 1987 Report of the Working Party classified Convention No. 23 with "general conditions of employment for seafarers". Convention No. 55 also includes a provision as to repatriation. The question is significant only in order to decide whether laws and regulations are mandatory, under Article 2(a)(ii) of Convention No. 147, or optional, where there are other binding arrangements, under Article 2(a)(iii). Repatriation is treated here for convenience as a matter of social security.

to the Conventions referred to in the Convention No. 147 Appendix; under Paragraph 3 they should take steps with a view to such laws or regulations containing provisions at least equivalent to the Social Security (Seafarers) Convention, 1946 (No. 70); under Paragraph 4(1) cognisance should be taken of the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), when it comes into force, in so far as it revises Convention No. 56, and of the Repatriation of Seafarers Convention (Revised), 1987 (No. 166), in similar circumstances in relation to Convention No. 23; and under Paragraph 4(2) cognisance should be taken of Convention No. 165, when it comes into force, in so far as it revises Convention No. 70.

132. The original Office draft instrument which later became Convention No. 147 and Recommendation No. 155 did not mention social security measures in the body of the text, although it did include Conventions Nos. 55, 56, 130 and 23 in the Appendix.[197] The reference to "social security measures" was added by the PTM Conference along with reference to Convention No. 70 in the Appendix.[198] After government replies to the questionnaire were examined, the French version became "un régime".[199] The word "appropriate" appeared in the responsible Conference Committee version, as the result of an amendment proposed by the United Kingdom Government member on the ground that shipowners and seafarers not domiciled in his country were not required to pay social security contributions: the implication was that coverage in such a case can be ensured by either public or private schemes (no mention was made of excluding some shipowners or seafarers on grounds of "domicile").[200] The fact remains that the social security measures specifically referred to in the Convention No. 147 Appendix are only partial: they cover only sickness and medical care, as well as, to a limited extent, death and employment injury, plus repatriation. Even given that the adjective "appropriate" was apparently added in order to describe the mode of social security coverage rather than its extent, it has been suggested that a social security regime based only on Convention No. 55 or Convention No. 56 or Convention No. 130 "would appear to be less than adequate in today's circumstances".[201] Recommendation No. 155 contains the Conference's further advice on the subject.[202]

(a) Sickness, injury and medical care

133. Article 2(a)(ii) and the Appendix of Convention No. 147 are presented in such a way that the requirement of substantial

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[197] 1976 Report V(1), pp. 5-7.

[198] ibid., pp. 23 and 25.

[199] Instead of "des mesures" - 1976 Report V(2), p. 51.

[200] 1976 RP, p. 191, para. 57, referring to "Subparagraph (b) (new text)" (sic.: the word "appropriate" in fact appears not in (b) but in (a)(ii) in the new text).

[201] See, e.g., 1986 PTMC Report II, p. 26.

[202] See below, paras. 147-155.

equivalence has to be met in respect of only one of the three Conventions Nos. 55, 56 and 130.[203] The latest of these, No. 130, sets a higher level of protection with more broadly defined contingencies than Nos. 55 and 56 (or even the Social Security (Minimum Standards) Convention, 1952 (No. 102) (Part III in particular)): in this sense it must be regarded as more than a "minimum standard", and, when it is duly applied to all the persons who should be protected under Article 2(a)(ii) of Convention No. 147, it is the instrument to be preferred in respect of medical care and sickness benefits.[204]

134. The determination as to whether there is substantial equivalence to one of the three Conventions must, it seems to the Committee, refer to the following points. Under Convention No. 55, shipowners must, subject to certain limitations, be made liable for sickness and injury occurring while on articles (Article 2); medical care and maintenance should be defrayed for up to at least 16 weeks: although shipowner liability ceases where there is a compulsory insurance scheme (perhaps of the kind anticipated in Convention No. 56), it may not so cease in respect of foreign workers or those not resident in the territory who are excluded as such from the scheme (Article 4); wages while on board should be paid plus whole or partial wages from the time landed, subject to the same conditions as in Article 4 (Article 5); there is liability for repatriation (Article 6) and burial expenses (Article 7); there is provision for equality of treatment irrespective of nationality, domicile ("résidence" in French) or race (Article 11). Under Convention No. 56 there should be a compulsory sickness insurance scheme (Article 1), with - subject to the usual limitations - cash benefits for the seafarer or his family at the national going rate for at least 26 weeks (Articles 2 and 4); medical benefit (Article 3); maternity benefit (Article 5); and death or survivors' benefit (Article 6); benefits should cover the normal interval between engagements (Article 7); the shipowners and seafarers should share the expenses of the scheme (Article 8). Convention No. 130, which includes flexibility provisions in favour of countries whose economic and medical facilities are insufficiently developed, lays down amongst other

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[203] As to the scope of these three Conventions, see above, para. 50.

[204] Conventions Nos. 55 and 56 were adopted by the Conference in 1936 not as alternatives but as mutual complements: so it can be argued that a State applying only one of them - entirely apart from the question of scope - does not necessarily "afford complete protection" for national (let alone foreign) seafarers, even in respect of sickness and injury. See the statement of the Reporter of the Committee on the Protection of Seamen in Case of Sickness or Injury - 1936 RP, p. 84: "... in order to afford complete protection provision has to be made for continued assistance to sick seamen after the responsibility of the shipowner has ceased ... this can only be satisfactorily secured by bringing the seamen within the scope of national schemes of social insurance".

practical matters details of the kind of medical care to be secured (Articles 13 and 14); for sickness benefit it prescribes detailed methods for calculating earnings-related payments (Articles 21 to 24); there are safeguards in respect of qualifying periods (Articles 15 and 25) and cost sharing (Article 17).[205]

135. Of the countries bound by Convention No. 147, most are bound also by one or more of the three sickness Conventions. In the other cases the Committee has examined so far, it has found that there appears to be substantial equivalence to Convention No. 55 on most points in one,[206] although it has at the same time requested and received clarification as to the provision of board and lodging (Articles 3(b) and 6(3)) and as to how far recent legislation enables a general sickness insurance scheme along the lines of Convention No. 56 to be applied; and in one other case:[207] under Article 5(2) liability to pay wages in whole or in part may be limited to no less than 16 weeks, but, where the rule is one of full wages for no less than only 12 weeks, substantial equivalence may be considered to have been achieved. In another country,[208] where there is a compulsory insurance scheme, there appears, given what the Government refers to as the system of "continuous employment" for seafarers (and other workers) in the country, to be substantial equivalence to Convention No. 56 despite the absence of cover "between successive engagements" (Article 7); the Committee has none the less requested information to clarify whether benefits are withheld only in the conditions contemplated in Article 2(4), since if benefits were unduly withheld the whole object and purpose of the Convention could be undermined. Two other such countries[209] have referred to their compliance with Convention No. 56, but the Committee has recently requested further information. And in a final case,[210] the Committee has asked for clarification and details of legislation, when it is not clear whether Convention No. 55 or Convention No. 56 is relied on.

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[205] On the other hand there are "flexibility" devices allowing, first, the definition of persons qualifying by reference to certain categories of residents (Articles 10 and 19) or - for developing countries - the limitation of the proportion of employees covered to as few as 25 per cent of all employees (Articles 11 and 20); and, secondly, the suspension of benefits "as long as the person concerned is absent from the territory of the Member" (Article 28(1)(a)). Compare also para. 50 above: if applied to seafarers, an Article 28(1)(a) suspension would risk bringing the good faith application of social security measures under Convention No. 147 Article 2(a)(ii) into serious question; observance of the requirement of equal treatment for non-national residents in Article 32 of Convention No. 130 would not mitigate such failure. As to non-residents, see paras. 138-139, below.

[206] Portugal.

[207] United Kingdom (Hong Kong).

[208] Japan.

[209] Netherlands and United Kingdom (Bermuda).

[210] Iraq.

136. Aside from those six cases referred to in paragraph 135, five countries[211] bound by Convention No. 147 are bound also by both Conventions Nos. 55 and 56. Two[212] are bound by both Conventions Nos. 56 and 130. In these seven cases, it may be arguable, subject to any outstanding comments of the Committee under those Conventions,[213] that satisfactory social security measures of the kind required under Article 2(a)(ii) of Convention No. 147 in respect of sickness and medical care are in operation. The protection given in countries bound by only Convention No. 55[214] or only Convention No. 56[215] should probably, with similar reservations, also be regarded as meeting the specific Article 2(a)(ii) requirement in relation to sickness benefit and injury - but with the additional reservation that the protection afforded by only one of these two Conventions may to other intents and purposes be considered not "complete" or "satisfactorily secured".[216] The position of the four countries bound only by Convention No. 130[217] is less simple: the problem of scope has been raised under Convention No. 130 for one of these countries[218] in relation to Article 5 of that Convention; the problem of suspension[219] does not seem to have arisen for these countries; and, apart from that one country in respect of which the question of scope has been raised, the problem of limiting application of Convention No. 130 in developing countries does not arise either. The legislation examined under Convention No. 130 for the remaining three countries has in one case[220] apparently provided sickness and medical care protection for all those employed on board nationally registered ships: this seems satisfactory in terms of Article 2(a)(ii) of Convention No. 147. However, in another case[221] the residence qualification in Article 10(c) of Convention No. 130 is applied; and in the final case[222] protection of non-nationals resident abroad seems also to be excluded.

137. The countries not bound by one of the three Conventions which have sent article 19 reports often seem to have legislation corresponding to or along the lines of Convention No. 55, providing

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[211] Belgium, Egypt, France, Greece, Spain - in the cases of Spain (both Conventions) and France (Convention No. 56), the Committee has outstanding comments.

[212] Federal Republic of Germany, Norway.

[213] And subject to the observations in paras. 138-139, below.

[214] Italy, Liberia, Morocco, United States - direct requests to Liberia and United States are outstanding.

[215] United Kingdom and United Kingdom (Isle of Man).

[216] See para. 133, above.

[217] Costa Rica, Denmark, Finland, Sweden.

[218] Costa Rica - see above, para. 50.

[219] See para. 134, above.

[220] Denmark.

[221] Finland.

[222] Sweden.

for shipowners' liability in cases of sickness or injury.[223] In some cases there is compulsory sickness insurance along the lines of Convention No. 56.[224] And in some there are either general schemes or special seafarers' schemes of benefits, providing at least some protection of the kind laid down in Convention No. 130.[225]

138. The major problem in the application of any kind of social security measures under Convention No. 147, Article 2(a)(ii), is that a large proportion - even a vast majority - of seafarers may as a matter of fact be excluded from protection because of their residence outside the country of registration of their ship. Such exclusion may conform to the provisions of the three Conventions Nos. 55, 56 or 130, though the Committee has raised problems in respect of foreign seafarers where appropriate under those Conventions.[226] Some governments have not supplied full details on questions relating to seafarers arising under Convention No. 130.[227] The problem occurs especially but not exclusively in flag of convenience ships and those registered in "off-shore" or international registers. In order to be satisfied that the substantial equivalence requirement in Convention No. 147 has been met, it may be necessary for each country to consider what proportion of seafarers are in fact not covered on account of their nationality, residence or domicile. Subject to this, on the basis of government replies to an ILO questionnaire, it has recently seemed that "there is no social security protection of non-national, non-resident seafarers" in the legislation of several countries, including some bound by Convention No. 147[228] and several other countries with large registers.[229]

139. Something of the complexity of the issue can be gathered from the foregoing paragraphs. But the issues raised go beyond cover for sickness, to the question of a more comprehensive social security regime. The Committee has noted the considerable study and analysis undertaken by the Office in performance of two connected resolutions adopted by the 62nd Session of the Conference. One[230] called for the completion by the Office of a survey of the extent to which provisions concerning social security and conditions of employment are

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[223] e.g. Argentina, Australia, Bangladesh, Benin, Cameroon, Ecuador, German Democratic Republic, India, Ireland, Malaysia, Malta, Nigeria, United Arab Emirates.

[224] e.g. Australia, Côte d'Ivoire, Ireland, Switzerland.

[225] e.g. China, Guinea-Bissau, Honduras, Hungary, Indonesia, Ireland, New Zealand, Philippines, Poland, Qatar, Romania, Tunisia.

[226] cf. current comments addressed to Spain and United States (Convention No. 55) and France and Spain (Convention No. 56).

[227] Denmark, Finland, Norway, Sweden.

[228] Egypt, Japan, Netherlands, Spain - cf. paras. 135 and 136, above.

[229] e.g. Cyprus, Panama - see 1986 PTMC, Report II, p. 21.

[230] Resolution No. III Submitted to the Conference on the Proposal of the Committee on Substandard Vessels, Particularly Those Registered under Flags of Convenience.

applied on board flag of convenience ships; the other[231] noted the very small number of ratifications of Conventions concerning social security for seafarers, considered that new problems such as those arising from the supply of maritime manpower from developing countries to foreign vessels necessitate effective social security protection, and called for the review of seafarers' social security Conventions in the light of more recent general social security Conventions (the Employment Injury Benefits Convention, 1964 (No. 121), the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), and No. 130). That review[232] revealed the considerable lacunae in the social security protection of non-national and non-resident seafarers, including in some countries bound by Convention No. 147 and other countries with large registers, referred to above.[233] In some of those countries there was found to be no legislation giving social security protection to non-national, non-resident seafarers. This led directly to the consideration and adoption of Convention No. 165 by the 74th (Maritime) Session of the Conference in 1987.[234] But the upshot of the present examination of the application of Conventions Nos. 55, 56 and 130 within the Convention No. 147 framework is that it is possible in relatively few cases to conclude that the apparent object and purpose of Convention No. 147 of establishing at a minimum laws and regulations laying down social security measures in respect of sickness and injury benefit and medical care for seafarers on board ships registered in the territory has been fulfilled. The Committee's understanding of the situation would in all cases benefit from clarification as to the position of non-domiciled or non-resident and foreign workers on board such ships.

(b) Repatriation

(i) Convention No. 23

140. Taking into account paragraph 130 above, it may not be essential in all cases for purposes of Article 2(a) of Convention No. 147 to insist on laws and regulations (as opposed to other methods of application) in relation to repatriation.[235] Given what is in any event the strong social security flavour in repatriation, the

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[231] Resolution No. VII concerning the Revision of Conventions and Promotion of Maritime Social Legislation.

[232] 1984 Report JMC/24/1, and 1986 PTMC, Report II.

[233] e.g. Norway (in an observation in relation to Convention No. 56 made in 1987 the Norwegian Shipping and Offshore Federation stated that it was too early to say how new regulations for an international shipping register would diverge from present ones) - see also para. 138 above, last sentence.

[234] See further below, paras. 151-155.

[235] Except perhaps to some extent where substantial equivalence to Convention No. 55 (Article 6) applies - para. 134 above. Point (f) of Recommendation No. 108 expressly calls for regulations or legislation on repatriation.

Committee has sometimes had to examine whether substantial equivalence to Convention No. 23 was attained by legislation or other means.

141. The question whether there is substantial equivalence would seem to turn on the following points. Under Convention No. 23 (Article 3), a seafarer (except a master, pilot, cadet or pupil)[236] landed during or on the expiration of his engagement is entitled to be taken back to his own country or the port of engagement or where the voyage commenced; the provision of suitable employment on a vessel going to such a destination counts as repatriation; such provision should apply to any seafarer engaged in a port of his own country, but otherwise national provisions may decide under what conditions a foreign seafarer has the repatriation right (Article 3(4)). The expenses may not be charged to a seafarer in cases of injury sustained in the service of the vessel, shipwreck[237] or no-fault illness or discharge (Article 4). Relevant maintenance, accommodation and food expenses should be paid in addition to transport; if the seafarer is repatriated as part of a crew he should be remunerated (Article 5). And the public authority of the country of registration of the vessel should take responsibility for supervising repatriation - including of foreigners - and where necessary giving the seafarers expenses in advance (Article 6).

142. Of the countries bound by Convention No. 147, reports from eight not also bound by Convention No. 23 have so far been examined by the Committee, and in two of those cases[238] substantial equivalence or better seems to have been attained: in one of those two[239] some details of coverage and benefits - such as in cases of shipwreck and provision of food - are dealt with by collective agreement, and coverage of foreign[240] seafarers is ensured once they obtain an employment permit (in the first month of employment, before the permit is obtained, the employer is obliged by legislation to promise to pay repatriation costs). In a third case[241] there appears to be no relevant legislation so far. And in a fourth,[242] the Committee has raised questions as to repatriation after shipwreck, the payment of expenses, and the role of the public authority. In each of the remaining four[243] there appears to be legislation in one way or another restricting coverage of seafarers who are not domiciled in or not residents or nationals of the country in question, and to this extent it is again hard for the Committee without more information

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[236] Dealt with in the Repatriation (Ship Masters and Apprentices) Recommendation, 1926 (No. 27).

[237] cf. Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8).

[238] Sweden and United Kingdom (Hong Kong).

[239] Sweden.

[240] From non-Nordic countries.

[241] Costa Rica.

[242] Morocco.

[243] Denmark, Finland, Japan and Norway - see information in 1984 Report JMC/24/6, p. 7.

to appreciate how far the Convention No. 147 requirement of substantial equivalence is attained.[244]

143. Many of the countries not bound by Convention No. 23 which have sent article 19 reports have some legislation on repatriation.[245] In some, there seems to be conformity with much of the Convention.[246]

(ii) Convention No. 166

144. When it comes into force, 12 months after its second ratification,[247] Convention No. 166 will be formally linked to Convention No. 147 and Recommendation No. 155 under Paragraph 4(1) of the latter.[248] In any event, it constitutes a modern revision of the repatriation requirements of Convention No. 23, taking account in particular of the widespread growth in employment of non-national seafarers. It is intended to deal with the entitlements of seafarers who are engaged outside the country of registration of their ships or who are not domiciled in or residents or nationals of the country of registration, including the question of the appropriate destination for repatriation; to lay down precisely what costs should be covered; and to accommodate all cases where seafarers find themselves stranded through no fault of their own. It also takes account of the increased use of air travel (for leave - even in mid-voyage - as well as repatriation).[249]

145. Convention No. 166 applies to all those on board (Article 1). It indicates the occasions when repatriation entitlement arises (Article 2). The possible places of repatriation must include the place of engagement, the seafarer's country of residence, and any agreed place (Article 3). Repatriation should normally be by air and the cost is to be borne by the shipowner except, ultimately, in cases of serious default on the part of the seafarer; the elements making up the cost of repatriation are listed (transport, food, pay, medical care, etc. - Article 4). If the shipowner fails in this respect, the State of registration has responsibility (Article 5). The Convention includes other practical provisions.

146. In article 19 reports, three governments have indicated that they are considering ratifying Convention No. 166.[250] Another indicates that legislation needs to be amended before ratification is possible.[251]

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[244] See further below, paras. 151-155, and para. 138, above.

[245] e.g. Algeria, Bahamas, Benin, Cameroon, Côte d'Ivoire, Honduras, Malaysia, Nigeria, Qatar, Saudia Arabia, Togo, Trinidad and Tobago, Turkey, United Arab Emirates. There is draft legislation on the subject in Mauritius.

[246] e.g. Australia, Czechoslovakia, United Republic of Tanzania.

[247] Only Hungary has so far ratified.

[248] See para. 131, above.

[249] 1987 Report of the Director-General, p. 55.

[250] Australia, Austria, Côte d'Ivoire.

[251] Sweden.

(c) More general social security measures

147. The inclusion of Convention No. 70 in the Recommendation No. 155 Appendix already gives a clear signal that the Conference also had in mind more far-reaching social security measures. But it was at the same time aware of the need for review of social security Conventions with such a small number of ratifications, in order to promote seafarers' "effective protection by social security arrangements".[252] To the degree indicated,[253] then, there is a formal exhortation in Recommendation No. 155 to have regard to Conventions Nos. 70 and - later - 165.

148. The question of what aspects of "social security measures" are required by Convention No. 147 to be the object of laws or regulations may be answered differently. Given that the wording and ordinary meaning of Article 2(a)(ii) is not of itself limited to sickness and injury benefits and medical care, the situation is similar to that under Article 2(a)(i):[254] there is a grey area going beyond Conventions Nos. 55, 56, 130 and 23, in which it is a matter first for the good faith appreciation of the government concerned and secondly for the consideration of the ILO's supervisory bodies to decide what measures should be taken. In its consideration of the question, the Committee too is bound to have in mind the context in which Convention No. 147 was adopted by the Conference - i.e., Recommendation No. 155 and the resolutions adopted at the same time[255] - not forgetting, at the same time, the basic distinction between a Convention (which creates obligations) and a Recommendation (which does not). The Committee's role, where a State has decided that additional social security measures should be taken under Article 2(a)(ii), is to consider the information supplied in the reports of the government concerned (including any observations from employers' or workers' organisations) and, on the basis of any criteria provided by the government, to note and appreciate. Several governments have thus referred in article 22 reports to more varied or comprehensive social security measures, including some international arrangements.[256]

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[252] Resolution No. VII - see para. 139, above.

[253] See para. 131, above.

[254] See paras. 80 and 81, above.

[255] cf. Article 31(2) Vienna Convention: "The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: ... any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty...". Convention No. 70 is referred to directly in the considerata of Recommendation No. 108, itself recited in the Preamble to Convention No. 147.

[256] e.g. Norway, United Kingdom; United Kingdom (Hong Kong). See also the General Survey of the Seafarers' Pensions Convention, 1946 (No. 71) - 1950 Report III (Part IV), pp. 59-60; and the summaries of reports - 1950 Report III (Part II), pp. 93-97.

(i) Convention No. 70

149. Convention No. 70 has been ratified by seven countries, but this is insufficient to bring it into force.[257] Under this Convention, where resident in the country of registration of the ship, seafarers should be entitled to medical benefits, benefits in the event of employment injury or any other incapacity, unemployment[258] and old-age[259] benefits; and their dependants should be entitled to medical benefits and death benefits on terms not less favourable than those afforded in the case of industrial workers[260] (Article 2). There is provision for employment injury and medical care benefits abroad and repatriation for seafarers resident in the territory of registration of the ship (Article 3). There should, as between shoreworkers' and seafarers' schemes, be maintenance of rights in course of acquisition (Article 4). There are provisions for equality of treatment in general irrespective of nationality or race (Article 5), and in regard to sickness, injury or death irrespective also of residence (Article 6). There is provision for international reciprocity (Articles 7 and 8).[261]

150. Social security arrangements in general for seafarers have recently been analysed elsewhere.[262] In article 19 reports, some governments have indicated that Convention No. 70 is complied

[257] Under Article 12 of the Convention, ratification by three of the following countries would bring it into force (but from the date when the Convention which revises it (No. 165) comes into force, Convention No. 70 will be closed to ratification (Article 17)): Argentina, Australia, Belgium, Brazil, Canada, Chile, China, Denmark, Finland, Greece, India, Ireland, Italy, Norway, Portugal, Sweden, Turkey, United States, Yugoslavia.

[258] See also the Unemployment Insurance (Seamen) Recommendation, 1920 (No. 10).

[259] As distinct from a "retirement system", dealt with by Convention No. 71: see statement of the Reporter of the responsible Committee of the Conference which adopted both Conventions - 1946 RP, p. 101.

[260] The case where there is no general medical care service is the subject of the supplementary Seafarers (Medical Care for Dependants) Recommendation, 1946 (No. 76).

[261] On this point Convention No. 70 was supplemented also by the Seafarers' Social Security (Agreements) Recommendation, 1946 (No. 75), which encourages bilateral (or unilateral) action by States to extend protection to non-residents.

[262] See 1986 PTMC, Report II.

with[263] or at least partially applied.[264] Others show that it is not applied.[265]

(ii) Convention No. 165

151. The effect of Paragraph 4 of Recommendation No. 155, as indicated in paragraph 131 above, is to encourage consideration of certain instruments laying down more general social security measures. In the 1980s greater attention has been given by the Office, the Joint Maritime Commission and the PTM Conference to the way in which comprehensive social security protection could be accorded to seafarers, given that Convention No. 70 never received the requisite adherence in terms of ratifications in order to come into force, and given also the need for modernisation. Many countries can be said to have improved the social security protection of seafarers, although for some developing countries and flag of convenience countries this is not so. Gaps in respect of fatal non-occupational accidents, maternity, dependants, unemployment were identified. But one of the most pressing problems has undoubtedly become that of seafarers who are not nationals or residents of or not domiciled in the country of registration of their ships. Equality of treatment is ensured in several countries in respect of shipowners' liability - but this is only one aspect of what may be considered an adequate social security regime. Increasing numbers of seafarers have not been able to accumulate or enjoy entitlements under their national schemes or under the schemes of the country of registration of their ships or the country where the shipowner or manager is incorporated. Globally, this lack of protection is only partly mitigated by a series of bilateral (and, especially in Western Europe, multilateral) reciprocity agreements.[266]

152. It has been observed in the preparation of Convention No. 165[267] that the system of social security protection provided in Convention No. 147 appears to be less than adequate in modern circumstances, on the grounds that Conventions Nos. 55, 56 and 130 cover only two contingencies (medical care and sickness benefit); that Conventions Nos. 55 and 56 are rather old and in any event complement each other rather than being alternatives, whilst Convention No. 130 represents the highest possible standard (the more easily attainable standard in Convention No. 102 not having been used); and that the provisions of the Equality of Treatment (Social Security) Convention, 1962 (No. 118), and the Maintenance of Social

[263] e.g. United Kingdom (Isle of Man); and Australia, which has been considering whether to ratify the Convention.

[264] e.g. German Democratic Republic, Portugal; and New Zealand, which expresses some doubts because non-residents are not covered, although it also states that migrant seafarers are not a problem in New Zealand.

[265] e.g. Switzerland, United States.

[266] See 1986 PTMC, Report II, passim.

[267] ibid., pp. 26-27.

Security Rights Convention, 1982 (No. 157), should be taken into account. The same report suggested revision of the Appendix to Convention No. 147 in respect of social security instruments.[268] Convention No. 165 is expressly aimed at the social security protection of seafarers including those serving in ships flying flags other than those of their own country.[269]

153. Either minimum or superior standards may be applied in virtue of Convention No. 165 (Articles 4 and 9), but treatment should not be less favourable than that given to shoreworkers (Article 7).[270] As a statement of basic social security standards, Convention No. 165 is modelled on Convention No. 102: at least three of the branches medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, survivors' benefit, should be applied (Article 3).[271] There should be maintenance of rights in course of acquisition as between shoreworkers' and seafarers' schemes (Article 8). Shipowners should be liable for medical care and wages on board and, where seafarers irrespective of their residence (Article 20) are left behind through sickness, until repatriation or for up to at least 12 weeks or until the seafarer is landed in a country where he can claim benefits or until he has an offer of suitable employment (Articles 13 to 15). Seafarers' protection should in principle be governed by the legislation of either their ship's flag State or the country where they are resident (Article 17). There should also be equality of treatment as between nationals and non-nationals in respect of coverage and the right to benefits (Article 18), although non-contributory benefits may be made subject to residence requirements (Article 19). There are provisions for the maintenance as between States of rights in the course of acquisition (Articles 21 to 23). Benefits should be payable to beneficiaries irrespective of their place of residence, although for non-contributory benefits there must be agreements among States (Articles 24 and 25). The Convention finally provides for administrative safeguards (appeals, dispute settlement procedures). It revises both Conventions Nos. 56 and 70.

154. In article 19 reports, some governments have referred to Convention No. 165 or particular elements of the social security regime for seafarers. One indicates the Convention is generally applied;[272] another is considering ratification;[273] a third refers to obstacles to ratification.[274] Other governments have referred to pension arrangements for seafarers,[275] particularly under Convention No. 71;[276] one refers to special early retirement

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[268] See further below, paras. 198–202.
[269] Preamble to the Convention.
[270] cf. para. 73 above, concerning substantial equivalence.
[271] cf. Article 2 of Convention No. 102.
[272] Australia.
[273] Côte d'Ivoire.
[274] Sweden.
[275] e.g. China, India, Nigeria.
[276] Argentina, Ecuador, Panama.

for seafarers.[277] In its report, another government stated that it intended to ratify Conventions Nos. 102 and 128 shortly.[278]

155. It appears that Convention No. 165 represents the best possible authoritative statement of what a modern social security regime for seafarers might consist of. If - or when - it comes into force it will also formally be included in the package of merchant shipping standards delivered by Recommendation No. 155.[279] Convention No. 165 meets the need both for the determination of the extent and content of social security measures appropriate to the employment and living conditions of seafarers and for the promotion of co-ordination of social security among States. In the present context, action on these two fronts seems to be necessary in order more fully to implement the aims of Article 2(a) of Convention No. 147 for all seafarers, whether or not they are nationals of or domiciled or resident in the country of registration of the ships on which they sail.

VI. Shipboard conditions of employment and living arrangements

156. Article 2(a)(iii) of Convention No. 147 formulates the undertaking to have laws or regulations laying down shipboard conditions of employment and shipboard living arrangements, in so far as these, in the opinion of the Member, are not covered by collective agreements or laid down by competent courts in a manner equally binding on the shipowners and seafarers concerned; and Article 2(a) goes on to state that, where laws and regulations are enacted for this purpose, the State should satisfy itself that they are substantially equivalent to the Conventions or Articles of Conventions in the Appendix, in so far as it is not otherwise bound to give effect to those Conventions. As with Article 2(a)(i) and (ii), it may be said that in this wording the requirements of Article 2(a)(iii) are not limited to elements of the Conventions referred to in the Appendix. This follows also from the discussion in the PTM Conference Committee[280] in relation to what now corresponds to Article 2(b) of the Convention:[281] a working party of the Committee had agreed on the phrase "conditions of employment and shipboard living arrangements", but the Shipowners wanted the words "that are covered by instruments in the Appendix" to be added; the Seafarers opposed the addition on the ground that it would limit the scope of the provision, and the Committee decided against it. This said, there is

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[277] Poland.

[278] Czechoslovakia: the ratifications were registered on 11.1.90.

[279] See para. 131, above.

[280] 1976 Report V(1), pp. 16-18, paras. 32 to 39.

[281] In the first draft the order of those provisions was reversed.

no further direct indication in the Convention as to the meaning of the term.[282]

157. The variety of possible methods of laying down the shipboard conditions of employment and living arrangements distinguishes them from safety standards and social security measures. The distinction appeared in the PTM Conference,[283] where it was indicated that they could alternatively be fixed by collective agreement.[284] The reference to the possibility of those conditions and arrangements being governed by "labour court decisions" appeared in the PTM Conference Committee[285] with the added proviso[286] "where such courts operate in this field and where the court decisions are equally binding on shipowners and seafarers".[287]

158. Under Recommendation No. 155, Paragraph 2(a), States should, where shipboard conditions of employment and living arrangements are fixed by laws or regulations, ensure that such laws and regulations are at least equivalent to the Conventions in the Appendix to Convention No. 147. Under Paragraph 2(b) they should satisfy themselves, where they are fixed by provisions in collective agreements, that such provisions are similarly at least equivalent. Under Paragraph 3, steps should be taken with a view to those laws or regulations or collective agreements being made at least equivalent to the Recommendation Appendix instruments. And under Paragraph 4 cognisance should be taken of any revisions of the instruments in the two Appendices when they come into force.[288]

159. Recommendation No. 155 thus retains the provision for the State to satisfy itself in respect of collective agreements in relation to shipboard conditions of employment and living arrangements[289] despite the apprehension - at least in the case of a draft Convention - that (prescriptive) "jurisdiction[290] concerning certain conditions of employment, such as wages, rests with independent organisations of employers and workers".[291] The matter is resolved in the case of Convention No. 147 by pitching the

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[282] But see below, paras. 182-186, as to Convention No. 22.

[283] 1976 Report V(1), p. 23.

[284] See also para. 53, above.

[285] 1976 Report V(1), pp. 16-17.

[286] ibid., pp. 17 and 23.

[287] In the wording finally adopted it was apparently intended to provide that the "decisions need be binding only 'on the parties to the case'" - 1976 Report V(2), pp. 35, 36-37 and 41. It thus appears that the words "in a manner equally binding on the shipowners and seafarers concerned" mean that what is laid down by courts should be as binding as the collective agreements, rather than that collective agreements and court decisions should both be as binding as laws or regulations.

[288] See para. 61, above.

[289] cf. para. 58, above.

[290] See para. 56, above.

[291] Comment of Government of Federal Republic of Germany, 1976 Report V(2), p. 37 - but see further below, para. 242.

obligation on the State first at the lower level of forming an opinion as to whether shipboard conditions of employment and living arrangements are effectively covered by collective agreements or "decisions":[292] it is only if such opinion is negative that a further obligation (to legislate) arises. If such opinion is affirmative, that shipboard conditions of employment and living arrangements are effectively covered by collective agreements or "decisions", the role of the Committee in relation to Article 2(a)(iii) seems to be limited to ascertaining that such is the case. Recommendation No. 155, on the other hand, calls for positive action by States to satisfy themselves as to the provisions of collective agreements: the same apprehension may still be aroused where the competent authorities of the State do not in fact intervene in the fixing of such provisions by collective bargaining. It therefore seems to the Committee that in these circumstances it is most appropriate to conceive of the role of government as one of "promoting agreements" as to the matters in question - the role also laid down in Convention No. 98, as included in the Appendix to Convention No. 147.[293]

160. Some matters which may be regarded as falling under the heading of "shipboard conditions of employment and shipboard living arrangements" also fall under other heads (i.e. safety standards or social security): they have been examined above under Article 2(a)(i) and (ii), because in those cases the undertaking of the State to legislate is clear. This does not mean that either laws and regulations or the collective agreements and acts of courts referred to in Article 2(a)(iii) may not lay down higher standards than the minimum laid down by the Appendix Conventions. On the contrary, that is something which under Recommendation No. 155 is positively encouraged.[294] In this context, the Committee particularly welcomes the positive indications given by three governments as to the ratification prospects of Conventions Nos. 163 and 164: two of those States have since ratified both Conventions.[295]

(a) Shipboard conditions of employment

161. The term "shipboard conditions of employment" is not defined in the instruments: "conditions of employment" appeared in the first draft instrument[296] and the word "shipboard" was added without explanation to the draft Convention submitted to the International Labour Conference.[297] There are, however, indications in the

[292] See above, para. 53.

[293] See below, para. 189. cf. 1976 Report V(2), p. 41.

[294] The latest instruments elaborating even further on welfare conditions and arrangements in port as well as on board ship are Convention No. 163 and Recommendation No. 173.

[295] Côte d'Ivoire, Czechoslovakia, Sweden. The ratifications by Czechoslovakia were registered on 11.1.90, and those by Sweden on 21.2.90.

[296] 1976 Report V(1), p. 5.

[297] 1976 Report V(2), p. 50.

preparatory work as to aspects of shipboard conditions of employment which were under consideration, although omitted from express mention in the final instruments. There is further contextual evidence in Convention No. 147[298] and the Recommendation No. 155 Appendix as to what may be regarded as shipboard conditions of employment for present purposes. This tends to confirm that addition of the word "shipboard" did not have the effect of limiting the notion to material aspects of employment physically on board ship, so that any limitative meaning it might have been intended to carry is not clear. In the absence of a more precise definition, it seems that another grey area is exposed where a margin of discretion is left to the State to decide what aspects of conditions of employment it will deal with under Article 2(a)(iii), the exercise of such discretion being subject - through the article 22 procedures, where Convention No. 147 is ratified - to consideration also by the ILO supervisory bodies. With this preface, it can be said that "shipboard conditions of employment" may, in the circumstances next indicated, include but is not restricted to the matters referred to in the following paragraphs.[299]

162. The position under Convention No. 147 seems on this reasoning to be that a State may first consider these matters in the context of Article 2(a)(iii), then form the opinion that they are (or may be) covered by collective agreements or acts of the courts equally binding on the shipowners and seafarers concerned, and finally take no action on them. If it forms the opinion that any one of them is not so covered, it may none the less exercise its discretion to decide that it is not a matter which must be dealt with under the provisions as to "shipboard conditions of employment" in Article 2(a)(iii), and still take no action; alternatively it may exercise its discretion to assimilate it to "shipboard conditions of employment" and therefore enact laws or regulations on the subject in performance of its Article 2(a) undertaking. The role of the Committee, where a State has exercised its discretion to decide that "shipboard conditions of employment" in Article 2(a)(iii) covers any of these matters, is to consider the information provided in the reports of the government concerned (including any observations from employers' or workers' organisations) and, on the basis of any criteria provided by the government, to note and appreciate. In any event, Recommendation No. 155 calls specifically for provisions at least equivalent to Conventions Nos. 146 or 91: it would therefore be helpful for the Committee's appreciation of the national situation - as well as to

[298] In the Appendix: Convention No. 22, Article 6(3) (cf. para. 148 above and Article 32 Vienna Convention): see also below, paras. 182-186.

[299] There may in particular be other elements of interest in this context in the instruments referred to in paras. 198-202, below, or in many other international labour standards. cf. also the suggestion by the Swedish members of the Conference Committee as to the Guarding of Machinery Recommendation, 1963 (No. 118), and the Labour Inspection (Seamen) Recommendation, 1926 (No. 28): 1976 RP, p. 186, para. 13.

encourage the matter being kept under review - if governments of countries not bound by either of those two Conventions included information on them in their article 22 reports on Convention No. 147. The same might be said, in fact, for all the matters referred to in the present section.

(i) Annual leave

163. The first draft instrument[300] included Convention No. 91 and what was then another draft Convention on annual leave (later Convention No. 146) in its Appendix: though this was endorsed by the PIM Conference,[301] later, when separate drafts for a Convention and a Recommendation were prepared, Convention No. 91 and the future Convention No. 146 were included where they have remained in the Appendix to the Recommendation,[302] after reservations on the subject were expressed by some shipowners[303] and governments[304] and on the grounds that they had not received a sufficient degree of acceptance.[305]

164. Apart from obligations flowing from any determination by a State which has ratified Convention No. 147 that annual leave with pay is a matter of shipboard conditions of employment governed by Article 2(a)(iii), States should, in virtue of the inclusion of Conventions Nos. 91 and 146 in the Recommendation No. 155 Appendix, take appropriate steps with a view to laws and regulations or as appropriate collective agreements containing provisions at least equivalent to them. Convention No. 146, in its terms, is to be made effective by laws or regulations except in so far as collective agreements, court decisions or other appropriate means operate (Article 1). It calls for annual leave with pay of at least 30 days (Article 3) not counting public and customary holidays, temporary shore leave or - according to national conditions - periods of incapacity or compensatory leave (Article 6); for service of less than one year leave should be pro-rated (Article 4); service off articles and absences for training or illness should count as periods of service (Article 5); normal remuneration should generally be paid in advance (Article 7); leave should normally be uninterrupted

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[300] 1976 Report V(1), p. 6.

[301] ibid., p. 25.

[302] 1976 Report V(2), pp. 44 and 58.

[303] From the United Kingdom and the United States, ibid., pp. 18-19.

[304] e.g. Netherlands, ibid., p. 13.

[305] ibid., p. 44. Under Article 6(3), paragraph 11, of Convention No. 22, which is included in the Convention No. 147 Appendix, articles of agreement must include particulars of the annual leave with pay granted to the seafarer after one year's service with the same shipping company, if such leave is provided for by national law (cf. para. 148 above, and Article 32 Vienna Convention). Leave with pay was also linked to the question of the physical and mental health of seafarers - 1976 RP, p. 163, para. 8.

(Article 8); cash compensation in lieu should not normally be allowed (Article 9); the place for leave is normally the place of engagement (Article 10); and leave should not be subject to relinquishment (Article 11). The older Convention (No. 91 - formally revised by Convention No. 146) has been considered to fall short of more modern national provisions and to be insufficiently flexible:[306] it it provides for annual leave of at least 18 days per year of service for officers - 12 for other crew members - the method of calculation and pro-rating also being somewhat less favourable (Article 3); it includes provisions roughly corresponding to Articles 7, 10 and 11 of Convention No. 146 (Articles 5, 4, 2 and 11). Since Convention No. 146 came into force in 1979, Convention No. 91 is no longer open to ratification. Convention No. 146 has been ratified by ten countries including eight bound by Convention No. 147. Convention No. 91 has been ratified by a further 15 countries including three bound by Convention No. 147.

165. In practice, since annual leave is not expressly mentioned in Article 2(a) of Convention No. 147, the Committee has not examined the question in the article 22 context; but several countries have referred to it in article 19 reports. Many of them have legislation relating to at least some aspects of the annual leave of seafarers (sometimes merely laying down the right to annual leave, or the right to proportionate leave for less than one year's service).[307] In others, the legislation lays down the minimum annual leave allowable for seafarers.[308] Several countries, in addition to those bound by either Convention No. 91 or Convention No. 146, refer to the measures taken in relation to one or both of those Conventions: in some of these, such measures are laid down in particular by collective agreements.[309] Several governments have stated that the actual annual leave applied is superior to that provided in the Conventions.[310]

(ii) Hours of work

166. Wages and hours of work remain two of the subjects on which it has been most difficult to reach a consensus in terms of international labour standards, up to and beyond the preparation of Convention No. 147 and Recommendation No. 155.[311] A measure of agreement was reached in 1976 as to the need for legislation on hours

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[306] 1976 Report II, p. 7.

[307] e.g. Algeria, Argentina, Ecuador, Finland, Honduras, Mexico, Panama, Philippines, Turkey; in Mauritius there is draft legislation.

[308] e.g. Bahamas, Benin, Cape Verde, Côte d'Ivoire, Cuba, Czechoslovakia.

[309] e.g. United States; in Australia, awards made have statutory force. Nigeria also provides information on leave provisions in collective agreements.

[310] e.g. Australia, New Zealand.

[311] See above, paras. 94-96.

of work qua safety standards only. It is none the less clear from the discussion of both subjects in the preparatory stage that hours in the wider sense may be regarded as a matter of shipboard conditions of employment for present purposes.[312]

167. Although Convention No. 109 and Recommendation No. 109 were not retained in either the Convention No. 147 Appendix or the Recommendation No. 155 Appendix, and no obligation attaches to them, reference is made to them here because they supply examples of ways in which certain shipboard conditions of employment may operate. The main hours of work issues raised by Convention No. 109 and Recommendation No. 109 - in addition to the safety question - involve rest days and the compensation of overtime, whether by equivalent time off or in cash (normally at time and a quarter). Some governments have provided information in their article 22 and particularly article 19 reports on aspects of hours of work going beyond what is essential for safety. Several have referred to legislation governing weekly rest[313] (which may be applicable while in port, compensation for rest days worked while at sea being provided in some cases).

(iii) Wages

168. Consideration of wages went together with hours of work in the preparatory work for Convention No. 147 and Recommendation No. 155, given their association in Convention No. 109 and Recommendation No. 109.[314] The main preoccupation as regards the inclusion of reference to wages in the new instruments was perhaps the principle of non-interference by governments in many countries in the fixing of wage levels by agreement (especially collective agreement).[315]

169. Although Convention No. 109 and Recommendation No. 109 were not retained in either the Convention No. 147 Appendix or the

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[312] In terms of Article 6(3), paragraph 12, of Convention No. 22, hours may also be a particular to be included in the articles of agreement, if national law requires as much (cf. para. 148 above and Article 32 Vienna Convention).

[313] e.g. Argentina, Benin, Chile, Côte d'Ivoire, Mexico, Philippines, Saudi Arabia, Tunisia.

[314] See paras. 95 and 167 above, as to Convention No. 109 and Recommendation No. 109.

[315] See para. 159 above and 1976 Report V(2), p. 37 (comments of the Government of Federal Republic of Germany). See also references to wages by the Norwegian Shipping Federation and the General Council of British Shipowners - ibid., pp. 39 and 41; and 1976 RP, pp. 246 (Employers' Vice-Chairman of the responsible Committee) and 251 (Government representative of India). The Shipowners, however, have later linked the hope for international progress in improving seafarers' wages and other conditions of employment to the widespread application of Convention No. 147 - 1987 Report JMC/25/1, p. 6. Under Article 5 of Convention No. 109, Part II (dealing with wages) may in fact be excluded from a ratification.

Recommendation No. 155 Appendix, and no obligation attaches to them, reference is made to them here as examples of ways in which certain shipboard conditions of employment may operate. Convention No. 109 and Recommendation No. 109 fixed a minimum wage rate in pounds sterling and US dollars and provided for a system of supervision, sanctions and recovery of unpaid wages. The level of that minimum wage and the method of fixing it have since been, and continue to be, reviewed in some depth.[316]

170. Article 22 and particularly article 19 reports and the legislation referred to in them have revealed a broad approach to the regulation of seafarers' wages in many countries: although there is in relatively few cases information as to the fixing of basic wage levels by legislation,[317] in many there are provisions as to overtime rates,[318] or payments in cases of salvage.[319] One country provides that seafarers may be paid a fixed wage and/or a share in profits;[320] the same country lays down that a seafarer should have an increased wage if his work corresponds to a higher-level job. In many countries there is legislation for the protection of wages,[321] regulating, for example, the manner, timing and currency of its payment, and matters such as advances, suspension, deductions, recovery and dispute settlement.[322] In one country wages are governed by binding awards.[323]

(iv) Identity documents

171. This subject has been recommended by the Joint Maritime Commission for consideration in relation to Convention No. 147[324]

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[316] See 1972 Report JMC/21/5; 1984 Report JMC/24/4; and 1987 Report JMC/25/1, leading to the resolution on the Minimum Basic Wage of Able Seamen adopted by the Joint Maritime Commission at its 25th Session in 1987. The question has also been placed on the agenda of the 26th Session of the Joint Maritime Commission (Document GB.244/205, para. 71). Under Article 6(3), paragraph 9, of Convention No. 22, the amount of a seafarer's wages should be included in the particulars contained in the articles of agreement (cf. para. 148 above and Article 32 Vienna Convention).

[317] e.g. Cape Verde.

[318] e.g. Benin, Cape Verde, Panama, Philippines, Togo, Tunisia, Turkey, United Arab Emirates. Although an additional 25 per cent is usually laid down, in the last of these countries the rate is increased by 100 per cent.

[319] e.g. Honduras, Mexico, Saudi Arabia, Tunisia.

[320] Benin.

[321] cf. Protection of Wages Convention, 1949 (No. 95).

[322] e.g. Bahamas, Bangladesh, Benin, Malta, Nigeria, Philippines, Qatar, Singapore, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates.

[323] Australia.

[324] Resolution concerning the Identification of any Possible New Conventions to Be Added by a Protocol to the Appendix of Convention No. 147, adopted at its 25th Session in 1987.

and may thus be regarded as germane to conditions of employment in terms of Article 2(a)(iii). The Seafarers' Identity Documents Convention, 1958 (No. 108), was apparently not considered at the time when Convention No. 147 and Recommendation No. 155 were being prepared. The Convention provides (Article 2) for the compulsory issuing of a document to seafarers containing given particulars (Article 4); carrying the document should confer certain rights of admission to the territory for which the Convention is in force (Articles 5 and 6).

172. Convention No. 108 has been ratified by 47 countries, including 12 which have ratified Convention No. 147, although few have referred to it in their article 19 reports. Convention No. 108 does not seem to pose major difficulties for the countries bound by it.

(b) Shipboard living arrangements

173. "Shipboard living arrangements" is similarly undefined in Convention No. 147 and Recommendation No. 155, although perhaps easier to identify in ILO instruments. The term first appears in the PTM Conference Committee report[325] and is preserved in the final version of Article 2(a)(iii) of the Convention.

(i) Crew accommodation

174. In addition to fulfilling the safety requirements,[326] States which ratify Convention No. 147 have to have laws or regulations on shipboard living arrangements for crew accommodation in so far as those arrangements are not covered by collective agreements or laid down by competent courts in a manner equally binding and to satisfy themselves that those laws and regulations are substantially equivalent to Convention No. 92 in so far as they are not otherwise bound to give effect to that Convention. It may seem that legislation is none the less necessary for some non-safety elements of that Convention:[327] indeed, Convention No. 92 itself when ratified has to be applied by legislation (Article 3). The provisions not referred to above[328] include details of the construction, equipment, decoration and furnishing of all aspects of crew accommodation; there should also be recreation space (Article 12).

175. In its examination of the report of one country bound by Convention No. 147 but not Convention No. 92, the Committee has asked whether there are any provisions relating to bringing regulations to the notice of those concerned (Article 3(2)(a)), submission of plans for approval (Article 4), and inspection on re-registration or alteration (Article 5) - which seem to be important aspects of Convention No. 92; and other aspects such as materials used (Article 6), lighting (Article 9), berths (Article 10), messing (Article 11),

[325] 1976 Report V(1), p. 16, para. 35.
[326] See above, para. 120.
[327] ibid.
[328] See above, paras. 119-124.

leisure accommodation (Article 12), sanitary facilities (Article 13), hospitals (Article 14), and maintenance and weekly inspection (Article 17).[329] Whilst not all of these may be necessary to establish substantial equivalence (for example, messing details in Article 11 may well be dispensable), it is not yet possible in that case to be clear whether substantial equivalence to Convention No. 92 as a whole has been shown. In another case, the Committee refrained from raising a number of points for clarification under Articles 6, 8 (heating), 10, 12, 13, 15 (offices) and 17: that country has since ratified Convention No. 92 and those matters have been raised under that head.[330]

176. Convention No. 133 was added by the PTM Conference to the Appendix of the draft instrument[331] and, although at first placed in the draft Convention Appendix,[332] it appears finally in the Recommendation No. 155 Appendix. This seems logical, given its orientation to the improvement of crew accommodation in modern ships. It requires legislation laying down higher standards of sleeping accommodation (Article 5), mess rooms (Article 6), recreation (Article 7), sanitation (Articles 8 and 9), headroom (Article 10) and lighting (Article 11).[333] Convention No. 133 is supplementary to and incorporates the substantive provisions (Parts II and III) of Convention No. 92 (Article 3) and has not formally revised it. Convention No. 133 has been ratified by 17 countries, including ten which have ratified Convention No. 147, and will come into force after one more ratification by a country with more than one million tons of shipping (Article 15).

177. Several governments have referred to Convention No. 133 in their article 19 reports on Recommendation No. 155. Some seem to have legislation applying the Convention at least in part.[334] Another indicates it has amended its regulations to bring them more into line with the Convention.[335] The Government of one State with a tonnage of over one million has indicated that work was under way towards the ratification of Convention No. 133.[336]

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[329] Japan.

[330] Greece.

[331] 1976 Report V(1), p. 25.

[332] 1976 Report V(2), p. 54.

[333] Three other priority instruments (see 1987 Report of the Working Party) give further guidance: the Bedding, Mess Utensils and Miscellaneous Provisions (Ships' Crews) Recommendation, 1946 (No. 78); the Crew Accommodation (Air Conditioning) Recommendation, 1970 (No. 140); and the Crew Accommodation (Noise Control) Recommendation, 1970 (No. 141).

[334] e.g. Australia, Côte d'Ivoire, Finland, Portugal, United States; United Kingdom (Hong Kong - with modifications) (Isle of Man).

[335] United Kingdom.

[336] USSR: 1989 RP, p. 26/3, para. 10.

(ii) Food and catering

178. In addition to the safety aspect,[337] countries bound by Convention No. 147 have to have laws or regulations on food and catering in so far as it is a matter of shipboard living arrangements not covered by collective agreements or laid down by competent courts in a manner equally binding and to satisfy themselves that those laws and regulations are substantially equivalent to Article 5 of Convention No. 68 in so far as they are not otherwise bound to give effect to that Convention. Article 5 requires legislation concerning food supply and catering arrangements designed to secure the health and well-being of the crew: food and water should be suitable in respect of quantity, nutritive value, quality and variety, and the arrangement and equipment of the catering department should enable proper meals to be served.

179. The rest of Convention No. 68 - it is included in its entirety in the Recommendation No. 155 Appendix - calls for the promotion of proper food and catering standards, for instance by research, training, information and advice (Articles 1, 2(d), 11 and 12); inspection by the competent authority, including after complaints, and penalties (Articles 4, 6, 8 and 9) and by the responsible officer at sea (Article 7); certification of catering department staff (Article 2(c));[338] and the publication of an annual report (Article 10).[339]

180. For two countries bound by Convention No. 147 but not by Convention No. 68, the Committee has raised the question of the arrangement and equipment of the catering department, where no information has been given.[340] It has also raised the question of different scales of provisions for seafarers who are "ordinarily resident" in different countries, and whether the scales can in all cases be considered suitable in terms of Article 5.[341] Some governments have provided additional information in article 19 reports, relating in particular to procedures for complaints[342] and for compensation to be paid to the seafarer, when provisions as to quality or quantity are inadequate.[343]

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[337] See paras. 125-129, above.

[338] cf. above, paras. 82, 83, 89, 92.

[339] cf. also Convention No. 69 and Recommendation No. 78.

[340] Morocco and United Kingdom (Bermuda).

[341] United Kingdom (Bermuda). Similar comments were made in respect of United Kingdom, which has ratified Convention No. 68, and United Kingdom (Isle of Man) to which Convention No. 68 is applicable in its own right.

[342] e.g. Nigeria, Trinidad and Tobago.

[343] e.g. Bahamas, Malta, Singapore, Trinidad and Tobago. For the earlier General Survey of Convention No. 68, see 1950 Report III (Part IV), pp. 57-58; the reports are summarised in 1950 Report III (Part II), pp. 86-91.

VII. Other matters referred to in the Conventions appended to Convention No. 147

181. It has already appeared[344] that the relationship between the first part of Article 2(a) and the second (beginning "and to satisfy itself ...") is not one of complete congruency, in that there are matters dealt with in the first part which are not reflected in the second (read together with the Appendix). Conversely, there are matters dealt with in Appendix Conventions which cannot in all logic be assimilated to subparagraphs (i), (ii) and (iii) of Article 2(a). These relate first to the procedure by which the employment relationship is established and terminated and in which certain conditions of employment are specified (Convention No. 22); and secondly to the ambient legal and constitutional requirements for the fixing of conditions of employment by the collective agreements referred to in subparagraph (iii), together with the specific safeguards and the general policy environment which are essential to such collective agreements - these all being matters of fundamental human rights for seafaring workers (Conventions Nos. 87 and 98 respectively).[345] In respect of these matters, then, Article 2(a) formulates the State's undertaking to satisfy itself that its laws and regulations are substantially equivalent to Conventions Nos. 22, 87 and 98, in so far as it is not otherwise bound to give effect to those Conventions (and, perhaps, as regards any of those matters which may be duly covered by collective agreements or laid down in a manner equally binding on the shipowners and seafarers concerned, in so far as those matters are not in fact so covered).

(a) Articles of agreement

182. The provisions of Convention No. 22 do not actually contain standards for shipboard conditions of employment and living arrangements, but they do lay down the manner in which some such provisions are to be specified.[346] In the first draft instrument leading to the Convention,[347] only Articles 3, 4, 5, 6 and 9 were listed in the Appendix: the whole Convention appeared in the version submitted to the International Labour Conference[348] and this was not

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[344] See above, para. 60.

[345] Point (e) of Recommendation No. 108 specifically favours "regulations or legislation" to ensure freedom of association for seafarers.

[346] As indicated in paras. 156-180 above, it may be thought that the inclusion of Convention No. 22 in the Convention No. 147 Appendix gives some additional guidance as to how the term "shipboard conditions of employment and shipboard living arrangements" in Article 2(a)(iii) is to be interpreted.

[347] 1976 Report V(1), p. 6. That draft also called for Convention No. 22 to be taken into account in the provision as to engagement - ibid., p. 5 (cf. below, Chapter IV).

[348] 1976 Report V(2), p. 54.

changed again. Convention No. 22 moreover includes some essential provisions which call specifically for laws rather than other methods of application. To that extent it seems necessary to read the Article 2(a) obligations in respect of Convention No. 22 as themselves requiring laws or regulations. Convention No. 22 is limited in scope to persons entered on the ship's articles (Article 2(b)). Article 3 of the Convention lays down for the protection of shipowners and seafarers the conditions under which articles should be signed, involving adequate supervision by the competent authority; Article 4 says that ordinary rules of jurisdiction should apply; Article 5 requires seafarers to be given a separate document recording particulars of their employment on the vessel in question; Article 6 lays down the particulars to be recorded in the articles; Article 8 requires national law to provide for means by which a seafarer can obtain information on board as to conditions of employment; the method of giving notice is to be governed by national law (Article 9), and the conditions in which termination may take place are described (Article 6(3), paragraph 10, and Articles 10 to 14); Article 15 says national law should provide for measures to ensure compliance with the Convention.[349]

183. The particulars to be included in the articles of agreement under Article 6(3) relate to several matters dealt with more specifically elsewhere in Convention No. 147 and its Appendix: the age of the seafarer;[350] the scale of provisions;[351] the place and date of the agreement;[352] the number of crew;[353] and the capacity in which the seafarer is employed.[354] They must also include the amount of wages[355] and leave[356] and any other particulars required by national law.

184. Fifteen of the States which have ratified Convention No. 147 have also ratified Convention No. 22. None of the reports of the others which the Commitee has examined has given rise to the question whether legislation is necessary for application. In one[357] it has not yet been possible to say that substantial equivalence has been attained, and a direct request is outstanding as to new legislation

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[349] Like Convention No. 147, Convention No. 22 is aimed at vessels registered in the country of a Member ratifying it (Article 1(1)): there is nothing in Convention No. 22 which in itself would exclude its application to those engaged outside the national territory on such vessels. See also below, Chapter IV.

[350] cf. Conventions Nos. 7, 58 and 138 - paras. 108-111, above.

[351] cf. Convention No. 68 - paras. 125-129 and 178-180, above.

[352] cf. Article 2(d) of Convention No. 147 - Chapter IV, below; see also Articles 3 to 5 of Convention No. 22.

[353] cf. Article 2(a)(i) as to manning - paras. 99-101, above.

[354] cf. Article 2(a)(i) as to competency and qualifications - paras. 82-93, above; also Article 2(e) - Chapter III, below.

[355] cf. paras. 168-170, above.

[356] cf. paras. 163-165, above.

[357] Costa Rica.

proposed to implement Articles 5, 6 and 14. In another[358] there has appeared to be substantial equivalence except possibly on one essential issue - that of termination - although there too it may appear that provisions prohibiting abuse ("abus de droit") by the shipowner and allowing indemnities might go to mitigate certain shortcomings in national provisions as compared with Convention No. 22: in any event the Government has indicated a review of the legislation and the Committee has asked for information on progress made in such review and on the practical application of the present provisions. In another case[359] the Committee has made direct requests as to the application of Articles 5(2) and 14 (entries in a separate document as to the quality of work, wages and termination, particularly in the case of foreign seafarers). The final case[360] is instructive: the Committee has not raised some questions of detail such as mention in the articles of the place of birth and scale of provisions (Article 6(3), paragraphs 1 and 8) - the first being regarded by the Government as of diminished importance, the second gap being filled by ensuring substantial equivalence to Article 5 of Convention No. 68; the Committee has also not raised Article 10(c) in the face of the Government's argument that the preservation of the employment relation in national legislation gives the seafarer a better safeguard than the Convention's provision that the agreement should be considered terminated in cases of the loss or total unseaworthiness of the vessel; the Government considers that its provisions can be said to do more than satisfy the requirement of substantial equivalence, and this seems to the Committee to be correct.

185. Article 19 reports from other countries show that there is often legislation requiring written articles of agreement, usually including at least some of the particulars specified by Convention No. 22.[361]

186. For purposes of Article 2(a) of Convention No. 147, it seems clear that at the least a large dose of law or regulations will be necessary in respect of Convention No. 22, although perhaps some minor points could be established by the alternative methods. The essential features of Convention No. 22 on which substantial equivalence would then have to be established must include the provision of a document containing all the main particulars listed in Article 6(3). Adequate protection of the seafarer on termination (Articles 10 to 14) would also be essential.

(b) Freedom of association

187. Conventions Nos. 87 and 98 - like Convention No. 22 - do not contain shipboard (or any other) conditions of employment and living

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[358] Greece.

[359] Denmark.

[360] Sweden.

[361] e.g. Cameroon, Guinea-Bissau, Honduras, Mali, Mexico, Nigeria, Qatar, Saudi Arabia, Singapore, Switzerland, Togo, Trinidad and Tobago, Turkey, United Arab Emirates.

arrangements so much as describe the manner in which some such provisions may be determined; they thus refer for example to preconditions for the proper articulation of those conditions in articles of agreement. The view was put forward at the preparatory stage that, as Conventions Nos. 87 and 98 express principles applicable to all workers and employers and are very general in scope, they were not appropriate for inclusion with the other specifically marine-oriented instruments.[362] Certainly their implementation might be difficult for some countries[363] (although they are among the most widely ratified of all ILO Conventions).[364] Conventions Nos. 87 and 98 were nevertheless included in the Appendix to the first draft instrument[365] and by general consensus in the Convention No. 147 Appendix.[366]

188. The essence of Convention No. 87 is freedom vis-à-vis the public authorities for workers and employers to exercise the right to organise. That freedom is predicated on four basic guarantees: first, that all workers and employers have the right to establish and join organisations of their own choosing without previous authorisation (Article 2); second, that those organisations have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes (Article 3); third, that the organisations are not liable to be dissolved or suspended by administrative authority (Article 4); and, fourth, that the organisations have the right to establish and join federations and confederations and affiliate with international organisations of workers and employers (Article 5), such federations and confederations having the same rights as their constituent organisations (Article 6).[367] For purposes of Convention No. 147, substantial equivalence to Convention No. 87 involves at the minimum the observance and implementation in full of these four guarantees in respect of seafarers on ships registered in the national territory.

189. Convention No. 98 in essence provides, first, that workers should be protected in their employment against acts of anti-union discrimination (Article 1); and, second, that workers' and employers' organisations should be protected against mutual acts of interference (Article 2). Equally, it requires measures to promote voluntary

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[362] 1976 Report V(2), pp. 13-14 (New Zealand Government); also p. 22 (the Netherlands Shipowners' Organisation).

[363] In the view of the New Zealand Government, ibid., pp. 13-14; and 1976 RP, p. 187, para. 21 (Mexican Government).

[364] Convention No. 87 has had 99 ratifications and Convention No. 98 115.

[365] 1976 Report V(1), p. 7.

[366] The requirements of Convention No. 147 in respect of Conventions Nos. 87 and 98 thus apply whether or not any shipboard conditions of employment or living arrangements are governed by collective agreements.

[367] 1983 General Survey, para. 45.

collective bargaining (Article 4).[368] For purposes of Convention No. 147, substantial equivalence to Convention No. 98 therefore involves at least the full guarantee of those two forms of protection and the full implementation of such measures in respect of seafarers on ships registered in the national territory.

190. All except three countries[369] bound by Convention No. 147 are also bound by Convention No. 87; the declaration of application to one territory[370] includes modifications in respect of Articles 3, 5 and 6. All except two countries[371] bound by Convention No. 147 are also bound by Convention No. 98. The Committee has therefore in effect rarely had to consider the application of these Conventions in the Convention No. 147 framework.[372] For one of the States not bound by Convention No. 87,[373] the Committee has in particular raised the right for non-national seafarers to exercise union functions, and the right of seafarers' unions to affiliate to international organisations. For another,[374] it has asked for any relevant provisions.

191. It may be held that the very reference to collective agreements in Article 2(a)(iii) supposes a process of collective bargaining in conformity with the principles laid down in Conventions Nos. 87 and 98. The Committee would also note that all member States of the ILO are bound by the Constitution to observe the principles of freedom of association[375] and in particular are subject to the complaints procedure of the Governing Body Committee on Freedom of Association. Three questions now arise, on the basis that both Conventions Nos. 87 and 98 call for legislative action, and that Article 2(a) of Convention No. 147 requires a State to satisfy itself that the provisions of its legislation are substantially equivalent to Conventions Nos. 87 and 98 in so far as it is not otherwise bound to give effect to them.

192. In the first place, it seems that, where the declaration of application of Convention No. 87 to a non-metropolitan territory includes modifications which limit or exclude the operation of some of its essential features referred to in paragraph 188 above, that country cannot be regarded in the terms of Article 2(a) of Convention No. 147 as "otherwise bound" to give effect to the relevant provisions of that Convention. It therefore becomes necessary to demonstrate substantial equivalence on those issues. In the case in point,[376] the modifications go to the root of the guarantees laid down in

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[368] ibid., para. 253.

[369] Iraq, Morocco, United States (the last of whose detailed report on Convention No. 147 has not yet been examined).

[370] United Kingdom (Hong Kong).

[371] Netherlands, United States.

[372] See above, paras. 62-64.

[373] Morocco.

[374] Iraq.

[375] Preamble to the Constitution and Parts I(b) and III(e) of the Declaration of Philadelphia.

[376] United Kingdom (Hong Kong).

Articles 3, 5, and 6 of Convention No. 87. For that reason, it seems appropriate to raise the application of those Articles to shipboard employment in the framework of Convention No. 147.

193. In the second place, where Convention No. 87 is binding on a country also bound by Convention No. 147, but Convention No. 98 is not, it may be necessary to consider how far that country in the measures it takes to apply Convention No. 87 effectively implements the three essential aspects of Convention No. 98 referred to in paragraph 189 above in respect of work on board ships registered in its territory. In the case in point,[377] it seems appropriate in relation to shipboard employment to verify conformity with Convention No. 98 in respect of those three aspects within the Convention No. 147 framework.

194. In the third place, where one or both of Conventions Nos. 87 and 98 is or are binding on a country, a specific question relating to the operation of those Conventions on board ship may arise.[378] The Committee has taken due note of the discussion of the case in point in the Conference Committee on the Application of Standards in 1989 and the wish expressed by some members of that Committee for the issues raised to be examined in relation to Convention No. 147. In the terms of Convention No. 147, Article 2(a), however, such a course is in that case for the reasons given above[379] superfluous: the full application of Conventions Nos. 87 and 98 - with review by the ILO supervisory bodies - to which such a country is committed must be a better insurance than the application only of provisions substantially equivalent to those Conventions.

195. The Workers' Representatives Convention, 1971 (No. 135), was included in the Appendix to the first draft instrument considered by the PTM Conference[380] and, although later placed in the draft Convention Appendix,[381] it was finally included instead in the Recommendation Appendix.[382] Convention No. 135 develops the anti-union discrimination aspect of Convention No. 98, providing for the effective protection of workers' representatives as such against prejudicial acts, including dismissal (Article 1); workers'

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[377] Netherlands, where no information as to the particular case of seafarers has been provided, although a general question of the right of workers to organise and carry on collective bargaining has been examined by the supervisory bodies in the Convention No. 87 context: see e.g. 1989 RCE, pp. 196-201, and 1989 RP, p. 26/45. The Government has at the same time indicated it is preparing ratification of Convention No. 98 - ibid., p. 18/22.

[378] Denmark: the question is that of the operation of the principle of free collective bargaining through chosen representatives in respect of all seafarers - including foreign residents and nationals - on board ships registered in the Danish International Shipping Register: ibid., pp. 26/65 to 69.

[379] See para. 62, above.

[380] 1976 Report V(1), p. 7.

[381] 1976 Report V(2), p. 54.

[382] 1976 RP, p. 197, para. 121.

representatives should also be given facilities for carrying out their functions (Article 2). Under Recommendation No. 155, Paragraph 3, steps should be taken with a view to laws and regulations containing provisions at least equivalent to Convention No. 135. Convention No. 135 has been ratified by 42 States.

196. From article 19 reports it appears that particular aspects of Conventions Nos. 87 or 98 are seen as constituting an obstacle to ratification of Convention No. 147 in one or two cases - for example, where national requirements as to the minimum number of workers who may form an organisation (1,000) or a power of deregistration of a union by administrative decision run counter to the principles laid down by the ILO supervisory bodies;[383] or where in the legislation employment can be made conditional on not belonging to a trade union.[384] Some governments have referred to Convention No. 135, indicating that it seems to be well applied to seafarers;[385] one states that, although there is no legislation on the subject, the unions are sufficiently strong to protect their members;[386] another indicates that there is legislation making it unlawful to single out workers' representatives for prejudicial treatment, and some collective agreements give specific rights to the use of facilities on board for consultations between workers' representatives and union members;[387] and in a fifth country, legislation provides for time to be spent on trade union activities on board, safety permitting.[388] One country, whose first article 22 report on Convention No. 135 has not yet been examined by the Committee, states that an exception has been made in respect of seafarers.[389]

197. The inclusion of Conventions Nos. 87 and 98 in the Convention No. 147 Appendix has - in addition to the specific effect of creating the obligation to confer on seafarers the guarantees and protections referred to in paragraphs 188 and 189 above - the general effect of reaffirming that shipboard employment is not exempt from principles and national policies relating to freedom of association, the right to organise and collective bargaining.[390] The fact that the Committee has rarely in practice had to give detailed consideration to these matters in the Convention No. 147 framework appears as testimony to their universal acceptability among the ILO

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[383] New Zealand.

[384] cf. Article 1(2) of Convention No. 98 - in the case of Switzerland: on this point, the Association of Swiss Shipowners considers that by collective agreement a shipowner may not refuse employment to a seafarer who belongs to a union, however.

[385] e.g. Australia, Chile.

[386] New Zealand.

[387] United States.

[388] Honduras.

[389] Greece.

[390] See also below, Chapter V, as to the role of employers' and workers' organisations in relation to Convention No. 147 and Recommendation No. 155, and paras. 242-249, as to the reference to the Conventions in Article 2(c) of Convention No. 147.

membership. The extent to which countries which have not ratified Convention No. 147 indicate some reservations in this area might nevertheless imply that the situation should be followed closely in some cases in the framework of its supervision of the application of the respective Conventions.

VIII. Revision of standards

198. In connection with Convention No. 147 and Recommendation No. 155, the International Labour Conference in 1976 adopted a resolution calling for periodic consideration by the Joint Maritime Commission of whether the list of Conventions appended to Convention No. 147 continues to constitute an acceptable minimum or whether it needs to be revised.[391] Paragraph 4 of Recommendation No. 155 states that it is pending such revision of the Convention No. 147 Appendix as may become necessary in the light of changes in the circumstances and needs of merchant shipping that cognisance should be taken of the revisions of individual Appendix Conventions. The question has indeed been considered on various occasions since then.[392] It has also been particularly linked to the present general survey by the Joint Maritime Commission, which saw the article 19 exercise as a means of enabling the Commission more accurately to assess whether revision is necessary or desirable.[393] The Governing Body, however, has now decided not to place the question on the agenda of the 78th Session of the Conference (1991).[394]

199. This general survey refers separately to all maritime instruments classified by the Governing Body as "instruments to be promoted on a priority basis"[395] as well as those adopted by the

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[391] Resolution No. II concerning the Periodic Revision of the List of Conventions Appended to the Merchant Shipping (Minimum Standards) Convention, 1976. The contents of the resolution are drawn from the Programme for the Effective Attainment of Standards originally proposed by the PTM Conference and later drafted into the proposed Recommendation, but finally hived off from there by the responsible Committee of the 1976 Conference - see 1976 Report V(1), p. 26; 1976 Report V(2), p. 60; and 1976 RP, p. 198, para. 136.

[392] For a recent review, see 1989 document GB.244/2/2, paras. 48-59.

[393] Resolution on Convention No. 147 adopted at its 24th Session, 1984.

[394] Document GB.244/205, paras. 4-5.

[395] In 1987 Report of the Working Party. That Report also called for the revision of the Appendix to Convention No. 147, on the one hand, and Convention No. 109 and Recommendation No. 109, on the other - see pp. 34-37. The two reports of the Working Party on International Labour Standards (1979 and 1987) have amongst other things classified Conventions and Recommendations into: (1) those which should be promoted on a priority basis; (2) existing

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74th Session of the Conference in 1987 and some others. In doing so, it refers to all the cases where instruments included in either the Convention No. 147 or the Recommendation No. 155 Appendix have been revised. As regards instruments not included in the Convention No. 147 Appendix, the Committee has given indications which might amongst other things be of assistance in the consideration of a possible revision of the Appendix.

200. The Committee has noted in particular that four Conventions (Nos. 108, 145, 146 and perhaps 133) were recommended by the Joint Maritime Commission[396] for addition to the Convention No. 147 Appendix. It is interesting to note that, while most of these relate to what may be considered shipboard conditions of employment and living arrangements (Article 2(a)(iii) of Convention No. 147), one (No. 145) relates rather to broader issues of national policy,[397] and to the method of organising engagement.[398]

201. The Committee would emphasise in this context that the standards laid down by Convention No. 147 are in any event minimum and not maximum ones. Convention No. 147 should ideally be read together with Recommendation No. 155, where the policy of dynamic improvement beyond the minimum has been sanctioned by the Conference. Given the contemporaneous adoption of resolution No. II by the 62nd Session of the Conference and the constant reconsideration of the revision of the Convention No. 147 Appendix in the ILO, it seems clear that the standards incorporated in that Appendix in 1976 ought not to be regarded as immutable and that their outward - as well as their upward - revision is a logical course.

202. One government[399] has referred to the possible revision of the Convention No. 147 Appendix in its article 19 report. It considers that there should be no extension of the Convention Appendix to new aspects of seafarers' conditions, although these could be dealt with in a new Recommendation. In the Convention Appendix, it suggests including Convention No. 165 as an alternative to Nos. 55, 56, 130; and No. 166 as an alternative to No. 23. The government also suggests

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instruments, revision of which would be appropriate; and (3) other existing instruments. The Working Party reports also identify subjects concerning which the formulation of new instruments should be considered.

[396] At its 25th Session (1987): Resolution concerning the Identification of any Possible New Conventions to be Added by a Protocol to the Appendix of Convention No. 147. The Office document discussed at that time (1987 JMC/25/2) had also drawn attention to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and Convention No. 135. As to social security, see para. 155, and as to other conditions see paras. 161-162, above. As to Convention No. 108, see above, paras. 171-172.

[397] cf. para. 181, above.

[398] cf. Article 2(d) of Convention No. 147, below, Chapter IV.

[399] Sweden.

revision of the Recommendation No. 155 Appendix to include Conventions Nos. 163 and 164; to make it clear that Convention No. 70 should be applied only where Convention No. 165 is not binding, and similarly Recommendation No. 137 only where the STCW Convention is not ratified; and to replace the 1975 Document for Guidance by the 1985 version.

CHAPTER III

VOCATIONAL TRAINING OF SEAFARERS

203. Article 2(e) of Convention No. 147 formulates the State's undertaking to ensure that seafarers employed on ships registered in its territory are properly qualified or trained for the duties for which they are engaged, due regard being had to Recommendation No. 137. This undertaking has been seen alongside that in Article 2(a) to have legislation laying down, for ships registered in the territory, safety standards including standards of competency.[1] Although some overlap on that score there certainly is, it would seem that Article 2(e) also introduces elements which are not present in Article 2(a) - in particular the promotional aspect of vocational training. The injunction in Paragraph 3 of Recommendation No. 155 to take steps with a view to laws and regulations containing provisions at least equivalent to both the 1975 Document for Guidance and Recommendation No. 137 also overlaps with the requirements of Article 2(e) of Convention No. 147.

204. Recommendation No. 137 applies to training for those in the deck, engine, radio and catering departments and for general purpose crews (Paragraph 1(2)). The seafarers' vocational training policy it outlines includes amongst its aims the constant improvement of abilities through training and retraining, keeping in mind the interests of the shipping industry and of seafarers, and with special reference to accident prevention (Paragraph 2). The authorities competent for planning national education and training policy should ensure the integration of seafarers' training facilities in the general scheme, with all due co-ordination and consultation on both sides of the shipping industry and periodical review of the arrangements; information should be disseminated for vocational guidance; the 1968 IMCO/ILO Document for Guidance, as amended, should be taken into account (Paragraphs 3 to 9). Finance should be adequate, with government sponsoring where appropriate, to enable all seafarers to participate in training: retraining in particular should be free, with sufficient income protection (Paragraph 10). There should be medical examinations and a general education requirement for entry into training: subjects covered should include navigation, seamanship, radio, electronics, engineering, catering and human relations, and the teaching staff should themselves have experience and qualifications; examinations related to the various seafarers' certificates of competency should be prescribed (Paragraph 11). Programmes should also deal with cargo handling, ship maintenance,

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[1] See above, paras. 82-93.

life-saving and fire-fighting and other aspects of safety, propulsion installations, safe working practices[2] (including first aid, and physical training, especially swimming), social and labour legislation and management; they should take account of general schooling, minimum age and practical experience requirements (Paragraphs 12 to 14). Induction training for young people and later upgrading by short or correspondence courses should be available (Paragraphs 15 to 17). Retraining, especially on job release, should emphasise the ability to handle new types of ships safely (Paragraphs 18 to 19). Modern methods should be used and practical training - for example on training vessels - should be an important feature (Paragraphs 20 to 25). International co-operation in all of these matters is encouraged (Paragraphs 4 and 26 to 27).[3]

205. The countries which are bound by Convention No. 147 have provided more or less detailed information on seafarers' vocational training arrangements, although relatively little on its planning and administration and its setting in the context of general vocational training policies and programmes. The Committee has been particularly interested in information as to the development of new training institutions[4] and the legislative framework for the training activities.[5] Various governments have indicated that Recommendation No. 137 is taken into account,[6] and the extent to which regard is had in turn to the Document for Guidance is in part evidenced by the numbers of those States which have adhered to the STCW Convention.[7] Little specific information is available as to the qualifications and training of non-national seafarers: in one country[8] the legislation particularly provides for non-nationals to obtain the essential certificates as officers, and another[9] has indicated that foreigners may receive training if the appropriate fees are paid. The same country has referred in particular to private training arrangements for seafarers, although it states that there are no measures to co-ordinate them. Another[10] has stated that it would consult the

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[2] cf. Articles 8 and 9 of Convention No. 134, as to programmes for the prevention of occupational accidents to seafarers - para. 103, above.

[3] Paragraph 77(2) of the Human Resources Development Recommendation, 1975 (No. 150) - one of the instruments which will be dealt with in the Committee's 1991 General Survey - provides that Recommendation No. 137 remains applicable so far as seafarers are concerned. For the earlier General Survey of Recommendation No. 77, see 1950 Report III (Part IV), p. 61; the reports are summarised in 1950 Report III (Part II), pp. 106-113.

[4] e.g. in Costa Rica, Finland, France, Greece, Japan, Morocco.

[5] e.g. in Egypt, Federal Republic of Germany.

[6] e.g. Denmark, Finland, Greece, Iraq, Portugal, Sweden, United Kingdom.

[7] All except Costa Rica, Iraq, Morocco, United States.

[8] Spain.

[9] United Kingdom.

[10] United Kingdom (Isle of Man).

industry as to what further training measures might be necessary. One country, however, relies on training received by seafarers under programmes of other countries.[11]

206. The arrangements made by those countries generally dovetail into the requirements of Conventions Nos. 53, 69 and 74 when they are ratified or where provisions substantially equivalent to Articles 3 and 4 of Convention No. 53 are applied in accordance with Article 2(a) of Convention No. 147. However, the Committee would stress that the measures called for under Article 2(e) (combined with Article 2(a)(i)) extend to other specialisations, especially radio, and to all ranks, including non-specialised or uncertificated ratings. For this reason the Committee has been encouraged by the information on additional training undertaken by some countries. One such[12] has referred to requirements as to lifeboat operators and doctors and health supervisors on certain ships. Another[13] states that in order to be registered as a seafarer an applicant must have reached a minimum age (17), and have completed a vocational training course and approved fire-fighting and personal survival courses or have had specified experience; the same Government lists the approved courses organised for officers and ratings entitled, for example, Pre-Sea Cadets, Survival, Efficient Deck Hand, Petroleum Tanker Familiarisation and Safety, Navigational and Engine-Room Watch Ratings, First Aid, Marine Studies, Radar Maintenance/Observer/Simulator. A third country[14] has detailed the special training and qualifications required for tanker personnel; it has also supplied a copy of its regulations as to the qualifications of personnel on national ships for whom a certificate of competency is not required, which specify basic safety training, age, health, experience and training for those taking part in navigational watches (with additional requirements for those serving on tankers or responsible for survival craft, greasers, motormen, engine-room attendants, mechanics).

207. Several article 19 reports have referred to legislation[15] or other arrangements for seafarers' training, such as a special institution,[16] and in one case a regional maritime training centre.[17] Some have indicated specifically that Recommendation No. 137 is taken into account,[18] and that new measures are envisaged in this respect.[19] In some other countries, information available relates only to legislation for apprenticeships.[20]

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[11] United Kingdom (Bermuda).
[12] Japan.
[13] United Kingdom (Hong Kong).
[14] Norway.
[15] e.g. Algeria, Bangladesh, Canada.
[16] e.g. Ireland, Mozambique, New Zealand.
[17] Côte d'Ivoire: the Abidjan Regional Marine, Scientific and Technical Academy.
[18] e.g. Australia, German Democratic Republic, Greece, Hungary, New Zealand, United States.
[19] e.g. Portugal; United Kingdom (Isle of Man).
[20] e.g. Bahamas, Mauritius, Singapore.

208. The Committee would draw attention to the comprehensive nature of the two aspects of Article 2(e) of Convention No. 147 and Recommendation No. 137. First, the measures taken to ensure that seafarers are properly qualified or trained for the duties for which they are in fact employed apply to all crew members. Second, the measures taken to implement a national policy on vocational training for seafarers should be calculated to satisfy the need on board ship for officers and ratings, both specialised and general-purpose, who have the benefit of qualifications encompassing the best modern technology available in the shipping industry. These things are in the interests of both seafarers and shipowners.

CHAPTER IV

ENGAGEMENT OF SEAFARERS

209. Article 2(d) of Convention No. 147 formulates the undertaking by the State in respect of adequate procedures for the engagement of seafarers and the investigation of complaints about engagement. The undertaking is attenuated as between, first, home-registered and foreign-registered vessels; second, seafarers of the State's own and those of another nationality; and, third, engagements taking place in the national territory and those taking place abroad. In this way Convention No. 147 develops an aspect of the placing of seafarers not specifically covered by the Placing of Seamen Convention, 1920 (No. 9), which is concerned mainly with the institutional facilities established for finding employment for seafarers within the territory.[1] Article 3 of Convention No. 147 deals with the particular question of the nationals of a State which has ratified it signing on for employment on a ship registered in a State which has not ratified it (the problems involved in that being presaged in Convention No. 147's preambular reference to Recommendation No. 107).

210. The engagement and complaints procedures provided for in Article 2(d) are not restricted to cases of substandard ships (in the sense of ships failing to meet Article 2(a) standards), but apply to engagement in general. Article 2(d) and Article 3 of Convention No. 147 together must be taken to elaborate on by and large different aspects and a different stage of maritime employment than Article 2(a). Some overlap there nevertheless is, to the extent that Article 2(a) incorporates, via the Appendix, a Convention (No. 22) which lays down procedures precisely for engagement:[2] the substantive requirements of that Convention - whether it is to be applied by virtue of the substantially equivalent clause or of being otherwise

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[1] The Continuity of Employment (Seafarers) Convention (No. 145) and Recommendation (No. 154) (following up the earlier Employment of Seafarers (Technical Development) Recommendation, 1970 (No. 139)), also adopted by the 62nd Session of the Conference in 1976, develop another dimension of seafarers' employment, viz. that of a national policy aimed at promoting continuity of employment. Such a policy - which goes beyond the present ambit of Convention No. 147 (but see above, paras. 198-202) - is conceived as being implemented through a national system of registers: these would presumably be administered by the seafarers' employment services established along the lines of Convention No. 9.

[2] See paras. 182-186, above.

binding on the State - are more far-reaching and more detailed than those of Article 2(d), although the latter does both add a requirement of tripartite consultations where appropriate[3] and raise the "standard of proof".[4] Under Article 2(d), the Committee is therefore concerned first with the emphasis placed on supervising engagement procedures. The other ingredient added by Article 2(d) is that of adequate procedures for the investigation of complaints, making explicit something which could only be implied under Article 3(6) and Article 15 of Convention No. 22 (requirements as to legislation for any further formalities and safeguards considered necessary, and measures to ensure compliance), and the Committee is thus concerned secondly with this.

211. One noticeable feature of Article 2(d)(ii) and Article 3 is that they enter into the domain of foreign-registered ships. In this, too, they go beyond Convention No. 22, although not beyond Convention No. 9. However, they go no further in this respect than providing for procedures for complaints relating to engagement in the State's own territory and for a State to give advice to its own nationals.

212. The embryo Article 2(d) can be found in the original Office draft instrument,[5] which included the State's undertaking simply "to supervise the engagement of seafarers in its territory on vessels of any nationality" and in doing so to give effect, in so far as the State was not otherwise so bound, to Conventions Nos. 9 and 22.[6] The references in clause 4(c) to both these Conventions were removed by the PTM Conference Committee.[7] The draft later went through a series of permutations in respect of the considerations referred to in paragraph 209 above (second sentence), during which from the primary concept of engagement procedures was born the secondary one of complaints procedures.[8]

213. What became Article 3 of Convention No. 147 is directly drawn from Paragraph 1 of Recommendation No. 107,[9] which called on

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[3] As to tripartite consultations, see below Chapter V.

[4] cf. above, paras. 58-61: the standard is raised from the minimum "satisfy itself" (that the legislation is substantially equivalent to Article 3(2) of Convention No. 22, requiring legislation to ensure adequate supervision), to the higher "ensure" (that there are adequate procedures subject to over-all supervision).

[5] 1976 Report V(1), p. 5 - clause 4(c) of the draft.

[6] There was thus precise duplication with clause 4(b) in respect of several Articles of Convention No. 22 - see above, para. 182.

[7] 1976 Report V(1), p. 18, paras. 41-42.

[8] ibid., p. 24, and 1976 Report V(2), pp. 36-50. On p. 41 of Report V(2) the intention of distinguishing clearly between home-registered and foreign-registered vessels - as suggested by the Netherlands Government (p. 38) - is indicated; the same paragraph on p. 41 perhaps alludes also to the obligation in respect of engagement imposed by Article 2(a), by virtue of the inclusion of Convention No. 22 in the Appendix to the Convention.

[9] In general see 1958 Report III, and 1958 RP, pp. 234-236.

States to do everything in their power to discourage seafarers within their territory from joining vessels registered abroad unless the conditions of such engagement were generally equivalent to those applicable under collective agreements and social standards accepted by bona fide shipowners' and seafarers' organisations of maritime countries where such agreements and standards are traditionally observed. The first Office draft instrument[10] also included an explicit undertaking to take account of Recommendation No. 107. The Office had moreover drafted a Programme for the Effective Attainment of Standards,[11] which called on governments, where there was no evidence, such as ratification or a statement of the shipowner, that minimum standards were met on foreign vessels, to require such evidence as a condition for not applying that Recommendation's "discouragement" injunction. It was in the responsible Committee of the International Labour Conference[12] that that provision was lifted from the Programme (the Programme in the end being virtually completely reproduced in Convention No. 147 and Recommendation No. 155), recast and inserted in the draft Convention.

I. Engagement procedures

214. Under Article 2(d)(i) of Convention No. 147, a State undertakes to ensure that there are adequate procedures for the engagement of seafarers on ships registered in its territory; such procedures should be subject to over-all supervision by the competent authority, after tripartite consultation with representative organisations of shipowners and seafarers where appropriate. The procedures in question are not defined in Convention No. 147, but, from the reference to Convention No. 9 as well as Convention No. 22 in the original draft and the fact that the PTM Conference Committee had the principles of both Conventions in mind,[13] the kind of procedures concerned may be surmised;[14] it is not meant to imply that any

[10] 1976 Report V(1), p. 5 - clause 4(c).
[11] ibid., p. 8, para. 4.
[12] 1976 RP, p. 192, paras. 71-74.
[13] 1976 Report V(1), p. 18, paras. 41-42.
[14] The only reason for diffidence is that one aspect of Convention No. 9 has more recently been the subject of controversy: the Joint Maritime Commission discussed the Office report on its revision (1984 Report JMC/24/5) and in the end there was no agreement between the Seafarers (who felt that revision would not help eliminate the widespread practice of allowing fee-charging agencies for recruitment and placement of seamen in the face of the requirement of their prohibition under Convention No. 9, Articles 2 and 3) and the Shipowners (who wished for revision in order to provide for supervision and control of such agencies along the lines of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)), so that the question of revision was not pursued (1984 document

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obligations relating to Convention No. 9 as such are contained in Convention No. 147. Those procedures would, then, involve essentially an efficient and adequate system of public employment offices for finding employment for seamen (defined in Article 1 of Convention No. 9 to exclude officers) without charge (Article 4). Leaving aside the question of fee-charging agencies, one additional Convention No. 9 principle may perhaps be taken into account for Article 2(d)(i) purposes: that of free choice for both seafarer and shipowner (Article 6). Article 2(d)(i) goes further than Convention No. 9 in that the procedures required should extend to officers[15] as well as ratings (cf. Article 9); and should also apply to non-national seafarers, since Article 2(d)(i) - unlike Article 2(d)(ii) - makes no distinction on the basis of nationality. The State's undertaking in Article 2(d)(i) - again unlike that in Article 2(d)(ii) - is not restricted to engagement "in its territory": adequate procedures have to cater also for the engagement of national seafarers on home-registered ships while abroad.[16] On the other hand, Article 2(d)(i) does not apply to engagement on foreign-registered ships (and in this it is narrower than Convention No. 9, under which a system of seafarers' placement offices covers all placement regardless of the nationality of the ship and under which the prohibition on fee-charging would also extend to engagement on foreign-registered ships).

215. Thirteen[17] of the States which have ratified Convention No. 147 are bound by Convention No. 9. Most of these have given information on engagement procedures as required by Article 2(d)(i). Most often there is a separate public seafarers' employment service apart from the general one; in some countries placements are made also by shipowners' and seafarers' organisations and by private

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GB.228/7/8, p. 7). Convention No. 9 as is remains a priority instrument in the 1987 Report of the Working Party (p. 35). The question of its possible revision has now been placed on the agenda of the 26th Session of the Joint Maritime Commission (Document GB.244/205, para. 71).

[15] But perhaps not masters - cf. Article 2(b) of Convention No. 22 and Article 9 of Convention No. 9 - or trainees (also Article 2(b) of Convention No. 22). cf. 1958 RP, p. 235, para. 17.

[16] Recommendation No. 108 expressly calls for provisions to ensure that "both in its territory and abroad the requisite government agencies are established to supervise the signing-on and signing-off of seafarers" (point (c)) - see 1958 RP, pp. 148 and 238, paras. 16 and 17.

[17] Belgium, Denmark, Egypt, Finland, France, Federal Republic of Germany, Greece, Italy, Japan, Netherlands, Norway, Spain, Sweden. Another three (Costa Rica, Iraq, Portugal) have ratified and are bound by the Employment Service Convention, 1948 (No. 88), which deals with a general employment service.

agencies; the service is usually free.[18] However, under Article 2(d)(i) of Convention No. 147, the Committee has in some cases asked for information as to the establishment of procedures[19] or their application to foreign seafarers in particular.[20]

216. In 1972, when the Committee considered article 19 reports on Recommendations Nos. 107 and 108, it noted that various countries had indicated point (c) of Recommendation No. 108 was applied.[21] The Committee recalls that in several of those cases information was provided as to consular or other facilities for engagement abroad.[22]

217. Many of the article 19 reports now refer to arrangements for the engagement of seafarers, most often through some system of public placement offices or registration along the lines of Conventions Nos. 9 and/or 145.[23] In some cases, mention is made of procedures abroad.[24] One country has indicated that a new system is envisaged.[25] In another, the system appears to cover only home-registered vessels.[26] In one, there is direct recruitment by the shipowner, according to principles laid down in legislation.[27] Further information is contained in another recent analysis made by the Office.[28]

II. Complaints procedures

218. The State's undertaking under Article 2(d)(i) includes the commitment to ensuring there are adequate procedures for the investigation of complaints arising in connection with the engagement of seafarers on ships registered in the State's territory. That commitment applies regardless of the nationality of the seafarer and the place where the subject of the complaint arises.[29] Where, however, the complaint relates to a foreign-registered ship, Article 2(d)(ii) applies: the State undertakes to ensure that there are adequate procedures for the investigation of complaints as to the engagement in its territory of its own national seafarers on

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[18] See 1984 Report JMC/24/5, passim.

[19] e.g. Liberia; France (New Caledonia), United Kingdom (Bermuda).

[20] e.g. Portugal - similar questions may arise for various other countries, e.g. Greece, Netherlands - cf. 1984 Report JMC/24/5, pp. 21-22.

[21] 1972 General Survey, para. 15.

[22] e.g. Belgium, Cyprus, France, Greece, Malta, Netherlands, Norway, Singapore, Sweden - see 1972 Report III (Part 2B).

[23] e.g. Algeria, Austria, Cameroon, Côte d'Ivoire, Cuba, New Zealand, Philippines, Poland, Singapore, Trinidad and Tobago, Tunisia.

[24] e.g. Ecuador, Panama, Switzerland.

[25] Argentina.

[26] Benin.

[27] Czechoslovakia.

[28] 1984 Report JMC/24/5.

[29] cf. para. 214, above.

foreign-registered ships; it also undertakes to ensure[30] that any complaint as to the engagement in its territory of either national or foreign seafarers on foreign-registered ships is promptly reported to the competent authority of the State of registration, and a copy forwarded to the Director-General of the ILO;[31] Article 2(d)(ii) complaints should if possible be made at the time of the engagement. There is no provision as to engagement outside the territory on foreign ships. In Article 2(d)(ii), it is immaterial whether the foreign seafarers are of the same nationality as the ship.

219. The Committee has examined information on engagement complaints procedures from nearly all countries bound by Convention No. 147, and where none was available on one or another aspect it has requested such information. There seem to be complaints procedures as required in several of those countries.[32] In one case,[33] the Government has referred in this connection to the system of port state control[34] and stated that the authorities were unlikely to intervene in response to such complaints: the Committee notes that Article 2(d)(ii) requires investigation only in respect of complaints by national seafarers concerning engagement on foreign ships in the territory, whilst in respect of such complaints by foreign seafarers the requirement is merely to report to the foreign competent authority with a copy to the ILO. In other cases, the Committee has clarified various elements through direct requests.[35] There remain some outstanding questions as to the procedures relating to national

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[30] The weaker "s'assurer" was allowed to remain in the French (middle of paragraph (d)(ii)) at the time when the term "faire en sorte" was introduced at the beginning of the paragraph, bringing it into line with the English - see 1976 Report V(2) (French version), pp. 39 and 52; see also above, paras. 58-61. Since prompt reporting with a copy to the ILO is a straightforward procedure not involving any element of judgement, "ensure" ("faire en sorte") fits more logically into the second part of paragraph (d)(ii) and seems better to reflect the Conference's intention.

[31] The Committee understands that the Director-General has not so far received any copies of reports made under this provision.

[32] e.g. Finland, France, Federal Republic of Germany, Italy, Japan, Netherlands, Sweden, United Kingdom; United Kingdom (Bermuda, Hong Kong, Isle of Man).

[33] Sweden.

[34] cf. below, paras. 221-225, and Chapter VI.

[35] e.g. Finland (steps to report to foreign competent authorities, with a copy to the ILO); France (as to any complaints procedures existing and reporting to foreign competent authorities, with a copy to the ILO); Netherlands (as to complaints procedures: measures may be taken and the civil courts may take jurisdiction where Dutch law is the law of the contract of employment or even where this is not the case - i.e. when the Dutch court might settle a dispute under the rules of private international law, applying the proper (foreign) law of the contract of employment, according to the

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seafarers engaged on foreign ships,[36] as to reporting to the foreign competent authority with a copy to the ILO,[37] and as to the establishment and functioning of an engagement complaints procedure in general.[38]

220. Only a few governments have indicated in article 19 reports that complaints procedures of the kind laid down in Article 2(d) exist, stating that such complaints are received[39] or investigated[40] or arbitrated.[41] In another country, complaints as to engagement in home-registered ships are referred to a government official, under a binding award;[42] and in another complaints as to foreign-registered ships are simply communicated to the consul of the State in question.[43]

III. Advice to nationals

221. Under Article 3 of Convention No. 147, a State which has ratified it must in so far as practicable advise its nationals[44] as to the possible problems of signing on for employment on a ship registered in a State which has not ratified the Convention, until such advising State is satisfied that standards equivalent to those fixed by the Convention are being applied. Article 3 includes the proviso that measures taken to advise in this way must not violate any principle of free movement of workers contained in a treaty to which the advising State and the State of registration are both party: that is to say, if it arises, the principle of free movement of workers takes precedence.[45]

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Government); United Kingdom (as to complaints procedures in respect of engagement on foreign-registered ships and reporting to the foreign competent authority, with a copy to the ILO).

[36] Belgium, Greece, Norway (also national seafarers), Portugal (in particular as to whether shipowners' and seafarers' organisations have been consulted).

[37] Costa Rica, Denmark, Greece.

[38] Costa Rica, Iraq, Liberia, Morocco, Spain.

[39] German Democratic Republic.

[40] India, Ireland.

[41] Czechoslovakia.

[42] Australia.

[43] Canada.

[44] cf. Paragraph 1 of Recommendation No. 107, which is not limited to nationals.

[45] That this is the intended meaning of the ambiguous "shall not be in contradiction with" appears from the French version and the minutes of the Conference Committee (1976 CSV, PV5, pp. 1-2). It was the Treaty establishing the European Economic Community (Treaty of Rome) which the French Government member of that Committee had in mind in proposing what became Article 3 of Convention No. 147: Article 48 of the Treaty provides for the freedom of movement of workers within

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222. Article 3 is worded so as to impose an obligation on countries bound by the Convention. However, that obligation is attenuated by the phrase "in so far as practicable". In these circumstances, the question whether the State is "satisfied"[46] that "equivalent"[47] standards are being applied and the meaning given to these terms in practice have never been examined in detail by the Committee in its consideration of article 22 reports on the Convention. However, it appears from the recorded discussion in the responsible Committee of the 1976 Conference that what was aimed at by the majority of that Committee was the giving of advice to its nationals as to all ships registered in States which have not ratified the Convention, and not just particular ships: if it were not to take measures to give such advice (in so far as practicable), a State would have to be satisfied that the equivalent standards were being applied by the State of registration in general to ships registered in its territory.[48]

223. In 1972, when the Committee considered article 19 reports on Recommendation No. 107,[49] it noted that in some cases[50] the port shipping master or employment exchanges were instructed to discourage or even prevent national seafarers from accepting employment on foreign flag vessels, particularly if the conditions of employment were found to be inferior to those on national flag vessels or those generally accepted internationally; in other cases, it appeared that Paragraph 1 of Recommendation No. 107 might be taken into account. In some countries, few seafarers were said to be engaged on foreign vessels, but even so there were some bilateral agreements between (especially neighbouring) States and sometimes trade unions would give advice or warnings would be posted as to discrepancies in conditions of employment on foreign vessels.

224. In its examination of article 22 reports, the Committee has found indications that several countries bound by Convention No. 147

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the Community (now consisting of 12 members in Western Europe, all but two of which - Ireland and Luxembourg - have ratified Convention No. 147), entailing the abolition of any discrimination based on nationality as regards employment, remuneration, and other working conditions.

[46] A relatively wide discretion is left to the State concerned - cf. paras. 58-61, above.

[47] cf. paras. 65-79, above.

[48] The author of the proposal that became Article 3 had intended to signify a clearly identified ship and not all the ships of the State in question; but the Seafarers' group took the contrary view and the Committee decided by a vote not to insert the words "on board that ship" after "are being applied" (1976 CSV, PV5, pp. 3-4, especially the French version).

[49] 1972 General Survey, paras. 8 and 9.

[50] e.g. Belgium, Canada, Cyprus, Finland, Federal Republic of Germany, Morocco, Switzerland, United Kingdom - see 1972 Report III (Part 2B).

take measures to give advice, either through the port authorities or employment offices, or by publications.[51] One of these[52] indicated that instructions referring directly to Recommendation No. 107 had been issued: though those instructions have since been cancelled (the reason is not given), new instructions were said to be planned and the previous ones to be still applied in practice. The matter has been under consideration in one or two other countries,[53] and in four other cases[54] the Committee has raised the matter in direct requests.

225. Few other governments have referred to the question in article 19 reports. One has indicated that unions and engagement offices supply such information.[55] Others have said that giving such advice is not practicable[56] or not necessary, because of employment patterns.[57]

IV. Need for action as to engagement

226. From the contents of Article 2(d) and Article 3 of Convention No. 147 and from available information on the way in which they are implemented by States, it is clear that the engagement of seafarers is more than a "mere" procedural matter. In the Convention's perspective it is an area where the substantive right of seafarers to efficient and fair treatment deserves protection, both initially and in the course of their employment, when there is cause for complaint. It is no less an area where there may arise opportunities for promoting the observance of at least the minimum standards aimed at by Convention No. 147 - under Article 3 especially on foreign-registered ships. Whilst Article 2(d) lays down relatively concrete steps to be taken, Article 3 leaves much more to the judgement of States as to what is practicable. The Committee hopes that further consideration might be given by all countries concerned to what can be undertaken, particularly under Article 3.

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[51] e.g. France, Federal Republic of Germany, Greece, Iraq, Italy, Japan, Norway, Spain, Sweden, United Kingdom; United Kingdom (Hong Kong, Isle of Man).

[52] Sweden.

[53] e.g. Finland.

[54] Costa Rica, Denmark, Liberia, Portugal.

[55] Australia.

[56] e.g. Austria, Pakistan.

[57] e.g. German Democratic Republic, Ireland, New Zealand.

CHAPTER V

SHIPOWNERS' AND SEAFARERS' ORGANISATIONS

227. The role of shipowners' and seafarers' organisations in relation to labour standards is not fully described in Convention No. 147 and Recommendation No. 155 and the instruments appended to them. But what those instruments taken together do do is lay down, first, some general principles and guarantees as to the nature of the organisations and, second, the part they can play in fixing standards (primarily through collective agreements). They also indicate the part the organisations might play in procedures for ensuring the implementation of standards. And together they provide for various ways in which the organisations should be consulted and should participate in the administration of standards-related questions. Most - but not all - countries bound by Convention No. 147 have indicated that organisations of shipowners and seafarers are consulted by the competent authorities either on maritime affairs in general or on specific questions arising under maritime labour standards.

I. Nature of the organisations

228. Convention No. 147's requirements in relation to Conventions Nos. 87 and 98[1] are far-reaching: they make it clear that the organisations of shipowners and seafarers referred to in Convention No. 147 must enjoy the independence and freedom and the protections laid down in those two Conventions. This echoes a fear voiced in the PTM Conference that the use of collective agreements as a means of applying labour standards would open the way to "arrangements between company-controlled unions and enterprises which would go against the interests of seafarers".[2] A similar fear led in 1946 to use of the term "recognised bona fide trade unions of seafarers",[3] which now figures in Convention No. 92.[4] If this were not enough, Article 2(c) makes it clear in relation to the control of shipboard conditions of employment and living arrangements in certain circumstances that

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[1] See above, paras. 181 and 187-197.

[2] 1976 Report V(1), p. 16, para. 32.

[3] In the Accommodation of Crews Convention, 1946 (No. 75) - see 1946 RP, p. 238, para. 8.

[4] Incorporated by reference into Convention No. 147 - see above, paras. 119-124 and 174-177; the same term, without "recognised", is used in Convention No. 133.

the organisations which may agree on measures should be constituted in accordance with Conventions No. 87 and 98.[5]

229. Another concern, also raised in the 1946 discussion,[6] was that it might be difficult to determine which shipowners' organisation was truly representative in any given case: for this reason the term "the organisations of shipowners and/or the shipowners" was preferred then. Convention No. 147 responds to that concern in four different ways: first, in Article 1(4)(c) it provides for consultation of "the most representative organisations of shipowners and seafarers";[7] second, in Article 2(c) it refers to agreement "between shipowners or their organisations and seafarers' organisations"; third, in Article 2(d) it provides for consultation with representative organisations as to engagement procedures only "where appropriate"; and, fourth, in Article 4(3) it refers even more generally to "a professional body, an association, a trade union, or generally any person with an interest in the safety of the ship ...".[8] Thus, if only one organisation of either shipowners or seafarers is to be involved (in a general issue) it should be the most representative one; otherwise, in any given case the wording seems sufficiently flexible.

230. Where, as is usually the case, countries bound by Convention No. 147 have organisations made up specifically of shipowners and seafarers, there need be little difficulty in identifying the organisations to be involved for purposes of the Convention. Occasionally it has appeared that no such organisations exist,[9] or at least that no separate organisations exist in a non-metropolitan territory to which the Convention has been declared applicable.[10] Some other countries have referred to general tripartite consultative machinery for the shipping sector.[11]

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[5] See below, Chapter VI, especially para. 248.

[6] 1946 RP, p. 238, para. 8.

[7] An expression reminiscent of Article 1 of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), in which "the term 'representative organisations' means the most representative organisations of employers and workers enjoying the right of freedom of association" - see 1982 General Survey, paras. 47-55.

[8] See below, Chapter VI, especially para. 262.

[9] e.g. Costa Rica, in the declared absence of any significant merchant fleet.

[10] e.g. United Kingdom (Isle of Man): the Government has referred to consultations of Isle of Man based shipping companies directly and United Kingdom trade unions.

[11] e.g. Denmark, Finland, Netherlands, Norway, Spain; United Kingdom (Hong Kong).

II. Role of the organisations

(a) Consultations as to policy

231. Consultations are called for as to policy in one general and two specific areas. Generally, under Paragraph 4 of Recommendation No. 155 governments should consult the most representative organisations of shipowners and seafarers when they "take cognisance" of the revisions of instruments (when they come into force, if they are Conventions) listed in the Appendix to Convention No. 147 and the Appendix to Recommendation No. 155.[12] More specifically, under Paragraph 5(2) of Recommendation No. 137[13] shipowners' and seafarers' organisations should be consulted in order to establish the operational requirements of the shipping industry, to meet which seafarers' training programmes are to be developed; and under Convention No. 70, Article 10(3), there should be tripartite examination of the effect given to the Convention.[14] Some article 19 reports have referred to general tripartite consultations taking place[15] or consultations as to new legislation in particular.[16]

(b) Consultations as to procedures

232. Article 2(d) of Convention No. 147 says that the engagement and complaints procedures established should be subject to overall supervision by the competent authority "after tripartite consultation amongst that authority and the representative organisations of shipowners and seafarers".[17] Under Convention No. 73, Articles 4 and 9, there should be consultations with shipowners' and seafarers' organisations as to the nature of the medical examination and particulars to be included in the certificate, and as to the delegation of the competent authority's functions.[18] Under Article 11 of Convention No. 68, training courses for catering department staff should be organised by arrangements acceptable to shipowners' and seafarers' organisations;[19] and, similarly, accident prevention courses call for their co-operation under Convention No. 134, Article 8.[20] Some governments have indicated that consultations have taken

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[12] See above, paras. 90-93, 144-146, 151-155.

[13] See above, Chapter III.

[14] See above, paras. 149-150.

[15] e.g. Australia, Egypt, Switzerland (for instance, in relation to social security), USSR.

[16] e.g. Belgium, Ghana, New Zealand.

[17] See above, Chapter IV.

[18] See above, paras. 112-118 - the Committee has not considered whether such consultations are necessary in order to demonstrate substantial equivalence.

[19] See above, paras. 178-180.

[20] See above, paras. 102-107.

place at least in relation to engagement procedures;[21] in other cases such procedures are a joint concern of shipowners and unions[22] or subject to tripartite supervision.[23]

(c) Consultations as to scope

233. There are provisions for consultations of shipowners' and seafarers' organisations on measures defining, limiting or extending the scope of several instruments: in respect of small vessels (Article 1(4)(c) of Convention No. 147 and Paragraph 1(4)(c) of Recommendation No. 155);[24] and under various provisions as to minimum age (Convention No. 138, Articles 3, 4, 6 and 8);[25] crew accommodation (Convention No. 92, Article 1(5), Article 10(10), Article 16(5) and similar provisions of Convention No. 133);[26] food and catering (Convention No. 68, Article 1(2));[27] and annual leave (Convention No. 91, Article 2(2) and Convention No. 146, Article 2).[28] In so far as they fall within Convention No. 147, the Committee has not so far considered details of any consultations taking place under these provisions. It is in the nature of provisions such as these that the decision prior to which consultations should be made is often a fait accompli - even before the relevant Convention is ratified - such that the Committee's role in supervising the application of the provisions may be somewhat diminished.

(d) Collective agreements

234. In recalling Recommendation No. 107 in the Preamble to Convention No. 147, the Conference renewed its concern that seafarers often serve on vessels of countries without the benefit of properly negotiated collective agreements ensuring them the protection and standards applicable in "maritime countries where such agreements and standards are traditionally observed". It was therefore logical that collective agreements should continue to be seen as a means of fixing and guaranteeing maritime labour standards. However, it is entirely possible to lay down the minimum standards of Convention No. 147 by legislation, without resort to collective agreements. The potential role of shipowners' and seafarers' organisations in fixing shipboard conditions of employment and living arrangements[29] is thus one that has in many countries been realised less by fixing minimum standards in accordance with Article 2(a)(iii) of Convention No. 147 than by

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[21] e.g. Belgium, Finland, India, Sweden.
[22] e.g. Nigeria.
[23] e.g. Singapore.
[24] See above, paras. 43-45.
[25] See above, paras. 108-111.
[26] See above, paras. 119-124 and 174-177.
[27] See above, paras. 125-129 and 178-180.
[28] See above, paras. 163-165.
[29] See above, paras. 156-180.

improving on the minimum, along the lines advocated by Paragraphs 2(b) and 3 of Recommendation No. 155. That role is supplemented by the provision in Article 2(c) of Convention No. 147, which seems to contemplate shipowners or their organisations and seafarers' organisations agreeing on measures for the "effective control" of whatever shipboard conditions of employment and living arrangements are fixed by collective agreement.[30] There is further scope for collective agreements in Conventions which make explicit the general principle[31] that agreements may ensure more favourable conditions than the Convention (Convention No. 92, Article 19;[32] Convention No. 70, Article 9[33]); or mention collective agreements as a possible method of implementation of at least some provisions (Convention No. 91, Article 10; Convention No. 146, Article 1;[34] Convention No. 70, Article 10(1); Convention No. 68, Article 7[35]).

235. Chapter II above shows that several countries bound by Convention No. 147 have stressed the role of collective agreements, for example in fixing certain shipboard conditions of employment and living arrangements.[36] In the other areas where collective agreements have a potential role, little or no information is available. Three such countries have said there are no collective agreements there.[37] From article 19 reports, it is clear that most countries reserve an important role for collective agreements in relation to maritime labour standards;[38] one indicates that collective agreements confer conditions no less favourable than those of shoreworkers (in particular in relation to social security);[39] another two confirm that they improve on the legislated minimum standards.[40] In a few other countries there are apparently no collective agreements in the maritime sector.[41]

(e) Co-operation in administration

236. Convention No. 147 describes the possible role of "a member of the crew, a professional body, an association, a trade union, or generally any person with an interest in the safety of the ship,

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[30] See below, Chapter VI, especially paras. 243-252. Such collective agreements may in particular be the subject of inspection under Article 2(f).

[31] Article 19(8), ILO Constitution - see above, para. 57.

[32] See above, paras. 119-124 and 174-177.

[33] See above, paras. 149-150.

[34] See above, paras. 163-165.

[35] See above, paras. 178-180.

[36] e.g. Italy, Sweden, United Kingdom.

[37] Egypt, Iraq; United Kingdom (Bermuda).

[38] e.g. Austria, Benin, Côte d'Ivoire, Czechoslovakia, India, Malaysia, Mexico, Mauritius, New Zealand, Nigeria, Pakistan, Philippines, Poland, Switzerland.

[39] Singapore.

[40] Argentina, Canada.

[41] e.g. Bahamas, Qatar, Saudi Arabia.

including an interest in safety or health hazards to its crew" in the specific action of making a complaint as to the standards of a foreign-registered ship:[42] this is a function which thus goes beyond shipowners' and seafarers' organisations to the individual seafarer or the seafarer's spouse, dependant or creditor or, presumably, to the shipowner. Other instruments describe more general participation, for example in the management of medical care and sickness benefits (by representatives of persons protected and of employers, under Convention No. 130, Article 31);[43] in establishing and implementing occupational accident prevention programmes (Convention No. 134, Article 8);[44] in food and catering matters (Convention No. 68, Article 3);[45] and in disseminating vocational training information (Recommendation No. 137, Paragraph 7);[46] in relation to crew accommodation there should be not only consultation as to the framing of regulations and their adaptation to existing ships but also collaboration in their administration (Articles 3(2)(e) and 18 of Convention No. 92 and similar provisions in Convention No. 133).[47]

237. Little information on these matters has been given in governments' reports, and for countries bound by Convention No. 147 the Committee has rarely had occasion to examine relevant questions. Several article 19 reports from other countries have referred to tripartite co-operation, as to, for instance, supervision of the application of legislation[48] and particularly in inspection.[49] In some other countries, it seems that such co-operation can be ensured when necessary.[50]

III. The need for active shipowners' and seafarers' organisations

238. Tripartism in maritime affairs at the international level, at maritime sessions of the International Labour Conference and at Preparatory Technical Maritime Conferences - in addition to the opportunities for consultation provided by the Joint Maritime Commission - is a long-established tradition in the ILO. The references to shipowners and seafarers in Convention No. 147 and Recommendation No. 155 and the appended instruments mentioned here do not exhaust the range of opportunities available for tripartite co-operation in relation to maritime labour standards, or indeed for

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[42] See below, paras. 259-276.

[43] See above, paras. 133-139. cf. Article 35 of Convention No. 165.

[44] See above, paras. 102-107.

[45] See above, paras. 125-129 and 178-180.

[46] See above, Chapter III.

[47] See above, paras. 119-124 and 174-177.

[48] e.g. Ireland, Nigeria, Peru, Turkey, USSR.

[49] e.g. Algeria, Argentina, Austria, USSR.

[50] e.g. Belize, Côte d'Ivoire.

bipartite co-operation and agreement between either shipowners' and seafarers' organisations or individuals on either side. They do nevertheless show that the potential role of tripartism in maritime labour standards at the national level is a significant one. Whilst separate maritime employers' and workers' organisations may not be essential in the Convention No. 147 framework, the existence of some organisations constituted on the principles of Conventions Nos. 87 and 98 and covering the maritime sector is a corollary of the inclusion of those two Conventions in the Appendix to Convention No. 147. In the case of countries bound by Convention No. 147, the Committee in its supervisory work finds it particularly helpful when shipowners' and seafarers' organisations provide information and observations as to questions of application arising. For this reason, the Committee would encourage greater use to be made by governments of the opportunities referred to here for involving shipowners and seafarers, and the opportunities offered to be seized by those organisations at both national and international levels. It hopes that article 22 reporting on Convention No. 147 and related Conventions will contain all available information.

CHAPTER VI

JURISDICTION AND CONTROL

239. The object and purpose of Convention No. 147 and Recommendation No. 155 was conceived by the Conference in 1976 and referred to in the respective Preambles as "the adoption of proposals with regard to substandard vessels, particularly those registered under flags of convenience". In this perspective, the Conference made a point of recalling also in the Preamble to the new Convention the two earlier instruments, namely Recommendations Nos. 107 and 108, which had considered the question of substandard vessels and the provisions of which it wished to develop. Recommendation No. 107 had dealt with the question of what States might do to avoid their own national seafarers suffering through employment on substandard foreign-registered vessels - the matter taken up in Article 3 (and to an extent Article 2(d)(ii)) of Convention No. 147. Recommendation No. 108 had dealt with what States should do for the safety and welfare of seafarers when they "accept the full obligations implied by registration" in respect of their own ships - dealt with now principally in Article 2(a) and (f), but also to some extent in Article 2(d) and (e). In 1976 the Conference went further than in 1958 in both these respects. In addition, it laid down the requirement of an official inquiry into serious marine casualties involving home-registered ships; and it contemplated the possibility of States taking action in respect of foreign-registered ships calling in their ports.

I. Undertaking "to exercise effective jurisdiction or control"

240. In its use of the expression "jurisdiction" in relation to merchant ships, Convention No. 147 has adopted and adapted the existing international law concept of the effective exercise of jurisdiction and control.[1] Recommendation No. 108 had cited in its considerata the important principle laid down in the 1958 Convention on the High Seas (CHS): Article 5(1) of that Convention reads "Each State shall fix the conditions for the grant of its nationality to

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[1] For the argumentation of the final drafting of Article 2, see 1976 CSV, PVs 3 and 4. The relevant amendment (1976 CSV/D4(Rev.)) was proposed by the Government members of Belgium, Denmark, France, Federal Republic of Germany, Ireland, Italy, Netherlands, and United Kingdom.

ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag".[2] The obligation effectively to exercise jurisdiction and control is thus the main ingredient in the genuine link. Establishment of the notion of genuine link in international law itself represented a major step in the international campaign to counter registration under flags of convenience.[3] It seems clear that the mischief which it was intended to redress was the vacuum of jurisdiction and control, in which in particular safety and social standards on board ship were unregulated and in which there was no forum for aggrieved parties to go to to seek a remedy. By adopting first Recommendation No. 108 and then Convention No. 147 (with Recommendation No. 155), the International Labour Conference has contributed considerably to the task of filling that vacuum.

241. Recommendation No. 108 is thus expressed in terms of the exercise of effective jurisdiction and control[4] for the purpose of safety and welfare of seafarers on the State's ships, and the measures which should in consequence be taken by the country of registration in fulfilment of the obligations implied by registration.[5] The

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[2] The same provisions are now reproduced in Articles 91(1) and 94(1) of the LOS Convention. Article 94(2)(b) of the LOS Convention clarifies the obligation as to "assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship", immediately making it clear that the international law obligation effectively to exercise jurisdiction and control necessarily has consequences on the internal law plane. cf. paras. 12 and 56-57, above.

[3] 1975 PTMC, Report V, pp. 48-49, citing a study on flags of convenience made by the Maritime Transport Committee of the Organisation for Economic Cooperation and Development (OECD).

[4] The words "jurisdiction and" were added in the responsible Committee in 1958 on the proposal of the Government members of Belgium and Netherlands. It was agreed that this did not imply that States would have to assume "direct responsibility" for welfare services of seafarers - see 1958 RP, pp. 237-238, para. 11.

[5] With this background, the bearing of the original Office draft instrument which later became Convention No. 147 (and Recommendation No. 155) is logical (see 1976 Report V(1), p. 5): the parent provision was to be an undertaking to exercise effective jurisdiction and control over safety standards, standards of competency and conditions of employment; one offshoot of this was the undertaking as to legislation or collective agreements laying down standards on those matters as defined in the instrument (answering the question as to how effective jurisdiction is exercised); after the

(footnote continued on next page)

international law obligation of all States of registration to exercise effective jurisdiction and control in social matters amongst others over ships flying their respective flags was a firmly established principle when Convention No. 147 was adopted in 1976. Since the adoption of the LOS Convention in 1982 it is undisputed.[6] Article 2 of Convention No. 147 as a whole now elaborates on the matters in respect of which the State has to exercise effective jurisdiction and control, i.e. safety standards (including standards of competency, hours of work and manning), social security measures and shipboard conditions of employment and living arrangements.

242. The various meanings which at various times have been given to the term "jurisdiction" were analysed in one Government's first article 22 report. That Government concluded in reference to Article 2(b) that, for the exercise of jurisdiction to be established, it is sufficient that legal procedures are available to seafarers which enable their claims submitted under private law to be examined, the resulting judgement being binding on the parties and enforceable through the executive authorities.[7] It seems to the Committee that, in understanding the expression "jurisdiction or control", the availability of such legal procedures - justiciability - may be regarded as a component of the exercise of jurisdiction (to enforce) in internal law; another component would be "inspection or other appropriate means" (the words used in Article 2(f)). This approach

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two particular questions of engagement and training were mentioned, the other offshoot was the undertaking as to compliance with such legislation or collective agreements (answering the question as to how effective control is exercised). It was with due deliberation in preparing that draft that the Office first borrowed the term "jurisdiction and control" and the reference to its effective exercise via Recommendation No. 108 from Article 5 CHS and then elaborated on its two elements in an ILO perspective.

[6] See, e.g., statement of the United Nations Secretary General on 10.12.82 at the final session of the Montego Bay Conference when the LOS Convention was adopted - The Law of the Sea - Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index - Final Act of the Third United Nations Conference on the Law of the Sea - Introductory Material on the Convention and the Conference, United Nations, New York, 1983, p. xxix. In any case where there might seem to be a conflict between Convention No. 147 and other international legal provisions, it would have to be remembered that Convention No. 147, like other international labour Conventions, lays down minimum - not maximum - standards, and reference might be made again to article 19(8) of the ILO Constitution as regards "more favourable conditions" - see above, para. 57.

[7] Report of the Government of the Federal Republic of Germany, 1982 (translation from the German). The Government's earlier doubts (see 1976 Report V(1), p. 23; 1976 Report V(2), p. 37; and 1976 CSV, PV 3, p. 4) were based on a different translation of the word "jurisdiction" (in document PTMC/1975/CSV/G5).

helps to see the meaning of "effective ... control" as used in Article 5(1) CHS and Article 94(1) of the LOS Convention on the one hand and Article 2(b) and (c) of Convention No. 147 on the other. On this reasoning, the control is not an alternative to jurisdiction to enforce: rather it is a complement of it.

243. In order to read Convention No. 147 in a way which is consistent with the cited provisions of CHS and the LOS Convention, it must be kept in mind that Article 2 presupposes both the obligation to exercise effective "jurisdiction" and the obligation to exercise effective "control":[8] the "or" in "jurisdiction or control" should be read conjunctively (the second term complementing the first) and not disjunctively (presenting alternatives). Article 2 then deals first in clause (a) with the exercise of jurisdiction to prescribe. In Article 2(b) it becomes necessary, on the given presupposition, to understand at the beginning a formula such as "to ensure that the respective competent authorities ..."; the word "jurisdiction" can then only mean "jurisdiction to enforce" and is understood when conjoined with "control" in the sense of justiciability and the power to supervise. There will thus normally be separate competent authorities involved in the application of Article 2(b) (i.e. the judicial and the executive (administrative)). Article 2(f) (at the beginning of which a formula such as "to ensure that the competent authority (verifies)" should be understood in any event)[9] is to be seen as enlarging on the composite notion of "jurisdiction or control" in Article 2(b),[10] and the words "as appropriate under national law" mean "where the competent administrative authority has such powers". Article 2(c) then deals with the remaining case where such verification does not obtain (i.e. where the competent administrative authority has no "effective jurisdiction" (powers)). The member State should satisfy itself in this last case that measures for the effective[11] control of shipboard conditions of employment and living arrangements are agreed between the shipowners and seafarers. This reading of Article 2(c) involves understanding "it" as "the competent administrative authority[12] rather than "the member State" (since

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[8] This is the opinion expressed by the Norwegian Shipping Federation - 1976 Report V(2), p. 39.

[9] cf. use of the expression "authority" or "authorities" in the Labour Inspection Convention, 1947 (No. 81), and Recommendation No. 28.

[10] And thus enlarging also on Article 10(2) CHS (Article 94(5) of the LOS Convention), which adds to the more general notion of effectively exercising control the explicit obligation "to take any steps which may be necessary to ensure (the) observance (of the measures adopted under Article 10(1))".

[11] At this point, the final French version uses the word "efficace" (efficacious): "effectif" would correspond to the English term and the terms used in Article 2(b), and CHS and the LOS Convention, as well as the earlier French version (see 1976 Report V(1) (French version), p. 24).

[12] The report form adopted by the Governing Body uses in relation to Article 2(c) the expression "in respect of which your government has no effective jurisdiction".

every State as such in international law must "effectively exercise its jurisdiction and control").

244. It seems essential that Article 2 of Convention No. 147 as it stands should be read in a manner consistent with the relevant rules of international law relating to the exercise of effective jurisdiction and control over ships operated for commercial purposes, as exemplified in the provisions of CHS and the LOS Convention.[13] When the international law obligations of the State are thus presupposed, it becomes clear that clauses (c) and (f) of Article 2 should be read as describing the role not of the State as such (as a subject of international law) but of the competent authorities of the State (in the internal law system). The import of Article 2(b) remains perhaps somewhat obscure, due principally to the wide spectrum of meanings attributable to the term "jurisdiction". But, for practical purposes, so long as the given presupposition is maintained, the undertakings in Article 2 as a whole might be considered sufficiently lucid.

245. The article 22 reports of countries bound by Convention No. 147 which the Committee has examined in detail illustrate these difficulties. All refer (sometimes under Article 2(b) sometimes under Article 2(f)), to the crucial question of inspection, indicating which are the competent national authorities. The most significant conclusion which seems to emerge from the reports is that the principle of "effective exercise of jurisdiction and control" as used in CHS and the LOS Convention is in fact virtually taken for granted.

II. Inspection and other means of control

246. Article 2(a) of Convention No. 147 contemplates a wide range of standards on board ship and application of some of them by methods other than legislation. This is reflected in the provision in Article 2(f) for verification either by inspection or by "other appropriate means" and in the allowance in Article 2(c) and (f) for the two possible means of control where standards are fixed by collective agreements. The original Office draft was narrower in the sense that it considered only the case of inspection; but it went further in that it included a requirement that ships should be "regularly" inspected.[14] The word "regularly" was altered to

[13] cf. Article 31(3)(c), Vienna Convention. The Shipowners' view was earlier given as that "it was necessary for all ships to conform to the widely accepted international provisions in force" - 1976 Report V(1), p. 11, para. 9.

[14] 1976 Report V(1), p. 5. In this orientation it was clearly derived from point (b) of Recommendation No. 108, which called on the State to "make arrangements for a proper ship inspection service adequate to the requirements of the tonnage on its register and ensure that all ships on its register are regularly inspected to ensure conformity with regulations issued (as to safety)".

"periodically" in the PTM Conference[15] and then removed altogether in an amendment which also made provision for "other appropriate means" of verification.[16] It its final form, Article 2(f) lays down the State's undertaking to verify (vérifier)[17] by inspection or other appropriate means that ships registered in its territory comply with applicable[18] international labour Conventions in force which it has ratified, with the laws and regulations required by Article 2(a), and, as appropriate under national law, with (applicable)[19] collective agreements. It is clear that the manner in which the State fulfils its undertaking in Article 2(f) is through action by a competent authority.

247. The scope of the undertaking as to verification in Article 2(f) has three dimensions. First it applies to applicable international labour Conventions in force which the State has ratified. The word "applicable" here seems to denote applicable to the "ships registered in its territory": this term presumably has the same meaning as elsewhere in Article 2, which is that given it by the provisions as to scope in Article 1; to that extent, Article 2(f) as drafted would not impose any obligation in respect of ships registered in the territory which are within the scope of particular ratified Conventions in force but not within the scope of Convention No. 147 as so defined (for example, fishing vessels). The point is significant, since some "applicable" Conventions provide for inspection or "other appropriate means" of supervision,[20] others do not.[21] For those Conventions that do so provide, then, Article 2(f) adds nothing; for those that do not, it may be argued that it brings an important clarification of the obligation in article 19(5)(d) of the ILO Constitution to "take such action as may be necessary to make effective the provisions of such Convention" vis-à-vis the ships which

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[15] On the suggestion of the United Kingdom Government - ibid., p. 19.

[16] 1976 Document CSV/D9 - amendment proposed by the United Kingdom Government - see also 1976 RP, p. 191, para. 65.

[17] cf. above, para. 59.

[18] The word "applicable" was added without explanation at the suggestion of the Shipowners' group (1976 CSV, PV 14, p. 4). The words "in force" were added in order to exclude the case of Convention No. 133 (and perhaps others), ratified by several countries but not yet in force because of the tonnage threshold (1976 CSV, PV 4, p. 7).

[19] The word "applicable" does not appear at this point in the French version.

[20] Conventions Nos. 53, 68, 92, 134, 146 (plus Nos. 133 and 164 (as to medicine chests), which are not in force) refer specifically to inspection. Conventions Nos. 8, 22, 23, 55, 56, 71, 91, 98, 130 and 138 (plus Nos. 109, 165 and 166, which are not yet in force) refer to undefined measures to ensure compliance or supervision or (in the case of social security) dispute settlement or appeals procedures.

[21] There are no such provisions in Conventions Nos. 7, 9, 15, 16, 58, 69, 73, 74, 87, 108, 145 (plus Nos. 70, 163 and 164 (except as to medicine chests), which are not yet in force).

are within the scope of Convention No. 147: it specifies that the action in question is some form of verification, either by inspection or by other appropriate means. The undertaking as to verification in Article 2(f) applies, secondly, in respect of the laws and regulations required by Article 2(a). Thus, in so far as the Appendix Conventions which do not have their own corresponding provisions as to inspection or other appropriate means of ensuring compliance[22] are not ratified and in force for the State, but are required to be the object of laws or regulations ensuring substantial equivalence, Article 2(f) creates an obligation to verify compliance by inspection or other appropriate means. It creates a similar obligation in respect of matters which have to be the object of laws or regulations under Article 2(a) but are not covered by Appendix Conventions.[23] The undertaking as to verification in Article 2(f) applies, thirdly, as appropriate under national law, in respect of "applicable collective agreements". The word "applicable" here too presumably means "applicable to ships registered in the territory". Discharge by the competent authorities of the undertakings as to inspection and other means of control accepted by the State at the international level thus amounts to a considerable task, which covers at least all the matters referred to in Article 2(a) and potentially much more, where other Conventions apply.

248. The first discussion of what is now Article 2(c) in the PTM Conference shows that the Shipowners' group which made the proposal "had in mind the need to make provisions for those countries in which conditions of employment were not defined by legislation but by collective agreements"; the provision made was therefore that the State should satisfy itself that such conditions "were subject to effective control under arrangements agreed between shipowners' associations or shipowners and trade unions constituted in accordance with the substantive provisions of Conventions Nos. 87 and 98".[24] With further drafting changes,[25] it now appears that Article 2(c) lays down the State's undertaking to satisfy itself that measures for the effective control of shipboard conditions of employment and living arrangements[26] - where these are governed by collective agreements in accordance with Article 2(a)(iii), and where under national law either the competent authority has no power to exercise such control or for some other reason the exercise of such control is not (in the terms of Article 2(f)) "appropriate under national law" - are agreed between shipowners or their organisations and seafarers' organisations constituted in accordance with the substantive provisions of Conventions Nos. 87 and 98.

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[22] i.e. Conventions Nos. 7, 58, 73 and 87.

[23] See Chapter II, above.

[24] 1976 Report V(1), pp. 16-17, especially paras. 32 and 35, and p. 23; and 1976 CSV, PV 4, p. 7.

[25] 1976 Report V(2), pp. 36, 40 and 50; document 1976 CSV/D4(Rev.); and 1976 RP, p. 191, paras. 59-60.

[26] See paras. 156-180 and 243, above.

249. These are not the only undertakings of the State in Article 2 in respect of which the competent authorities have supervisory obligations. In addition to the "over-all supervision" of procedures relating to engagement in Article 2(d),[27] the measures taken to ensure that seafarers employed on ships registered in the territory are properly qualified in accordance with Article 2(e) call for the authorities to take action on several different points not specifically covered by Article 2(a) and (f).[28] On the other hand, the competent authority is not called on to take measures under Article 2(f) where shipboard conditions of employment and living arrangements are dealt with by collective agreements and, at the same time, it is not appropriate under national law: in those circumstances the State must none the less satisfy itself under Article 2(c) that measures for effective control are agreed between shipowners or their organisations and seafarers. Those measures are undefined in the Convention: they may be laid down in collective agreements themselves (for example, grievance procedures, arbitration) or form part of any other agreed procedures.[29] The mention of Conventions Nos. 87 and 98 in Article 2(c) has been said not to "pose any additional problem since they were already in the Appendix":[30] the upshot appears to be that where Article 2(c) measures are required (i.e. in cases where effective control is not otherwise ensured) the organisations which agree to the measures must as a matter of fact be constituted in accordance with Conventions Nos. 87 and 98.[31]

250. Neither Convention No. 147 nor Recommendation No. 155 elaborates on the nature of "inspection" as used in Article 2(f). Although relatively old and in need of revision, the leading instrument on inspection in the maritime sector (the Labour Inspection (Seamen) Recommendation, 1926 (No. 28)) is still regarded as an instrument for priority promotion.[32] Thus, while Convention No. 147 leaves the organisation and functioning of the inspection services to the State's discretion, international guidance in this respect is available both in general and in relation to the particular matters to

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[27] See above, Chapter IV.

[28] See above, Chapter III.

[29] ILO Memorandum addressed to the United States Government, 1.10.81, para. 12.

[30] ibid., para. 16 and 1976 RP, p. 188, para. 27. Introduction of the words "in accordance with the substantive provisions of", with which the Workers agreed, was intended by the Employers members to "facilitate ratification" - ibid. p. 191, paras. 59-60.

[31] ILO Memorandum, 1.10.81, para. 16 - by implication the seafarers' organisations should in particular not be "company-controlled" - see above, para. 228. As to the meaning of "satisfy itself" see above, paras. 58-61.

[32] 1987 Report of the Working Party, p. 35. The Committee recently considered inspection in general in its 1985 General Survey.

be inspected under Convention No. 147.[33] The Committee would note that, as expressed in Recommendation No. 28, the main duty of the authorities responsible for inspection should be to secure the enforcement of laws and regulations as to conditions of seafarers' work; there should be centralisation or collaboration of bodies responsible; there should be detailed annual reports; and inspectors should have all necessary rights, powers and duties as guaranteed by law. The 1989 Guide-lines discuss in turn each of the matters dealt with in Convention No. 147 and relate the recommended control procedures: visits to ships without notice; examination of ships' papers; investigation by questioning particular crew members; prompt response to complaints; and recommending issuing orders to secure compliance with legislation or, where there is a question of safety, detention of the ship.

251. Nearly all the reports from countries bound by Convention No. 147 examined by the Committee have referred to inspection of at least some of the matters dealt with in Article 2(a). In one case in particular the Committee has noted the comments of a workers' organisation as to significant cuts in the numbers of inspectors, and the Government has provided more detailed information.[34] In many cases several ministries and other bodies are responsible for various aspects of the standards to be enforced (for example, different authorities responsible for marine safety, health, social security, labour conditions, and consuls) - a fact which highlights the need for co-ordination and collaboration amongst the authorities.[35] Many countries with large registers of ships which may rarely or never call at home ports rely heavily on their consulates or other representatives in foreign ports to fulfil the role of the inspectorate. Several countries have referred to consuls or other inspectors abroad in this connection in article 22 reports.[36] However, in some cases little practical information on the functioning of these arrangements (numbers of staff and their qualifications, numbers of inspections carried out, co-ordination with other home and foreign-based inspecting authorities, follow-up)[37] has been provided. It seems to the Committee that in many cases these aspects of the control of labour standards in merchant ships require further

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[33] Guide-lines (not yet published) adopted by the ILO Meeting of Experts in 1989 (above, para. 11); Recommendation No. 28 is quoted in full in the Guide-lines. Consideration of the possible revision of Recommendation No. 28 has been placed on the agenda of the coming 26th Session (1991) of the Joint Maritime Commission (Document GB.244/205, para. 71).

[34] United Kingdom.

[35] cf. Recommendation No. 28, Paragraphs 3-6.

[36] e.g. Belgium, Greece, Japan, Norway, Sweden; United Kingdom (Bermuda, Hong Kong).

[37] cf. Recommendation No. 28, passim.

attention and clarification.[38] In this, regard should be had to the scope of the Article 2(f) undertaking, as shown above.[39]

252. The expression "inspection or other appropriate means" in Article 2(f) allows for the different kinds of control measures which are called for by the variety of subject-matter, as indicated for instance in some of the instruments in the Appendix. For example, crew accommodation and catering arrangements should be inspected by the competent authority at the time when the ship is registered or re-registered or altered but should also be subject to periodical inspection thereafter (by designated crew members), including while the ship is at sea.[40] For other Conventions, the establishment and maintenance of registers or other documentation has to be regulated and regular verification of them may be necessary.[41] Social security questions require a different kind of control involving sometimes complex administration and the keeping of records for both the collection of contributions and the payment of benefits - in addition to procedures for dispute settlement and appeals.[42] Some countries have referred to such measures in general terms.[43] The supervision of freedom of association, the right to organise and collective bargaining also calls for steps to be taken to ensure due operation, both by guaranteeing the free functioning of organisations on shore and by conducting inspections and investigations of the situation on board ship; to be able to do this, inspectors need to be aware of the issues at stake and have the opportunity to recognise and inquire into problems arising.

253. Some governments have referred in article 22 reports - again in general terms - to penalties imposed for breach of provisions,[44] although the Committee regrets to note that on the whole little detailed information as to the results of inspections and other control measures taken has been given.

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[38] Comments have been addressed to, e.g., Belgium, Denmark, Egypt, Finland, Federal Republic of Germany, Greece, Iraq, Liberia, Morocco, Netherlands.

[39] See para. 247: a direct request has been addressed to United Kingdom (Bermuda) as to verification of minimum age and freedom of association matters in particular.

[40] See Conventions Nos. 68 (Article 7) and 92 (Article 17).

[41] e.g. as to minimum age, Conventions Nos. 7 (Article 4), 58 (Article 4), and 138 (Article 9); as to medical examination, Convention No. 73 (Article 4); as to competency, Convention No. 53 (Article 3); and as to articles of agreement, Convention No. 22 (Article 5).

[42] cf. Conventions Nos. 55, 56 and 130, plus No. 23.

[43] e.g. Belgium, Italy, Sweden. In the case of United Kingdom (Isle of Man) it appears social security standards are administered by the metropolitan authority.

[44] e.g. Greece (where there is a penalty on a master preventing a crew member having recourse to the Greek authorities), Japan, United Kingdom.

254. In so far as standards are set by applicable collective agreements, it has appeared that control is invariably exercised by courts to the extent that agreements must be entered into and complied with in accordance with national law and the courts are competent to adjudicate on whether this has been done.[45] Several governments of countries bound by Convention No. 147 have thus explicitly indicated that "jurisdiction" in this sense is exercised.[46] One has referred to measures of inspection taken by public authorities in respect of provisions of collective agreements;[47] another has indicated there is no such inspection.[48] One country has referred to the participation by collective agreement of a trade union organisation in inspections.[49] There appears to be no information on any residual case duly covered by Article 2(c) where shipboard conditions of employment and living arrangements may be fixed by collective agreement in conformity with the Convention and where measures for effective control of them have been agreed between shipowners and seafarers.

255. Most of the countries which have sent article 19 reports have referred to the general system of ship inspection for safety purposes (including those within the framework of the IMO Conventions).[50] Some have provided information as to a sometimes extensive system of inspectorates in major ports of the world, principally for these purposes.[51] Other countries seem to conduct inspections of ships in respect of labour standards in general or at least some aspects.[52]

256. It is evident that, if the prescriptive aspect of jurisdiction is not to be a dead letter, the enforcement aspect must be given all due weight, and the Committee's general comments elsewhere as to the fundamental importance of inspection of labour standards[53] apply equally in the shipping sector. However, it is perhaps in merchant ships that the logistics of the physical surveillance of the workplace and control of all manner of labour standards for the protection of all workers concerned are the most problematical. It seems that under Convention No. 147 the State's

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[45] See comments of the Federal Republic of Germany above, para. 242.

[46] e.g. Denmark, Federal Republic of Germany, Greece, Norway, Portugal, Sweden.

[47] Spain.

[48] Japan.

[49] Finland.

[50] e.g. Belize, Benin, Cameroon, Canada, Côte d'Ivoire, Ecuador, Honduras, Iceland, Malaysia, Nigeria, Singapore, Thailand, Tunisia, United Arab Emirates, USSR.

[51] In particular, Panama, which has also indicated that it conducts inspections of some labour standards in that way. Also, e.g., Austria, Switzerland.

[52] e.g. Bangladesh and Barbados (as to food supplies), Colombia, Cuba, Malta (as to accommodation), Mexico, Turkey.

[53] e.g. 1985 General Survey, paras. 318-332.

acceptance of "jurisdiction" must be manifested first in the competent judicial authorities taking jurisdiction over ships registered in the territory - whether or not those ships themselves are present in the territory - and second in the competent administrative authorities exercising their control by whatever means are appropriate but especially by inspection. Both of these are seen by the Convention as essential to the campaign to deal with substandard vessels, especially those sailing under flags of convenience. There is no substitute for an efficient inspection system, which is still the surest guarantee that national and international labour standards are complied with in fact as well as in law. In this light, the Committee has been encouraged by the attention given by some governments to inspection of home-registered ships. It would urge all governments to extend their activities in this respect and have all due regard (when they are published) to the 1989 Guide-lines adopted by the ILO Meeting of Experts and to Recommendation No. 28, as well as to any subsequent new standards on the subject. The Committee proposes to consider the more detailed application of Article 2(f) in countries bound by the Convention in its examination of article 22 reports in future.

III. Official inquiries into serious marine casualties

257. The first draft of what is now Article 2(g) of Convention No. 147 was added by the PTM Conference Committee.[54] In the replies to the questionnaire subsequently circulated, reservations were expressed as to the publication of inquiry reports in some cases.[55] Those and other doubts were discussed in the responsible Committee of the 1976 Conference, following which the words "final" and "normally" were added.[56] The outcome is an undertaking by the State to hold an official inquiry into any serious marine casualty involving ships registered in its territory, particularly one[57] involving injury or loss of life, the final report of such inquiry normally being made public. This wording to a large extent accommodates the objection that preliminary inquiries must essentially be rapid and informal. It covers casualties involving home-registered ships wherever they occur;[58] it does not cover casualties only involving

[54] 1976 Report V(1), p. 19, para. 46.

[55] 1976 Report V(2), pp. 38-40, by the New Zealand Government and the Norwegian Shipping Federation.

[56] 1976 RP, pp. 191-192, para. 67.

[57] The French version confirms that "those" in the English version of Article 2(g) should be read as "one".

[58] In this it follows the example of the 1974 SOLAS and 1966 Load Lines Conventions - 1976 RP, p. 191, para. 66.

foreign-registered ships, even if they occur within the territorial waters.[59]

258. Most of the countries bound by Convention No. 147 have indicated they have established procedures for official inquiries as required by Article 2(g). The Committee has made direct requests as to the functioning of the procedures in general,[60] and where the publication of the final report seems not to have been provided for:[61] this requirement seems to be satisfied where the final report is made available to interested parties and the conclusions announced publicly.[62] In the absence of actual casualties, no standing inquiry body need apparently be appointed.[63] Article 22 reports have occasionally provided the information requested in the report form as to numbers of such inquiries and measures taken as a result: the Committee hopes that governments concerned will not omit to reply to this request. Article 19 reports also show that there is often a statutory procedure for the investigation of shipping casualties.[64] This usually follows a less formal preliminary inquiry; it reports to the minister responsible and it seems that in most cases the hearings are public and/or the findings are eventually published.[65]

IV. Port state action

(a) Provisions of Convention No. 147

259. Article 4 of Convention No. 147 tackles the problem of substandard ships from the angle not of the country of registration but of the country in whose ports they call. In this it reflects one aspect of each sovereign State's inherent rights over its

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[59] ibid. and p. 196, para. 115 - the Conference Committee discussion on the inclusion of such provision in Recommendation No. 155 was curtailed for lack of time and the matter was dropped. Article 2(g) contains no provision for transmitting a copy of the inquiry report to the Director-General of the ILO.

[60] e.g. Egypt, Iraq, Liberia.

[61] e.g. Italy, Morocco, Portugal, Spain; United Kingdom (Hong Kong).

[62] e.g. Belgium.

[63] e.g. Costa Rica, Finland - although a Standing Committee for the Investigation of Marine Accidents has recently been set up in Spain.

[64] e.g. Australia, Bahamas, Bangladesh, Belize, Cameroon, Czechoslovakia, Iceland, India, Ireland, Malta, Mauritius, New Zealand, Nigeria, Singapore, Sri Lanka, Sudan, Switzerland, Trinidad and Tobago.

[65] In several of the cases cited, jurisdiction is based not only on the registration of the ships involved but also on the territorial waters in which the incident occurs.

territory;[66] and it adopts an approach expressly provided for in earlier IMO Conventions, while adapting it to the ILO sphere of competence. In contemplating action by a State other than the State of registration, Article 4 envisages the former not only drawing the latter's attention to the failure to comply with the standards - something for which there is at least a partial precedent among ILO Conventions[67] - but also taking necessary measures where conditions on board are clearly hazardous to safety or health.

260. The original Office draft Programme for the Effective Attainment of Standards discussed by the PTM Conference in 1975 proposed that any evidence as to the application of standards obtained in pursuing the Programme be "taken into account" by port authorities in connection with their right to control under Chapter I, Regulation 19, of the Annex of the 1960 SOLAS Convention.[68] That draft was not retained in the Conclusions of the PTM Conference, but the 1976 Conference received a timely reminder of the Procedures for the Control of Ships adopted by the IMO, concerning the inspection by port States of foreign-registered vessels in relation to the SOLAS and Load Lines Conventions,[69] and this contributed directly to what became Article 4 of Convention No. 147. Those Procedures note that port state control should be regarded as complementary to measures taken at home and abroad by flag States and are mainly intended to assist flag States in securing compliance with relevant provisions. They observe that the SOLAS and Load Lines Conventions provide expressly for examination of foreign-registered ships' certificates by control officers;[70] but they add provision for the initiation of control on the basis of information about a substandard ship submitted to the port state authorities by a crew member, professional body, association, trade union or any individual with an interest in the safety of the ship, its crew and passengers. The Procedures outline the steps to be taken by port authorities in respect to the SOLAS and Load Lines Conventions - including communicating with representatives of the flag State - and in doing so give at least some indirect

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[66] Statement of the Government delegate of Netherlands, 1976 RP, p. 248.

[67] Article 5(3) of Convention No. 53 provides for the authorities of a State, where they find a breach of Convention No. 53, to communicate with the consul of the State of registration, both States having ratified the Convention.

[68] 1976 Report V(1), p. 8, para. 5. The same provision appears in the 1974 SOLAS Convention, which at that time had not yet come into force - see above, para. 22.

[69] 1976 Document CSV/D.1, citing in particular IMCO Resolution A.321(IX) of 12.11.75 (now see also IMCO Resolution A.466(XII) of 19.11.81).

[70] Not the case in Convention No. 147 and other ILO Conventions.

indications of the way in which the authorities might act also in relation to labour standards.[71]

261. Several government comments on the PTM Conference Conclusions suggested reinsertion of some provision for the control of foreign-registered ships[72] and a new paragraph was placed in the draft Programme calling on coastal or port authorities to take "action as necessary against vessels which do not conform to the safety and health standards referred to in the Convention, regardless of whether the country of registration has ratified it".[73] It was on the basis of a proposal made by a group of western European governments that the final version of Article 4 was adopted. The 1976 Conference Committee decided against limiting the scope of Article 4 to ships registered in countries bound by Convention No. 147.[74] The Reporter of the Committee referred to "striking a balance between the powers of the flag country and the powers of the port country" and considered there to be several safeguards built into the wording of the Article.[75]

262. Article 4 provides that when a ship in the normal course of its business or for operational reasons calls in the port of a State which has ratified Convention No. 147, and the State receives a complaint or obtains evidence that the ship does not conform to the standards of the Convention, the State may prepare a report addressed to the government of the country of registration, with a copy to the Director-General of the ILO, and may take measures necessary to rectify any conditions on board clearly hazardous to safety or health. If such measures are taken, notification of the nearest representative of the flag State and a request to such representative to be present if possible are compulsory. The ship must not be unreasonably detained or delayed. Those competent to make a complaint for this purpose are defined as crew members, professional bodies, associations, trade unions or generally anyone with an interest in the ship's safety, including safety and health hazards to the crew.

263. Article 4(1) of Convention No. 147 - like the Articles of many international labour Conventions - lays down provisions to be applied by "any Member which has ratified this Convention": although

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[71] The Procedures define substandard ships as ones which are unseaworthy (thus putting lives at risk) due especially to given physical deficiencies as evidenced in the first place by lack of valid certificates. They acknowledge that the inspector has to exercise his professional judgement in the circumstances in deciding whether to detain a given ship or allow it to sail despite certain deficiencies (which are not vital to safety). For purposes of labour standards, the definition of "substandard" would focus on the standards of Convention No. 147.

[72] 1976 Report V(2), pp. 32-33.

[73] ibid., p. 60.

[74] 1976 RP, p. 192, para. 77. Several statements were also made expressing reservations as to Article 4: ibid., pp. 192-193 (paras. 77-79), 249-253, 257-261, 276.

[75] ibid., p. 245.

the responsible Committee decided not to refer to the ILO Constitution in this Article,[76] it seems literally to go without saying that States not bound by the Convention through ratification and for which the Convention is not in force have no obligation under the Convention. At the same time, the Committee and the Conference decided against limiting the application of Article 4 to ships flying the flag of a State which has ratified the Convention.[77] The fact that all ships calling at a State's port may legitimately be required by that State to submit to certain controls was attributed by proposers of the amendment to each State's sovereign rights already existing in international law independently of the Convention being ratified.[78] The present Committee would once more observe that Convention No. 147 - like other international labour Conventions - establishes minimum standards and does not prevent States from going beyond such minimum by ensuring more favourable conditions to the workers concerned.[79]

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[76] ibid., p. 192, para. 77.

[77] ibid. and pp. 260-261, although it might be argued that a State which has ratified Convention No. 147 is in particular "estopped" from objecting to inspections of such a nature.

[78] It is in that light that the purpose of Article 4 was perceived in one sense as, on the basis of accepted rules and regulations, to "stop unreasonable local actions": see e.g. statement of the Government delegate of Netherlands: "In regard to the concept of the control to be exercised by the port State, I have the feeling that exaggerated notions are being held ... The concept is not new and even without anything being on paper we would have our own sovereign rights in territorial waters and ports ... The trend at the Law of the Sea Conference is clearly towards confirming certain powers for coastal States." (1976 RP, p. 248 - cf. Articles 218 to 220 of the LOS Convention concerning pollution). See also the statement in the responsible Committee of the Government member of France: "It was not a question of an innovation in international law because, as each country was responsible for safety in its ports, it was the responsibility of the port authorities to intervene if the manning was not such as to ensure safety at sea" (ibid. p. 193, para. 79).

[79] Article 19(8) of the ILO Constitution - see para. 57, above. The recorded declaration of the EEC Governments and the Workers' group that "'measures necessary' would be taken in the light of the standards included in the Appendix to the proposed Convention, in other words according to internationally accepted standards and not according to standards in force in a certain State" (1976 RP, p. 193, para. 79) thus appears as an indication of the light in which measures might to be taken by any State and not as limiting the considerations it might have in mind (e.g. standards laid down by Convention No. 147 but not contained in the Appendix or standards contained in other ILO instruments - see statement of the French Government member quoted in previous footnote). It may also in hindsight appear as a statement by the eight EEC Governments represented in the Committee of the

(footnote continued on next page)

264. Whilst Article 4(2) contains mandatory provisions as to some aspects of the manner in which Article 4(1) measures are taken, Article 4(1) itself is purely permissive. There is thus no basis in Article 4(1) of Convention No. 147 for compelling port States to take action to control or inspect either foreign-registered ships in general or ships of any particular State or group of States (moreover, the words "control" and "inspection" do not appear in Article 4). Neither is there any basis in Article 4(1) for preventing States from taking such action in cases of non-conformity with standards going beyond Convention No. 147.

265. Article 4 applies to a ship calling in port in the normal course of its business or for operational reasons.[80] It applies when the port State receives a complaint or obtains evidence in relation to the standards of the Convention. The persons or bodies who may make a complaint are defined in Article 4(3) in terms only slightly adapted from the IMO Procedures.[81] Addition of the final words of Article 4(3) seems to allow for complaints to be received not only from someone with an interest in the safety of the ship but also from someone with an interest in the safety or health hazards to the crew, in so far as this may be different.[82] Article 4 does not define the "evidence" on which a port State may act or the manner in which it may be obtained. Such evidence may, then, be obtained in any way, but it might appear first in examination of ships' certificates and carrying out any control or inspections provided for by other international instruments (SOLAS and Load Lines Conventions or, for example, the LOS Convention) or by national laws and regulations. Except for the provision to "take measures", Article 4 operates when such complaint or evidence tends to show non-conformity with <u>any</u> of the standards of the Convention.[83]

(footnote continued from previous page)
labour standards which would later be adopted as a basis for exercising port state control under the MOU - see further below, paras. 270-271.

[80] An earlier proposal had used the word "voluntarily" (1976 RP, p. 192, para. 76), which was borrowed from the Law of the Sea drafts (see now Articles 218-220 of the LOS Convention, as to pollution) and understood to exclude the case where the authorities of a State bring a ship into port by force (1976 CSV, PV6, p. 2). The question whether Article 4 applies to ships calling at a port of refuge (ibid., p. 3) apparently remained unresolved.

[81] See para. 260, above. Those Procedures also say it is advisable, where applicable, for more than one crew member to submit information, and that information should be submitted in writing and as soon as possible after the ship's arrival in port.

[82] 1976 RP, p. 193, para. 83. See also above, para. 236.

[83] Not only those referred to in the Appendix (see above, para. 263), nor only those relating to safety and health (1976 RP, p. 261).

266. The first action which may be taken under Article 4 is to prepare a report and address it to the government of the country of registration. This seems to have been uncontroversial at the 1976 Conference. The second action which may be taken is to transmit a copy of such report to the Director-General of the ILO. Apparently the first action may under the Convention be taken without the second, although the present Committee would tend to raise the question with the government in such case.[84] Although these actions are not mandatory on the part of the port State, they apply in respect to non-conformity with any of the standards of Convention No. 147 (not only those involving hazards to safety or health), and they apply whether or not any measures of rectification are taken or proposed. They are thus a potential means of stimulating a flag State to take corrective action in cases where the port State does not consider its own intervention appropriate.[85]

267. The third action which may be taken under Article 4 is to "take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health".[86] The terms used are not defined.[87] In considering the bearing of this phrase and the manner in which it is applied, the Committee would keep in mind both the internal context of Convention No. 147 - i.e. the substantive standards laid down by the Convention as a whole and the intent and purpose of the Convention of dealing with the question of substandard vessels, especially those registered under flags of convenience - and the external international legal context - i.e. the fact that States in any event enjoy and may exercise sovereign rights in their ports, and the fact that certain aspects of the physical safety of ships are governed more specifically by other international instruments which may be applicable.[88] It therefore is clear that States have a very wide discretion as to the measures they choose to take in ports in their territory, although there may in practice be many reasons of expediency or international comity or international agreement which inhibit the exercise of that discretion. Whilst the caveat as to "exaggerated notions" was therefore apt in 1976 and remains so in 1990, the fact that port state action is referred to here in this important international labour Convention in the maritime sphere does represent a positive contribution to the developing international consensus on port state control.

268. In taking measures of rectification under Article 4(1) a State must under Article 4(2), first, forthwith notify the nearest maritime, consular or diplomatic representative of the flag

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[84] e.g. United Kingdom (Hong Kong).

[85] There are no similar provisions in the SOLAS and Load Lines Conventions or in the LOS Convention.

[86] A proposal to replace the word "health" with "the sanitary conditions if they are likely to represent a danger for the citizens or the environment" was not adopted (1976 RP, p. 193, para. 80).

[87] Para. 79, ibid., does not in fact contain a definition of "measures necessary" (cf. above, para. 260).

[88] See above, paras. 19-27.

State;[89] second, "if possible, have such representative present";[90] and third, not unreasonably detain or delay the ship. The notification requirement is similar to that in other international instruments.[91] Article 4(2) does not require the taking of measures to be subject to a prior hearing by a representative of the State of registration,[92] nor does it go so far as the IMO Procedures, which call for the representative to be requested to initiate or co-operate with investigations.[93] Although it does appear from the wording of Article 4(2) that the representative of the State of registration should be notified at the moment when measures are taken, so that such representative will only be present afterwards, Article 4 would not appear to exclude the representative being notified, time permitting, before measures are taken.[94]

269. It is in any event clear that when any action is taken under Article 4 it must be swift - both in order to deal effectively with hazardous conditions; and to comply with the requirement that the ship should not be unreasonably detained or delayed. In the discussion in the responsible Committee of the 1976 Conference, concern was expressed by some Members that taking steps in relation to some shortcomings as to the standards of the Convention (for example competency) might take three or four months or more, especially in developing countries, and that ships should not be delayed on account of such steps. Since the Conference rejected a proposal that Article 4(2) should read simply "shall not detain or delay", the final use of the word "unreasonably" appears as a compromise which again leaves a discretion to the authorities of the port State.[95]

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[89] Article 4(1) uses the expression "country in which the ship is registered" and Article 4(2) "flag State", thus departing from the usual ILO terminology, which would be "State in which the ship is registered" and "State of registration" (cf. para. 56, above). The meaning is apparently intended to be the same.

[90] This means, as the French version indicates, "request such representative to be present if possible".

[91] SOLAS and Load Lines Conventions; and 1975 IMO Procedures (see para. 260, above), paras. 13 and 14.

[92] 1976 RP, p. 193, para. 81.

[93] In para. 15 (1975 version) they also call for information to be passed to the authorities of the country of the next appropriate port of call, if the port State has been unable to take other action in time.

[94] The notification "forthwith" need not be in writing, but should perhaps be at least confirmed in writing (cf. 1975 IMO Procedures, para. 16).

[95] 1976 CSV, PV6, p. 5, and 1976 RP, p. 261.

(b) Memorandum of Understanding on Port State Control

270. Thirteen of the 20[96] States which have ratified Convention No. 147 are party to the 1982 Memorandum and have referred to arrangements under it in their article 22 reports on Convention No. 147. The control of foreign-registered ships provided for in the Memorandum aims at the inspection of 25 per cent of the estimated number of individual foreign merchant ships (without distinction as to flag); there should also be mutual consultations, co-operation and exchange of information on the subject. Such control covers the main IMO Conventions as well as Convention No. 147. It includes the principle that "no more favourable" treatment is given to ships entitled to fly the flag of a State which is not a party to one of the instruments than to one that is. In order to fulfil their commitments States are to carry out inspections consisting of a visit on board to check relevant certificates and documents; in the absence of these, or if there are other "clear grounds" (for example, notification by another MOU country or a complaint similar to one under Article 4 of Convention No. 147) for believing that a ship does not substantially meet the requirements of a relevant instrument, a more detailed inspection will be carried out. Inspections should concentrate on ships presenting a special hazard (for example, oil tankers, chemical carriers) and those which have had recent deficiencies, but should normally avoid ships inspected by a Memorandum country within the previous six months. Inspections should be made by a qualified person, and the authorities should try to rectify deficiencies. Where these are hazardous to safety or health or the environment they should be removed before the ship is allowed to proceed, and the flag State representative should be notified. If no remedy is available in the port in question and if there is no unreasonable danger to another port, the ship may be allowed to proceed; flag state authorities and those of the next port of call should be notified as appropriate. A document attesting to the inspection should be provided. All possible efforts should be made to avoid unduly detaining or delaying a ship. Results of inspections are published by the MOU secretariat and arrangements are regularly reviewed by the Port State Control Committee.

271. The guide-lines in relation to Convention No. 147 originally annexed to the Memorandum of Understanding referred to requirements of Convention No. 147 and the Appendix Conventions in relation to minimum age, medical examination, officers' certificates of competency, food and catering, crew accommodation and accident prevention, as well as to requirements of the STCW and SOLAS Conventions. They referred also

[96] See above, para. 10. Co-operation with another one, the United States, as well as with Canada has been established and there is exchange of information with Japan. Exploratory discussions with USSR have taken place. See Annual Report of the Memorandum of Understanding on Port State Control, Ministry of Transport and Public Works, Netherlands, 1988.

to the IMO Safe Manning Resolution.[97] Amendments which took effect on 11 May 1989 include improvements on some of those matters and general guidance also in respect of articles of agreement, repatriation, shipowners' liability and trade union rights.[98] In respect of the rectification of deficiencies and detention, the guide-lines follow the requirements of Article 4 of Convention No. 147. States parties to the Memorandum publish statistics on inspections carried out, broken down by flag State and type of deficiency found (such as crew accommodation, food and catering, accident prevention) but not indicating what kinds of deficiencies occur on ships of which State of registration. Since the ILO participates in the Port State Control Committee which reviews this information and the statistics themselves are published, it has been considered that they have been duly communicated to the Director-General of the ILO in compliance with Article 4(1).[99]

(c) Other information provided

272. Of the other countries bound by Convention No. 147 whose detailed article 22 reports the Committee has examined, two[100] have indicated no port state action is taken. For another three[101] the Committee has raised the matter in direct requests. Four others[102] have indicated that at least some action along the lines of Article 4 is taken.

273. In four recent cases the Director-General of the ILO has received copies of detailed reports in connection with Article 4(1). These came from two MOU States. One involved a ship calling in port for repair: one seafarer had had an accident, various deficiencies, including under the STCW Convention, were found and reference was also

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[97] Resolution A.481(XII), Annexes 1 (Contents of minimum safe manning document) and 2 (Guide-lines for the application of principles of safe manning) (cf. above, para. 99). Regular seminars for inspectors are held with ILO co-operation.

[98] The guidance is limited to where a complaint as to these matters is received, in which case the representative of the flag State should be contacted and a report made, as called for in Article 4 of Convention No. 147. No mention is made of complaints as to engagement, however: cf. Article 2(d)(ii); see above, para. 219.

[99] The 1988 figures show however that there has been a steep decline in the inspection rate in some countries, and others have not yet reached the percentage called for in the Memorandum.

[100] Costa Rica, Iraq.

[101] Liberia, Morocco; United Kingdom (Isle of Man).

[102] Japan; France (New Caledonia), United Kingdom (Bermuda, Hong Kong). Although the Government's first article 22 report on the Convention is not yet due, it appears that the United States has also issued detailed instructions for inspections under Article 4 of the Convention.

made to Article 4 of Convention No. 147.[103] The second case also involved multiple deficiencies and the inspecting authority referred to specific requirements of Conventions Nos. 68, 92 and 134: the ship was detained for five days and allowed to leave only after certain deficiencies under Conventions Nos. 68 and 134 amongst others were remedied and with a warning that the others would have to be corrected within one month.[104] In the third case, the authority also referred to deficiencies relating to Convention No. 134, amongst others: the ship was detained for rectification of some matters and after reinspection allowed to leave with a one-month warning as to the other matters; the next port of call was informed.[105] And in the fourth, the vessel was detained, the consulate informed, certain deficiencies (relating again to Convention No. 134 and other safety matters) were rectified and others were ordered rectified before arrival at the next port of call, which was also informed.[106]

274. Article 19 reports from other countries show that many do or may exercise port state control over foreign vessels in respect of safety (including manning).[107] In several of these, the provisions as to detention and notification of the consul are also available. However, reference to the standards of Convention No. 147 is made in only one case in this connection.[108] One country with no coastline[109] indicates that its ships have been inspected by MOU countries, with no fine for failure in respect of labour standards being imposed. Some developing countries indicate that no port state action of this kind is possible, because the legislation[110] or inspection resources[111] do not permit it.

(d) Development of port state control

275. Whilst the exercise of port state control remains subject to certain difficulties, it is the object of growing interest. It

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[103] Copy report of the Provincial Labour and Social Security Inspectorate of La Coruña, Spain, received July 1989, acting on information received from the Free Union of the Merchant Marine on a ship registered in Honduras and owned by an enterprise established in the United Kingdom.

[104] Copy report of the Maritime Authority at Esbjerg (Denmark), received November 1989 on a ship registered in Cyprus.

[105] Copy report of the Maritime Authority at Ensted (Denmark) received January 1990 on a ship registered in Norway.

[106] Copy report of the Maritime Authority at Esbjerg (Denmark) received January 1990 on a ship registered in Turkey.

[107] e.g. Algeria, Bahamas, Belize, Benin, Bulgaria, Cameroon, Canada, Ecuador, German Democratic Republic, Ghana, Iceland, India, Malaysia, New Zealand, Philippines, Qatar, Singapore, Sri Lanka, United Republic of Tanzania, Tunisia, United Arab Emirates.

[108] Australia.

[109] Hungary.

[110] e.g. Mexico.

[111] e.g. Pakistan, Trinidad and Tobago.

appears for one thing that many countries - especially developing ones - have meagre resources for the control of foreign-registered ships in respect of any of the international instruments which contemplate such action. There is a sure need in all countries for responsible officers to have the backing of clear legislation empowering them to take action in respect of labour standards on foreign-registered ships, and for them to be fully aware of their powers and duties in this respect. The thorough control of Convention No. 147 matters moreover entails special expertise and involves perhaps more difficult investigations and assessments by the controlling officers than is the case for some matters falling under instruments of other international organisations. It is noticeable also that even among the group of countries the most committed to port state control of Convention No. 147 and other matters - i.e. the MOU States - the goal of inspecting 25 per cent of foreign-registered ships is rarely met, and numbers of inspections in some countries have actually declined; where that goal is met, few details are provided as to the attention given directly to Convention No. 147 matters.

276. On the other hand, the practice of port state control in relation to several international instruments seems to have become well established amongst many leading maritime nations, and it can be a useful means of dealing with problems of substandard ships - including those registered under flags of convenience in the widest sense of the term - when the State of registration has not itself dealt with them. The Guide-lines adopted by the ILO Meeting of Experts in October 1989 may play an important part in this. They establish principles and practical advice based on Convention No. 147 and applicable to ILO member States in general - not only to a particular group of industrialised countries. The Committee would therefore recommend that all countries considering taking action along the lines of Article 4 of Convention No. 147 might have due regard to the indications both in this general survey and in the Guide-lines.

CHAPTER VII

CONCLUSIONS

277. It seems to the Committee that, despite some notable absences from the list of countries bound by Convention No. 147, there are grounds for a modest degree of satisfaction as to the level of formal acceptance it has met with in the last 13 years. Although there have been only a score of ratifications, the countries concerned continue to account for about 45 per cent of the global merchant fleet. The Committee notes in particular that, in the last year, the Convention has come into force in the United States and United Kingdom (Gibraltar).

278. The Committee notes with interest the indications in their article 19 reports by the Governments of Ireland, Ukrainian SSR and USSR that they intend to ratify the Convention. It has also noted with interest that the question seems to be under active consideration in Argentina, Australia, Czechoslovakia, German Democratic Republic, India, Malta and Poland: ratification by these countries would represent another big advance in the proportion of world shipping covered by Convention No. 147. Several governments have indicated that measures are being or will be taken to give further effect to Convention No. 147 or Recommendation No. 155 (Bangladesh, Indonesia, Mozambique, Peru, Philippines, Sudan). Others have indicated in reply to a question in the article 19 report form that there are no difficulties preventing or delaying ratification of the Convention (Bahamas, Ghana, Malaysia, Qatar).

279. Governments of some developing countries have considered their own conditions are at present not suited to applying the Convention and the Recommendation (Bangladesh, Barbados, Benin, Indonesia, Kenya, Pakistan, Sri Lanka, Suriname, United Arab Emirates, United Republic of Tanzania). A number of others have pointed to restructuring of the maritime sector or other developments such as new legislation in prospect (Cape Verde, Côte d'Ivoire, Ethiopia, Guinea-Bissau, Luxembourg, Suriname, Thailand, Trinidad and Tobago). Some appear to have no present intention of ratifying the Convention (Algeria, Belize, Chile, Ecuador, Singapore).

280. Some countries have indicated that technical aspects of the Convention prevent ratification at present (Cuba, Ethiopia, Guinea-Bissau): others have said in particular that ratification is hindered by their not having ratified or not being able to apply one or more of the Conventions appended to Convention No. 147 (Austria, New Zealand, Nigeria, Panama, Peru, Saudi Arabia, Switzerland, Tunisia) or the IMO instruments referred to in Article 5 (Cameroon); or by the absence of a procedure for complaints as to engagement on foreign-registered ships as required by Article 2(d)(ii) of the Convention (Canada). For these countries, the Committee recalls that

ratification of the Conventions in the Appendix - although often an indicator of the extent to which a country is already applying many of the substantive standards encompassed by Convention No. 147 - is not a requirement for purposes of Convention No. 147. It also notes that, as regards Panama - the country with currently the second largest merchant fleet in the world - only one of the Conventions appended to Convention No. 147 has not been ratified (Convention No. 134), and the questions dealt with in Article 4 of that Convention are to a large extent reflected in any event in the 1974 SOLAS Convention which is already binding on Panama.

281. Two countries (Bulgaria and Mexico) have pointed to the port state action provided for in Article 4 of Convention No. 147 as an obstacle to ratification. The Committee has noted in Chapter VI above the way in which the notion of port state control has become more widely accepted in recent years, whilst emphasising that there is no requirement of such action in the Convention. Article 4(2) includes requirements only as to some aspects of how port state control is exercised; but it remains open to a country bound by Convention No. 147 not to undertake any such action.

282. The Committee particularly hopes that this general survey will assist the governments of member States as well as shipowners and seafarers and their organisations in dispelling any misconceptions and in understanding the effective meaning of Convention No. 147. Only then will it be possible to grasp how far implementation of it can be guaranteed. It may in particular be thought appropriate that the indications in the article 22 report form adopted by the Governing Body, which governments of States bound by the Convention are asked to respond to when submitting their reports, might be revised in the light of the experience now gained since the Convention came into force and of the indications in this general survey, in order to assist governments in understanding the information to be supplied under each provision, and by reference in particular to Recommendation No. 155.

283. Clearly, there are a number of countries, especially developing countries, which do not have sufficient interest in maritime affairs or which have no significant maritime industry themselves or where economic and administrative conditions are not favourable to the detailed regulation of maritime labour conditions. For these, ratification of Convention No. 147 is not a priority. Nevertheless, the Committee considers that the minimum labour standards contained in the Convention remain a useful point of reference whenever maritime questions do arise - as, indeed, they must from time to time in all countries of the world. The Committee would note that, as indicated in the table of tonnages in Appendix III, a significant number of countries with large merchant fleets remain unbound by Convention No. 147; and it is a matter of regret that some of these which are member States of the ILO have not supplied article 19 reports. The Committee acknowledges that the information available for this general survey is in some respects uneven and perhaps incomplete: this is due in part to the nature of the present exercise, in which it is impossible to examine the detailed application of every ratified maritime Convention, and in part to the failure of some governments to provide all due information in

article 19 reports. The Committee hopes that all States with large registers of merchant ships and others which have become "open register" countries will give serious consideration to ratification and implementation of Convention No. 147. The Committee also hopes that States bound by the Convention which have not yet made declarations and provided reports under article 35 of the Constitution in respect of non-metropolitan territories with growing registers (for example, France (Southern and Antarctic Territories) and Netherlands (Netherlands Antilles)) will shortly be in a position to do so. The Committee has noted finally that one other country (Marshall Islands), hitherto part of the Trust Territory of the Pacific Islands (under article 35 of the ILO Constitution a non-metropolitan territory of the United States) but presently with an as yet apparently unresolved international status, is regarded by the International Transport Workers' Federation as a flag of convenience country; another (Cayman Islands) is a territory of the United Kingdom which has not been given the status of a non-metropolitan territory under article 35 of the ILO Constitution.

284. For many developing countries - and sometimes industrialised ones - ensuring the practical application of maritime labour standards may be a sticking point. The Committee has tried to show in Chapter VI above that this is indeed a matter to be taken seriously. The task is considerable, and yet it does appear that several countries, including some flag of convenience countries, have made a good deal of progress in recent years in carrying out inspections of their registered vessels. The role of port states in carrying out controls has also undoubtedly grown, and it has thus emerged as an important way in which countries with control facilities may contribute to the implementation of standards on ships of countries without the same means.

285. Action by port states in relation to the labour standards on board foreign-registered ships in accordance with Article 4 of Convention No. 147 can now be regarded as an established and important feature of the international campaign against substandard vessels. The Committee has welcomed the information provided in this respect - from the 14 MOU countries and others - and it hopes that efforts will continue to be made to see that in particular the safety aspects of labour standards on board ship receive due attention when port state control is operated.

286. Several points brought to light in this general survey deserve special mention. Convention No. 147 has appeared as a remarkably comprehensive instrument in three senses. In the first place, its scope is wide enough to cover virtually all merchant shipping, the only numerically significant exclusions being ships engaged in fishing and small vessels - and both these, as shown in Chapter I, are rather narrowly conceived. In the second place, the Convention contemplates a full gamut of kinds of action to be taken to achieve its aim of dealing with the problem of substandard vessels: these range from actions by the States of registration of vessels under Article 2 - legislating to lay down detailed standards, enforcing legislation by inspection and through the courts, supervising the manner in which seafarers' employment relations are established, implementing training programmes, inquiring into

casualties - and include collaboration with shipowners and seafarers and their organisations; to actions by other States under Articles 3 and 4 - advising seafarers as to employment on foreign ships and channelling complaints as to such employment, detecting and dealing with manifest hazards on board foreign-registered ships in their ports. In the third place, the substantive standards laid down in the Convention, as shown in Chapter II in particular, have proved a forceful statement by the International Labour Conference of what a code of minimum labour standards on board merchant ships should consist of.

287. Two aspects of these minimum standards should be stressed above all. The Committee makes no apology for insisting in its supervisory work on the health and safety aspects of employment at sea. It has found that most governments of countries bound by Convention No. 147 have continued to make progress here; but there is nearly always room for improvement, and the Committee's role must include further encouragement in this respect. At the same time, the Committee has been struck by the apparent weaknesses in many countries, including several bound by Convention No. 147, as regards social security measures applied to seafarers working on ships registered in their territory. The problem is most evident in the case of seafarers who are not resident or domiciled in or are not nationals of the country of registration of the ships in which they serve. The Committee hopes that all countries whose ships employ such seafarers will examine their legislation and practices carefully to ensure that - as a bare minimum - protection in the event of sickness and injury and medical care are guaranteed to all of them; and that, as regards all social security measures for seafarers, it might be possible to move swiftly towards the implementation and ratification of Convention No. 165.

288. As regards workers on board fishing vessels, the Committee notes that a number of instruments have been adopted by the Conference, laying down standards on hours of work (Recommendation No. 7) and vocational training (Recommendation No. 126) as well as minimum age (Convention No. 112), medical examination (Convention No. 113), articles of agreement (Convention No. 114), competency (Convention No. 125) and accommodation of crews (Convention No. 126), and that some of the Conventions referred to elsewhere in this general survey (especially as to social security and competency) are or may be applicable in the fishing sector. The Committee considers that, in addition to its regular supervisory work in relation to ratified fishing Conventions, and having regard to the working conditions in force on board the fishing vessels of various countries, it might be desirable at a suitable time in the future to examine the application of the relevant standards in a more general way.

289. As for the substantive standards laid down by Convention No. 147, there is no escaping the need for close and careful consideration of many questions. In so far as port state action under Article 4 is optional rather than mandatory, and in so far as the ships of any State may, regardless of Convention No. 147, as a matter of international law legitimately be subjected to control in a foreign port, it seems to the Committee that Article 4 ought not to constitute an obstacle to ratification. To the extent that the requirement to

give advice to nationals in Article 3 of the Convention is to be implemented "in so far as practicable", it too ought not to be an obstacle to ratification. Thirdly, the requirements of Article 5 as to adherence to IMO instruments ought not to be regarded as a legal obstacle to ratification of Convention No. 147, as indicated in the Introduction above (although, as the Government of Cameroon has recalled, those instruments may not always be implemented in law and practice even when they are formally ratified). However, although formal ratification (or, in the case of a non-metropolitan territory, declaration of application) of the Conventions appended to Convention No. 147 is in no sense a requirement, substantial equivalence to any of those Conventions which are not otherwise binding is.

290. It is true that Convention No. 147 embodies minimum standards on a wide range of maritime labour questions and enables member States to accept obligations in respect of those questions even though they are not able to implement the corresponding Appendix Conventions in every detail. There is moreover bound to be an element of judgement in deciding what are matters of detail which may be deviated from and what are material requirements. The Committee's role has been and continues to be to examine those questions as they arise and according to its established principles of independence, objectivity and impartiality. In fulfilling this role, the Committee has to keep in mind that the modes of implementation of international labour standards - in any event when applied in their own right, but especially when applied by virtue of being included in the Convention No. 147 Appendix - may be different in different countries. Application of the notion of substantial equivalence might be said to admit of a certain flexibility on some points; but it is not consistent with short-cutting across the material obligations of the respective Appendix Conventions. The supervisory process, with reporting by governments and examination of reports by the Committee, is well designed to enable the notion of substantial equivalence to be applied concretely and objectively, case by case, so as to ensure that the minimum standards which are aimed at by Convention No. 147 are achieved.

291. Whilst the Committee in its consideration of Convention No. 147 thus has to review many detailed aspects of labour standards on board merchant ships, it has also been aware of the "promotional" aspect of the Convention: various areas covered in general terms by Article 2 of the Convention call for States to pursue their national standard-setting activities relating to seafarers beyond the bare minimum. The provisions as to advice given to nationals in Article 3 and port state action in Article 4 may also be regarded as promotional in the sense that they call for the development of policies and practices, as well as legislation going beyond the minimum. In relation to Article 2(a) in particular, attention might be drawn to the aim of continuing improvement of labour standards along the lines laid down in Recommendation No. 155 and its Appendix instruments: this might be thought to merit further consideration especially by countries which have attained the minimum standards of Convention No. 147, and the Committee would welcome further information in article 22 reports.

292. The Committee would draw attention to the constant development of maritime standard-setting and technical co-operation activities in the ILO. This is evident for example in the agenda of the coming 26th Session of the Joint Maritime Commission, which will consider amongst other things the possible revision of Convention No. 9 and Recommendation No. 28 and changes in the shipboard environment and the characteristics of seaferers' employment. Convention No. 147 and Recommendation No. 155 were adopted a relatively short time ago, and it seems to the Committee that the Office's continuing examination of their practical aspects by empirical studies is essential in order to supplement the Committee's own work, particularly in this general survey, which necessarily concentrates on questions of interpretation and the legal difficulties of application. The Committee hopes that the possibility of a new general survey will be considered after not too long an interval.

293. The Committee is alive to the difficulties experienced by seafarers on the ships of many countries, including problems in the terms and conditions offered to them, the application of social security, the extent of their safety and training, and their ability to exercise basic trade union rights. In order to tackle these difficulties, the ILO offers various procedures and bodies for the involvement of seafarers and shipowners and their organisations at the international level. The Committee remains convinced that the further application of tripartite practices at the national level as well as at the international level is a sure way of continuing to make progress in setting and applying labour standards on board ship.

APPENDICES

APPENDIX I

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["L.S." refers to the ILO Legislative Series.]

APPENDIX II

(a) INTERNATIONAL LABOUR INSTRUMENTS RELATING TO SEAFARERS

Conventions

No. 7 - Minimum Age (Sea) Convention, 1920.

8 - Unemployment Idemnity (Shipwreck) Convention, 1920.

9 - Placing of Seamen Convention, 1920.

15 - Minimum Age (Trimmers and Stokers) Convention, 1921.

16 - Medical Examination of Young Persons (Sea) Convention, 1921.

22 - Seamen's Articles of Agreement Convention, 1926.

23 - Repatriation of Seamen Convention, 1926.

27 - Marking of Weight (Packages Transported by Vessels) Convention, 1929.

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54 - Holidays with Pay (Sea) Convention, 1936.

55 - Shipowners' Liability (Sick and Injured Seamen) Convention, 1936.

56 - Sickness Insurance (Sea) Convention, 1936.

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71 - Seafarers' Pensions Convention, 1946.

72 - Paid Vacations (Seafarers) Convention, 1946.

73 - Medical Examination (Seafarers) Convention, 1946.

74 - Certification of Able Seamen Convention, 1946.

75 - Accommodation of Crews Convention, 1946.

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145 - Continuity of Employment (Seafarers) Convention, 1976.

146 - Seafarers' Annual Leave with Pay Convention, 1976.

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APPENDIX III

MERCHANT FLEETS OF THE WORLD

Merchant fleets of over 1 million gross tons	No. of ships	Thousands gross tonnage
Liberia	1 455	47 893
Panama	5 121	47 365
Japan	9 830	28 030
USSR	6 555	25 854
Greece	1 839	21 324
United States of America	6 375	20 588
(includes American Samoa	(2)	(-)
Guam	(5)	(3)
Pacific Islands, (US Trust Territory)	(34)	(465)
Puerto Rico	(27)	(57)
US Virgin Islands)	(3)	(1)
China	2 548	18 683
(includes Taiwan)	(641)	(5 169)
Cyprus	1 278	18 134
Norway	2 304	15 597
(includes Norwegian International Ship Register)	(543)	(13 366)
Bahamas	724	11 579
Philippines	1 424	9 385
Korea, Republic of	1 974	7 832
United Kingdom	2 053	7 646
(includes Isle of Man)	(118)	(2 111)
Italy	1 571	7 602
Singapore	712	7 273
India	834	6 315
United Kingdom (Hong Kong)	366	6 151
Brazil	716	6 078
Denmark	1 256	4 963
(includes Danish International Ship Register	(334)	(4 013)
Faeroe Islands	(212)	(121)
Greenland)	(88)	(56)
Islamic Republic of Iran	386	4 733
France	921	4 413
(includes French Southern and Antarctic Territories	(29)	(335)
French Guiana	(4)	(680)
French Polynesia	(37)	(17)
Guadeloupe	(14)	(4)
Martinique	(7)	(8)
New Caledonia	(13)	(13)

Merchant fleets of over 1 million gross tons	No. of ships	Thousands gross tonnage
Réunion	(6)	(21)
St. Pierre and Miquelon	(8)	(4)
Wallis and Futuna Islands)	(7)	(59)
United Kingdom (Bermuda)	107	4 076
Germany, Federal Republic of	1 185	3 967
Spain	2 341	3 962
(includes Canary Islands)	(113)	(98)
Romania	468	3 783
Yugoslavia	500	3 681
Netherlands	1 218	3 655
(includes Netherlands Antilles and Aruba)	(94)	(421)
Poland	710	3 416
Malta	410	3 329
Turkey	855	3 240
Canada	1 227	2 825
United Kingdom (Gibraltar)	85	2 611
Australia	706	2 494
Sweden	644	2 167
Saudi Arabia	312	2 119
Belgium	333	2 044
Indonesia	1 722	2 035
Kuwait	220	1 865
Argentina	465	1 833
Malaysia	491	1 668
German Democratic Republic	372	1 500
Saint Vincent and the Grenadines	414	1 486
Mexico	642	1 388
Bulgaria	200	1 375
Egypt	426	1 230
Venezuela	288	1 092
Iraq	141	1 056
Other countries bound by Convention No. 147		
Finland	266	944
Portugal	313	726
(includes Azores	(24)	(20)
Macao	(6)	(4)
Madeira)	(9)	(6)
Morocco	359	454
Costa Rica	27	13

Merchant fleets of over 1 million gross tons	No. of ships	Thousands gross tonnage
Other countries listed which have sent article 19 reports		
Cuba	407	900
Algeria	146	848
United Arab Emirates	248	839
Honduras	677	691
Peru	616	638
Chile	304	590
Thailand	272	539
Nigeria	242	500
Bangladesh	305	439
Ecuador	159	402
Colombia	100	379
Pakistan	72	366
Qatar	65	306
Sri Lanka	93	287
Tunisia	74	282
New Zealand	133	257
(includes Cook Islands)	(4)	(5)
Switzerland	21	220
Austria	33	204
Czechoslovakia	20	191
Iceland	395	183
Ireland	175	167
Mauritius	35	130
Ghana	140	126
Sudan	25	97
Côte d'Ivoire	52	83
Ethiopia	29	77
Hungary	15	76
Togo	11	43
Mozambique	109	38
Cameroon	44	33
United Republic of Tanzania	39	32
Trinidad and Tobago	49	22
Cape Verde	37	18
Suriname	22	11
Barbados	37	8
Kenya	27	8
Guatemala	6	5
Uganda	3	5
Benin	13	5
Guinea-Bissau	17	4
Luxembourg	2	4

Merchant fleets of over 1 million gross tons	No. of ships	Thousands gross tonnage
Belize	3	1
Malawi	1	–
Other countries	3 138	6 955
World total	76 100	410 481

Note: Figures include some vessels (e.g. fishing vessels, non-sea-going vessels) not covered by the general survey.

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APPENDIX IV

RATIFICATIONS AND DECLARATIONS OF APPLICATION OF CONVENTION No. 147

States	Date of ratification
BELGIUM	16.09.1982
COSTA RICA	24.06.1981
DENMARK	28.07.1980
EGYPT	17.03.1983
FINLAND	02.10.1978
FRANCE	02.05.1978
GERMANY, FEDERAL REPUBLIC OF	14.07.1980
GREECE	18.09.1979
IRAQ	15.02.1985
ITALY	23.06.1981
JAPAN	31.05.1983
LIBERIA	08.07.1981
MOROCCO	15.06.1981
NETHERLANDS	25.01.1979
NORWAY	24.01.1979
PORTUGAL	02.05.1985
SPAIN	28.04.1978
SWEDEN	20.12.1978
UNITED KINGDOM	28.11.1980
UNITED STATES	15.06.1988

Non-metropolitan territories	Date of declaration
- Applicable without modifications	
FRENCH GUIANA (FRANCE)	09.05.1986
FRENCH POLYNESIA (FRANCE)	09.05.1986
GUADELOUPE (FRANCE)	09.05.1986
MARTINIQUE (FRANCE)	09.05.1986
NEW CALEDONIA (FRANCE)	09.05.1986
REUNION (FRANCE)	09.05.1986
ST. PIERRE AND MIQUELON (FRANCE)	09.05.1986
ARUBA (NETHERLANDS)	06.08.1986
BERMUDA (UNITED KINGDOM)	28.07.1986
GIBRALTAR (UNITED KINGDOM)	13.06.1989
ISLE OF MAN (UNITED KINGDOM)	01.07.1985
AMERICAN SAMOA (UNITED STATES)	28.02.1989
GUAM (UNITED STATES)	28.02.1989
NORTHERN MARIANA ISLANDS (UNITED STATES)	28.02.1989
PACIFIC ISLANDS ((TRUST TERRITORY) (PALAU)) (UNITED STATES)	28.02.1989
PUERTO RICO (UNITED STATES)	28.02.1989
UNITED STATES VIRGIN ISLANDS (UNITED STATES)	28.02.1989
- Applicable with modifications	
HONG KONG (UNITED KINGDOM)	26.07.1982

APPENDIX V

(a) RATIFICATIONS AND DECLARATIONS OF APPLICATION OF CONVENTIONS LISTED IN THE APPENDIX TO CONVENTION No. 147

MINIMUM AGE (SEA) CONVENTION, 1920 (No. 7)

States: ANGOLA, AUSTRALIA, BAHAMAS, BARBADOS, CHILE, CHINA, COLOMBIA, DOMINICAN REPUBLIC, GUINEA-BISSAU, GUYANA, HUNGARY, MALAYSIA, PAPUA NEW GUINEA, PORTUGAL, SAINT LUCIA, SINGAPORE, UNITED KINGDOM

Non-Metropolitan Territories

- Applicable without modification:
  FAEROE ISLANDS (DENMARK); GUERNSEY, ISLE OF MAN, JERSEY (UNITED KINGDOM)
- Applicable with modifications:
  GREENLAND (DENMARK)

MINIMUM AGE (SEA) CONVENTION (REVISED), 1936 (No. 58)

States: ARGENTINA, BELIZE, BRAZIL, CANADA, DEMOCRATIC YEMEN, DENMARK, DJIBOUTI, FIJI, FRANCE, GHANA, GRENADA, GUATEMALA, ICELAND, JAMAICA, JAPAN, LIBERIA, MAURITANIA, MAURITIUS, MEXICO, NEW ZEALAND, NIGERIA, PANAMA, PERU, SEYCHELLES, SIERRA LEONE, SRI LANKA, SWEDEN, SWITZERLAND, TANZANIA (UNITED REPUBLIC OF), TUNISIA, TURKEY, UNITED STATES

Non-Metropolitan Territories

- Applicable without modification:
  FRENCH GUIANA, FRENCH POLYNESIA, GUADELOUPE, MARTINIQUE, NEW CALEDONIA, REUNION, ST. PIERRE AND MIQUELON (FRANCE); NETHERLANDS ANTILLES (NETHERLANDS); FALKLAND ISLANDS (MALVINAS), GIBRALTAR, HONG KONG, ST. HELENA (UNITED KINGDOM); AMERICAN SAMOA, GUAM, PUERTO RICO, UNITED STATES VIRGIN ISLANDS (UNITED STATES)
- Applicable with modifications:
  ANGUILLA, BERMUDA, BRITISH VIRGIN ISLANDS, MONTSERRAT (UNITED KINGDOM)

MINIMUM AGE CONVENTION, 1973 (No. 138)

States: ALGERIA, ANTIGUA AND BARBUDA, BELGIUM, BULGARIA, BYELORUSSIAN SSR, COSTA RICA, CUBA, DOMINICA, EQUATORIAL GUINEA, FINLAND, GERMAN DEMOCRATIC REPUBLIC, FEDERAL REPUBLIC OF GERMANY, GREECE, HONDURAS, IRAQ, IRELAND, ISRAEL, ITALY, KENYA, LIBYAN ARAB JAMAHIRIYA, LUXEMBOURG, MALTA, NETHERLANDS, NICARAGUA, NIGER, NORWAY, POLAND, ROMANIA, RWANDA, SPAIN, TOGO, UKRAINIAN SSR, UNION OF SOVIET SOCIALIST REP., URUGUAY, VENEZUELA, YUGOSLAVIA, ZAMBIA

Non-Metropolitan Territories

- Applicable without modification:
  ARUBA (NETHERLANDS)

*

SHIPOWNERS' LIABILITY (SICK AND INJURED SEAMEN) CONVENTION, 1936 (No. 55)

States: BELGIUM, BULGARIA, DJIBOUTI, EGYPT, FRANCE, GREECE, ITALY, LIBERIA, MEXICO, MOROCCO, PANAMA, PERU, SPAIN, TUNISIA, UNITED STATES

Non-Metropolitan Territories

- Applicable without modification:
  FRENCH GUIANA, FRENCH POLYNESIA, GUADELOUPE, MARTINIQUE, NEW CALEDONIA, REUNION, ST. PIERRE AND MIQUELON (FRANCE); AMERICAN SAMOA, GUAM, PUERTO RICO, UNITED STATES VIRGIN ISLANDS (UNITED STATES)

SICKNESS INSURANCE (SEA) CONVENTION, 1936 (No. 56)

States: ALGERIA, BELGIUM, BULGARIA, DJIBOUTI, EGYPT, FRANCE, FEDERAL REPUBLIC OF GERMANY, MEXICO, NORWAY, PANAMA, PERU, SPAIN, UNITED KINGDOM, YUGOSLAVIA

Non-Metropolitan Territories

- Applicable without modification:
  FRENCH GUIANA, FRENCH POLYNESIA, GUADELOUPE, MARTINIQUE, NEW CALEDONIA, REUNION, ST. PIERRE AND MIQUELON (FRANCE); GUERNSEY, ISLE OF MAN, JERSEY (UNITED KINGDOM)

MEDICAL CARE AND SICKNESS BENEFITS CONVENTION, 1969 (No. 130)

States: BOLIVIA, COSTA RICA, CZECHOSLOVAKIA, DENMARK, ECUADOR, FINLAND, FEDERAL REPUBLIC OF GERMANY, LIBYAN ARAB JAMAHIRIYA, LUXEMBOURG, NORWAY, SWEDEN, URUGUAY, VENEZUELA

*

MEDICAL EXAMINATION (SEAFARERS) CONVENTION, 1946 (No. 73)

States: ALGERIA, ANGOLA, ARGENTINA, BELGIUM, BULGARIA, CANADA, DENMARK, DJIBOUTI, EGYPT, FINLAND, FRANCE, FEDERAL REPUBLIC OF GERMANY, GREECE, GUINEA-BISSAU, IRELAND, ITALY, JAPAN, NETHERLANDS, NORWAY, PANAMA, PERU, POLAND, PORTUGAL, SPAIN, SWEDEN, TUNISIA, UKRAINIAN SSR, UNION OF SOVIET SOCIALIST REP., URUGUAY, YUGOSLAVIA

Non-Metropolitan Territories

- Applicable without modification:
  FRENCH GUIANA, FRENCH POLYNESIA, GUADELOUPE, MARTINIQUE, NEW CALEDONIA, REUNION, ST. PIERRE AND MIQUELON (FRANCE)

*

PREVENTION OF ACCIDENTS (SEAFARERS) CONVENTION, 1970 (No. 134)

States: COSTA RICA, DENMARK, EGYPT, FINLAND, FRANCE, FEDERAL REPUBLIC OF GERMANY, GREECE, GUINEA, ISRAEL, ITALY, JAPAN, MEXICO, NEW ZEALAND, NIGERIA, NORWAY, POLAND, ROMANIA, SPAIN, SWEDEN, TANZANIA (UNITED REPUBLIC OF), UNION OF SOVIET SOCIALIST REP., URUGUAY

*

ACCOMMODATION OF CREWS CONVENTION (REVISED), 1949 (No. 92)

States: ALGERIA, ANGOLA, BELGIUM, BRAZIL, COSTA RICA, CUBA, DENMARK, EGYPT, FINLAND, FRANCE, FEDERAL REPUBLIC OF GERMANY, GHANA, GREECE, GUINEA-BISSAU, IRAQ, IRELAND, ISRAEL, ITALY, LIBERIA, NETHERLANDS, NEW ZEALAND, NORWAY, PANAMA, POLAND, PORTUGAL, SPAIN, SWEDEN, UKRAINIAN SSR, UNION OF SOVIET SOCIALIST REP., UNITED KINGDOM, YUGOSLAVIA

Non-Metropolitan Territories

- Applicable without modification:
  FAEROE ISLANDS (DENMARK); FRENCH GUIANA, GUADELOUPE, MARTINIQUE, REUNION (FRANCE); ISLE OF MAN (UNITED KINGDOM)
- Applicable with modifications:
  HONG KONG (UNITED KINGDOM)

*

FOOD AND CATERING (SHIPS' CREWS) CONVENTION, 1946 (No 68)

States: ALGERIA, ANGOLA, ARGENTINA, BELGIUM, BULGARIA, CANADA, EGYPT, FRANCE, GREECE, GUINEA-BISSAU, IRELAND, ITALY, NETHERLANDS, NEW ZEALAND, NORWAY, PANAMA, PERU, POLAND, PORTUGAL, SPAIN, UNITED KINGDOM

Non-Metropolitan Territories

- Applicable without modification:
  FRENCH GUIANA, GUADELOUPE, MARTINIQUE, REUNION (FRANCE); ISLE OF MAN (UNITED KINGDOM)

*

OFFICERS' COMPETENCY CERTIFICATES CONVENTION, 1936 (No. 53)

States: ARGENTINA, BELGIUM, BRAZIL, BULGARIA, CUBA, DENMARK, DJIBOUTI, EGYPT, FINLAND, FRANCE, FEDERAL REPUBLIC OF GERMANY, IRELAND, ISRAEL, ITALY, LIBERIA, LIBYAN ARAB JAMAHIRIYA, MAURITANIA, MEXICO, NEW ZEALAND, NORWAY, PANAMA, PERU, PHILIPPINES, SPAIN, SYRIAN ARAB REPUBLIC, UNITED STATES, YUGOSLAVIA

Non-Metropolitan Territories

- Applicable without modification:
  FAEROE ISLANDS (DENMARK); FRENCH GUIANA, FRENCH POLYNESIA, GUADELOUPE, MARTINIQUE, NEW CALEDONIA, REUNION, ST. PIERRE AND MIQUELON (FRANCE); AMERICAN SAMOA, GUAM, PACIFIC ISLANDS TRUST TERRITORY, PUERTO RICO, UNITED STATES VIRGIN ISLANDS (UNITED STATES)

*

SEAMEN'S ARTICLES OF AGREEMENT CONVENTION, 1926 (No. 22)

States: ARGENTINA, AUSTRALIA, BAHAMAS, BANGLADESH, BARBADOS, BELGIUM, BELIZE, BRAZIL, BULGARIA, CANADA, CHILE, CHINA, COLOMBIA, CUBA, DJIBOUTI, DOMINICA, EGYPT, FINLAND, FRANCE, FEDERAL REPUBLIC OF GERMANY, GHANA, INDIA, IRAQ, IRELAND, ITALY, JAPAN, LIBERIA, LUXEMBOURG, MALTA, MAURITANIA, MEXICO, MOROCCO, MYANMAR, NETHERLANDS, NEW ZEALAND, NICARAGUA,

NORWAY, PAKISTAN, PANAMA, PAPUA NEW GUINEA, PERU, POLAND, PORTUGAL, SIERRA LEONE, SINGAPORE, SOMALIA, SPAIN, TUNISIA, UNITED KINGDOM, URUGUAY, VENEZUELA, YUGOSLAVIA

Non-Metropolitan Territories

- Applicable without modification:
  FRENCH GUIANA, FRENCH POLYNESIA, GUADELOUPE, MARTINIQUE, NEW CALEDONIA, REUNION, ST. PIERRE AND MIQUELON (FRANCE); ARUBA, NETHERLANDS ANTILLES (NETHERLANDS); BERMUDA, FALKLAND ISLANDS (MALVINAS), GIBRALTAR, GUERNSEY, HONG KONG, ISLE OF MAN, JERSEY (UNITED KINGDOM)
- Applicable with modifications:
  ANGUILLA (UNITED KINGDOM)

*

REPATRIATION OF SEAMEN CONVENTION, 1926 (No. 23)

States: ARGENTINA, BELGIUM, BULGARIA, CHINA, COLOMBIA, CUBA, DJIBOUTI, EGYPT, FRANCE, GERMAN DEMOCRATIC REPUBLIC, FEDERAL REPUBLIC OF GERMANY, GHANA, GREECE, IRAQ, IRELAND, ITALY, LIBERIA, LUXEMBOURG, MAURITANIA, MEXICO, NETHERLANDS, NEW ZEALAND, NICARAGUA, PANAMA, PERU, PHILIPPINES, POLAND, PORTUGAL, SOMALIA, SPAIN, SWITZERLAND, TUNISIA, UKRAINIAN SSR, UNION OF SOVIET SOCIALIST REP., UNITED KINGDOM, URUGUAY, YUGOSLAVIA

Non-Metropolitan Territories

- Applicable without modification:
  FRENCH GUIANA, FRENCH POLYNESIA, GUADELOUPE, MARTINIQUE, NEW CALEDONIA, REUNION, ST. PIERRE AND MIQUELON (FRANCE); ARUBA, NETHERLANDS ANTILLES (NETHERLANDS); ANGUILLA, BERMUDA, BRITISH VIRGIN ISLANDS, FALKLAND ISLANDS (MALVINAS), GIBRALTAR, ISLE OF MAN (UNITED KINGDOM)

*

FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948 (No. 87)

States: ALGERIA, ANTIGUA AND BARBUDA, ARGENTINA, AUSTRALIA, AUSTRIA, BANGLADESH, BARBADOS, BELGIUM, BELIZE, BENIN, BOLIVIA, BULGARIA, BURKINA FASO, BYELORUSSIAN SSR, CAMEROON, CANADA, CENTRAL AFRICAN REPUBLIC, CHAD, COLOMBIA, COMOROS, CONGO, COSTA RICA, COTE D'IVOIRE, CUBA, CYPRUS, CZECHOSLOVAKIA, DENMARK, DJIBOUTI, DOMINICA, DOMINICAN REPUBLIC, ECUADOR, EGYPT, ETHIOPIA, FINLAND, FRANCE, GABON, GERMAN DEMOCRATIC REPUBLIC, FEDERAL REPUBLIC OF GERMANY, GHANA, GREECE, GUATEMALA, GUINEA, GUYANA, HAITI, HONDURAS, HUNGARY, ICELAND, IRELAND, ISRAEL, ITALY, JAMAICA, JAPAN, KUWAIT, LESOTHO, LIBERIA, LUXEMBOURG, MADAGASCAR, MALI, MALTA, MAURITANIA, MEXICO, MONGOLIA, MYANMAR, NETHERLANDS, NICARAGUA, NIGER, NIGERIA, NORWAY, PAKISTAN, PANAMA, PARAGUAY, PERU, PHILIPPINES, POLAND, PORTUGAL, ROMANIA, RWANDA, SAINT LUCIA, SAN MARINO, SENEGAL, SEYCHELLES, SIERRA LEONE, SPAIN, SURINAME, SWAZILAND, SWEDEN, SWITZERLAND, SYRIAN ARAB REPUBLIC, TOGO, TRINIDAD AND TOBAGO, TUNISIA, UKRAINIAN SSR,

UNION OF SOVIET SOCIALIST REP., UNITED KINGDOM, URUGUAY, VENEZUELA, YEMEN, YUGOSLAVIA

Non-Metropolitan Territories

- Applicable without modification:
  NORFOLK ISLAND (AUSTRALIA); FAEROE ISLANDS, GREENLAND (DENMARK); FRENCH GUIANA, FRENCH POLYNESIA, GUADELOUPE, MARTINIQUE, NEW CALEDONIA, REUNION, ST. PIERRE AND MIQUELON (FRANCE); ARUBA, NETHERLANDS ANTILLES (NETHERLANDS); ANGUILLA, BERMUDA, BRITISH VIRGIN ISLANDS, FALKLAND ISLANDS (MALVINAS), GUERNSEY, ISLE OF MAN, JERSEY, MONTSERRAT (UNITED KINGDOM)
- Applicable with modifications:
  GIBRALTAR, HONG KONG, ST. HELENA (UNITED KINGDOM)

*

RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION, 1949 (No. 98)

States: ALGERIA, ANGOLA, ANTIGUA AND BARBUDA, ARGENTINA, AUSTRALIA, AUSTRIA, BAHAMAS, BANGLADESH, BARBADOS, BELGIUM, BELIZE, BENIN, BOLIVIA, BRAZIL, BULGARIA, BURKINA FASO, BYELORUSSIAN SSR, CAMEROON, CAPE VERDE, CENTRAL AFRICAN REPUBLIC, CHAD, COLOMBIA, COMOROS, COSTA RICA, COTE D'IVOIRE, CUBA, CYPRUS, CZECHOSLOVAKIA, DEMOCRATIC YEMEN, DENMARK, DJIBOUTI, DOMINICA, DOMINICAN REPUBLIC, ECUADOR, EGYPT, ETHIOPIA, FIJI, FINLAND, FRANCE, GABON, GERMAN DEMOCRATIC REPUBLIC, FEDERAL REPUBLIC OF GERMANY, GHANA, GREECE, GRENADA, GUATEMALA, GUINEA, GUINEA-BISSAU, GUYANA, HAITI, HONDURAS, HUNGARY, ICELAND, INDONESIA, IRAQ, IRELAND, ISRAEL, ITALY, JAMAICA, JAPAN, JORDAN, KENYA, LEBANON, LESOTHO, LIBERIA, LIBYAN ARAB JAMAHIRIYA, LUXEMBOURG, MALAWI, MALAYSIA, MALI, MALTA, MAURITIUS, MONGOLIA, MOROCCO, NICARAGUA, NIGER, NIGERIA, NORWAY, PAKISTAN, PANAMA, PAPUA NEW GUINEA, PARAGUAY, PERU, PHILIPPINES, POLAND, PORTUGAL, ROMANIA, RWANDA, SAINT LUCIA, SAN MARINO, SENEGAL, SIERRA LEONE, SINGAPORE, SPAIN, SRI LANKA, SUDAN, SWAZILAND, SWEDEN, SYRIAN ARAB REPUBLIC, TANZANIA (UNITED REPUBLIC OF), TOGO, TRINIDAD AND TOBAGO, TUNISIA, TURKEY, UGANDA, UKRAINIAN SSR, UNION OF SOVIET SOCIALIST REP., UNITED KINGDOM, URUGUAY, VENEZUELA, YEMEN, YUGOSLAVIA, ZAIRE

Non-Metropolitan Territories

- Applicable without modification:
  NORFOLK ISLAND (AUSTRALIA); FAEROE ISLANDS (DENMARK); FRENCH GUIANA, FRENCH POLYNESIA, GUADELOUPE, MARTINIQUE, NEW CALEDONIA, REUNION, ST. PIERRE AND MIQUELON (FRANCE); ANGUILLA, BERMUDA, BRITISH VIRGIN ISLANDS, FALKLAND ISLANDS (MALVINAS), GIBRALTAR, GUERNSEY, HONG KONG, ISLE OF MAN, JERSEY, MONTSERRAT, ST. HELENA (UNITED KINGDOM)

(b) RATIFICATIONS AND DECLARATIONS OF APPLICATION OF ADDITIONAL CONVENTIONS LISTED IN THE APPENDIX TO RECOMMENDATION No. 155

ACCOMMODATION OF CREWS (SUPPLEMENTARY PROVISIONS) CONVENTION, 1970 (No. 133)[1]

States: COTE D'IVOIRE, FINLAND, FRANCE, FEDERAL REPUBLIC OF GERMANY, GREECE, GUINEA, ISRAEL, ITALY, LIBERIA, NETHERLANDS, NEW ZEALAND, NIGERIA, NORWAY, POLAND, SWEDEN, UNITED KINGDOM, URUGUAY

Non-Metropolitan Territories

- Applicable without modification:
  FRENCH GUIANA, GUADELOUPE, MARTINIQUE, REUNION (FRANCE); BERMUDA, GIBRALTAR (UNITED KINGDOM)
- Applicable with modifications:
  HONG KONG (UNITED KINGDOM)

*

WORKERS' REPRESENTATIVES CONVENTION, 1971 (No. 135)

States: AUSTRIA, BARBADOS, BURKINA FASO, CAMEROON, COSTA RICA, COTE D'IVOIRE, CUBA, DENMARK, EGYPT, FINLAND, FRANCE, GABON, GERMAN DEMOCRATIC REPUBLIC, FEDERAL REPUBLIC OF GERMANY, GREECE, GUINEA, GUYANA, HUNGARY, IRAQ, ITALY, JORDAN, KENYA, LUXEMBOURG, MALTA, MEXICO, NETHERLANDS, NICARAGUA, NIGER, NORWAY, POLAND, PORTUGAL, ROMANIA, RWANDA, SENEGAL, SPAIN, SRI LANKA, SURINAME, SWEDEN, SYRIAN ARAB REPUBLIC, TANZANIA (UNITED REPUBLIC OF), UNITED KINGDOM, YEMEN, YUGOSLAVIA, ZAMBIA

Non-Metropolitan Territories

- Applicable without modification:
  FRENCH GUIANA, GUADELOUPE, MARTINIQUE, REUNION (FRANCE); ARUBA (NETHERLANDS); BERMUDA, GIBRALTAR, GUERNSEY (UNITED KINGDOM)

*

PAID VACATIONS (SEAFARERS) CONVENTION (REVISED), 1949 (No. 91)

States: ALGERIA, ANGOLA, BELGIUM, BRAZIL, CUBA, DJIBOUTI, GUINEA-BISSAU, ICELAND, ISRAEL, MAURITANIA, NORWAY, POLAND, TUNISIA, YUGOSLAVIA

Non-Metropolitan Territories

- Applicable without modification:
  FRENCH GUIANA, FRENCH POLYNESIA, GUADELOUPE, MARTINIQUE, NEW CALEDONIA, REUNION, ST. PIERRE AND MIQUELON (FRANCE)

SEAFARERS' ANNUAL LEAVE WITH PAY CONVENTION, 1976 (No. 146)

States: CAMEROON, FINLAND, FRANCE, IRAQ, ITALY, MOROCCO, NETHERLANDS, NICARAGUA, PORTUGAL, SPAIN, SWEDEN

[1] Convention No. 133 has not yet come into force.

Non-Metropolitan Territories

- Applicable without modification:
  FRENCH GUIANA, FRENCH POLYNESIA, GUADELOUPE, MARTINIQUE, NEW CALEDONIA, REUNION, ST. PIERRE AND MIQUELON (FRANCE); ARUBA (NETHERLANDS)

*

SOCIAL SECURITY (SEAFARERS) CONVENTION, 1946 (No. 70)[2]

States: ALGERIA, FRANCE, NETHERLANDS, PERU, POLAND, SPAIN, UNITED KINGDOM

Non-Metropolitan Territories

- Applicable without modification:
  FRENCH GUIANA, GUADELOUPE, MARTINIQUE, REUNION (FRANCE); ISLE OF MAN (UNITED KINGDOM)

[2] Convention No. 70 has not yet come into force.

APPENDIX VI

REPORTS RECEIVED

Member States	Convention No. 147		Recommendation No. 155
	Ratified	Art. 19	Art. 19
Afghanistan		–	–
Algeria		X	X
Angola		–	–
Antigua and Barbuda		–	–
Argentina		X	X
Australia		X	X
Austria		X	X
Bahamas		X	X
Bahrain		–	–
Bangladesh		X	X
Barbados		X	X
Belgium	R		X
Belize		X	X
Benin		X	X
Bolivia		–	–
Botswana		X	X
Brazil		–	–
Bulgaria		X	X
Burkina Faso		–	X
Burundi		X	X
Byelorussian SSR		X	X
Cameroon		X	X
Canada		X	X
Cape Verde		X	X
Central African Republic		–	–
Chad		X	X
Chile		X	X
China		X	X
Colombia		X	X
Comoros		–	–
Congo		–	–
Costa Rica	R		–
Côte d'Ivoire		X	X
Cuba		X	X
Cyprus		–	–
Czechoslovakia		X	X
Democratic Yemen		–	–
Denmark	R		X
Djibouti		–	–
Dominica		–	–

Member States	Convention No. 147		Recommendation No. 155
	Ratified	Art. 19	Art. 19
Dominican Republic		-	-
Ecuador		X	X
Egypt	R		X
El Salvador		-	-
Equatorial Guinea		-	-
Ethiopia		X	X
Fiji		-	-
Finland	R		X
France	R		X
Gabon		-	-
German Democratic Republic		X	X
Germany, Federal Republic of	R		X
Ghana		X	X
Greece	R		X
Grenada		-	-
Guatemala		X	X
Guinea		-	-
Guinea-Bissau		X	X
Guyana		-	-
Haiti		-	-
Honduras		X	X
Hungary		X	X
Iceland		X	X
India		X	X
Indonesia		X	X
Iran, Islamic Republic of		-	-
Iraq	R		X
Ireland		X	X
Israel		-	-
Italy	R		X
Jamaica		-	-
Japan	R		X
Jordan		-	-
Democratic Kampuchea		-	-
Kenya		X	-
Kuwait		-	-
Lao People's Democratic Republic		-	-
Lebanon		-	-
Lesotho		X	X
Liberia	R		-
Libyan Arab Jamahiriya		-	-
Luxembourg		X	X
Madagascar		-	-

Member States	Convention No. 147		Recommendation No. 155
	Ratified	Art. 19	Art. 19
Malawi		X	–
Malaysia		X	X
Mali		X	X
Malta		X	X
Mauritania		–	–
Mauritius		X	X
Mexico		X	X
Mongolia		–	–
Morocco	R		X
Mozambique		X	X
Myanmar		–	–
Namibia		–	–
Nepal		X	X
Netherlands	R		X
New Zealand		X	X
Nicaragua		–	–
Niger		–	–
Nigeria		X	X
Norway	R		X
Pakistan		X	X
Panama		X	X
Papua New Guinea		–	–
Paraguay		–	–
Peru		X	X
Philippines		X	X
Poland		X	X
Portugal	R		X
Qatar		X	X
Romania		X	X
Rwanda		X	X
Saint Lucia		–	–
San Marino		X	X
Sao Tome and Principe		–	–
Saudi Arabia		X	X
Senegal		–	–
Seychelles		–	–
Sierra Leone		–	–
Singapore		X	X
Solomon Islands		–	–
Somalia		–	–
Spain	R		X
Sri Lanka		X	X
Sudan		X	X
Suriname		X	X

Member States	Convention No. 147		Recommendation No. 155
	Ratified	Art. 19	Art. 19
Swaziland		-	-
Sweden	R		X
Switzerland		X	X
Syrian Arab Republic		-	-
Tanzania, United Republic of		X	X
Thailand		X	-
Togo		X	X
Trinidad and Tobago		X	X
Tunisia		X	X
Turkey		X	X
Uganda		X	X
Ukrainian SSR		X	X
USSR		X	X
United Arab Emirates		X	X
United Kingdom	R		X
United States	R		X
Uruguay		-	-
Venezuela		-	-
Yemen		-	-
Yugoslavia		-	-
Zaire		-	-
Zambia		X	X
Zimbabwe		X	X

In addition, a total of 20 reports have been received, under article 19 of the Constitution, in respect of the following non-metropolitan territories: United Kingdom (Anguilla, Bermuda, British Virgin Islands, Falkland Islands (Malvinas), Gibraltar, Guernsey, Hong-Kong, Jersey, Isle of Man, Montserrat, St. Helena).

R = Convention ratified

X = Reports requested and received

- = Reports requested but not received

Convention 147

CONVENTION CONCERNING MINIMUM STANDARDS IN MERCHANT SHIPS

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Sixty-second Session on 13 October 1976, and

Recalling the provisions of the Seafarers' Engagement (Foreign Vessels) Recommendation, 1958, and of the Social Conditions and Safety (Seafarers) Recommendation, 1958, and

Having decided upon the adoption of certain proposals with regard to substandard vessels, particularly those registered under flags of convenience, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-ninth day of October of the year one thousand nine hundred and seventy-six the following Convention, which may be cited as the Merchant Shipping (Minimum Standards) Convention, 1976:

Article 1

1. Except as otherwise provided in this Article, this Convention applies to every sea-going ship, whether publicly or privately owned, which is engaged in the transport of cargo or passengers for the purpose of trade or is employed for any other commercial purpose.

2. National laws or regulations shall determine when ships are to be regarded as sea-going ships for the purpose of this Convention.

3. This Convention applies to sea-going tugs.

4. This Convention does not apply to—

(a) ships primarily propelled by sail, whether or not they are fitted with auxiliary engines;

(b) ships engaged in fishing or in whaling or in similar pursuits;

(c) small vessels and vessels such as oil rigs and drilling platforms when not engaged in navigation, the decision as to which vessels are covered by this subparagraph to be taken by the competent authority in each country in consultation with the most representative organisations of shipowners and seafarers.

5. Nothing in this Convention shall be deemed to extend the scope of the Conventions referred to in the Appendix to this Convention or of the provisions contained therein.

Each Member which ratifies this Convention undertakes—

(a) to have laws or regulations laying down, for ships registered in its territory—

(i) safety standards, including standards of competency, hours of work and manning, so as to ensure the safety of life on board ship;

(ii) appropriate social security measures; and

(iii) shipboard conditions of employment and shipboard living arrangements, in so far as these, in the opinion of the Member, are not covered by collective agreements or laid down by competent courts in a manner equally binding on the shipowners and seafarers concerned;

and to satisfy itself that the provisions of such laws and regulations are substantially equivalent to the Conventions or Articles of Conventions referred to in the Appendix to this Convention, in so far as the Member is not otherwise bound to give effect to the Conventions in question;

(b) to exercise effective jurisdiction or control over ships which are registered in its territory in respect of—

(i) safety standards, including standards of competency, hours of work and manning, prescribed by national laws or regulations;

(ii) social security measures prescribed by national laws or regulations;

(iii) shipboard conditions of employment and shipboard living arrangements prescribed by national laws or regulations, or laid down by competent courts in a manner equally binding on the shipowners and seafarers concerned;

(c) to satisfy itself that measures for the effective control of other shipboard conditions of employment and living arrangements, where it has no effective jurisdiction, are agreed between shipowners or their organisations and seafarers' organisations constituted in accordance with the substantive provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948, and the Right to Organise and Collective Bargaining Convention, 1949;

(d) to ensure that—

(i) adequate procedures—subject to over-all supervision by the competent authority, after tripartite consultation amongst that authority and the representative organisations of shipowners and seafarers where appropriate—exist for the engagement of seafarers on ships registered in its territory and for the investigation of complaints arising in that connection;

(ii) adequate procedures—subject to over-all supervision by the competent authority, after tripartite consultation amongst that authority and the representative organisations of shipowners and seafarers where appropriate—exist for the investigation of any complaint made in connection with and, if possible, at the time of the engagement in its territory of seafarers of its own nationality on ships registered in a foreign country, and that such complaint as well as any complaint made in connection with and, if possible, at the time of the engagement in its territory of foreign seafarers on ships registered in a foreign country, is promptly reported by its competent authority to the competent authority of the country in which the ship is registered, with a copy to the Director-General of the International Labour Office;

(e) to ensure that seafarers employed on ships registered in its territory are properly qualified or trained for the duties for which they are engaged, due regard being had to the Vocational Training (Seafarers) Recommendation, 1970;

(f) to verify by inspection or other appropriate means that ships registered in its territory comply with applicable international labour Conventions in force which it has ratified, with the laws and regulations required by subparagraph *(a)* of this Article and, as may be appropriate under national law, with applicable collective agreements;

(g) to hold an official inquiry into any serious marine casualty involving ships registered in its territory, particularly those involving injury and/or loss of life, the final report of such inquiry normally to be made public.

Article 3

Any Member which has ratified this Convention shall, in so far as practicable, advise its nationals on the possible problems of signing on a ship registered in a State which has not ratified the Convention, until it is satisfied that standards equivalent to those fixed by this Convention are being applied. Measures taken by the ratifying State to this effect shall not be in contradiction with the principle of free movement of workers stipulated by the treaties to which the two States concerned may be parties.

Article 4

1. If a Member which has ratified this Convention and in whose port a ship calls in the normal course of its business or for operational reasons receives a complaint or obtains evidence that the ship does not conform to the standards of this Convention, after it has come into force, it may prepare a report addressed to the government of the country in which the ship is registered, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.

2. In taking such measures, the Member shall forthwith notify the nearest maritime, consular or diplomatic representative of the flag State and shall, if possible, have such representative present. It shall not unreasonably detain or delay the ship.

3. For the purpose of this Article, " complaint " means information submitted by a member of the crew, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to its crew.

Article 5

1. This Convention is open to the ratification of Members which—

(a) are parties to the International Convention for the Safety of Life at Sea, 1960, or the International Convention for the Safety of Life at Sea, 1974, or any Convention subsequently revising these Conventions; and

(b) are parties to the International Convention on Load Lines, 1966, or any Convention subsequently revising that Convention; and

(c) are parties to, or have implemented the provisions of, the Regulations for Preventing Collisions at Sea of 1960, or the Convention on the International Regulations for Preventing Collisions at Sea, 1972, or any Convention subsequently revising these international instruments.

2. This Convention is further open to the ratification of any Member which, on ratification, undertakes to fulfil the requirements to which ratification is made subject by paragraph 1 of this Article and which are not yet satisfied.

3. The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 6

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which there have been registered ratifications by at least ten Members with a total share in world shipping gross tonnage of 25 per cent.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 7

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 8

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When the conditions provided for in Article 6, paragraph 2, above have been fulfilled, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 9

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 10

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 11

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 7 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 12

The English and French versions of the text of this Convention are equally authoritative.

APPENDIX

Minimum Age Convention, 1973 (No. 138), or
Minimum Age (Sea) Convention (Revised), 1936 (No. 58), or
Minimum Age (Sea) Convention, 1920 (No. 7);

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), or
Sickness Insurance (Sea) Convention, 1936 (No. 56), or
Medical Care and Sickness Benefits Convention, 1969 (No. 130);

Medical Examination (Seafarers) Convention, 1946 (No. 73);

Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (Articles 4 and 7);

Accommodation of Crews Convention (Revised), 1949 (No. 92);

Food and Catering (Ships' Crews) Convention, 1946 (No. 68) (Article 5);

Officers' Competency Certificates Convention, 1936 (No. 53) (Articles 3 and 4)[1];

Seamen's Articles of Agreement Convention, 1926 (No. 22);

Repatriation of Seamen Convention, 1926 (No. 23);

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);

Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

[1] In cases where the established licensing system or certification structure of a State would be prejudiced by problems arising from strict adherence to the relevant standards of the Officers' Competency Certificates Convention, 1936, the principle of substantial equivalence shall be applied so that there will be no conflict with that State's established arrangements for certification.

Recommendation 155

RECOMMENDATION CONCERNING THE IMPROVEMENT OF STANDARDS IN MERCHANT SHIPS

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Sixty-second Session on 13 October 1976, and

Having decided upon the adoption of certain proposals with regard to sub-standard vessels, particularly those registered under flags of convenience, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Merchant Shipping (Minimum Standards) Convention, 1976,

adopts this twenty-ninth day of October of the year one thousand nine hundred and seventy-six the following Recommendation, which may be cited as the Merchant Shipping (Improvement of Standards) Recommendation, 1976:

1. (1) Except as otherwise provided in this Paragraph, this Recommendation applies to every sea-going ship, whether publicly or privately owned, which is engaged in the transport of cargo or passengers for the purpose of trade or is employed for any other commercial purpose.

(2) National laws or regulations should determine when ships are to be regarded as sea-going ships for the purpose of this Recommendation.

(3) This Recommendation applies to sea-going tugs.

(4) This Recommendation does not apply to—

(a) ships primarily propelled by sail, whether or not they are fitted with auxiliary engines;

(b) ships engaged in fishing or in whaling or in similar pursuits;

(c) small vessels and vessels such as oil-rigs and drilling platforms when not engaged in navigation, the decision as to which vessels are covered by this clause to be taken by the competent authority in each country in consultation with the most representative organisations of shipowners and seafarers.

(5) Nothing in this Recommendation should be deemed to extend the scope of the instruments referred to in the Appendix to the Merchant Shipping (Minimum Standards) Convention, 1976, or in the Appendix to this Recommendation.

2. Members should—

(a) ensure that the provisions of the laws and regulations provided for in Article 2, subparagraph *(a)*, of the Merchant Shipping (Minimum Standards) Convention, 1976, and

(b) satisfy themselves that such provisions of collective agreements as deal with shipboard conditions of employment and shipboard living arrangements,

are at least equivalent to the Conventions or Articles of Conventions referred to in the Appendix to the Merchant Shipping (Minimum Standards) Convention, 1976.

3. In addition, steps should be taken, by stages if necessary, with a view to such laws or regulations, or as appropriate collective agreements, containing provisions at least equivalent to the provisions of the instruments referred to in the Appendix to this Recommendation.

4. (1) Pending steps for such revision of the Merchant Shipping (Minimum Standards) Convention, 1976, as may become necessary in the light of changes in the circumstances and needs of merchant shipping, cognisance should be taken in the application of that Convention, after consultation with the most representative organisations of shipowners and seafarers, of any revision of individual Conventions referred to in the Appendix thereto that has come into force.

(2) Cognisance should be taken in the application of this Recommendation, after consultation with the most representative organisations of shipowners and seafarers, of any revision of individual Conventions referred to in the Appendix thereto that has come into force and of any revision of other instruments therein referred to that has been adopted.

APPENDIX

Officers' Competency Certificates Convention, 1936 (No. 53);
Food and Catering (Ships' Crews) Convention, 1946 (No. 68);
Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133);
Prevention of Accidents (Seafarers) Convention, 1970 (No. 134);
Workers' Representatives Convention, 1971 (No. 135);
Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91); or
Seafarers' Annual Leave Convention, 1976 (No. 146);
Social Security (Seafarers) Convention, 1946 (No. 70);
Vocational Training (Seafarers) Recommendation, 1970 (No. 137);
IMCO/ILO Document for Guidance, 1975.

APPENDIX VIII

STATUS OF IMO AND UN MARITIME INSTRUMENTS
REFERRED TO IN THE GENERAL SURVEY

Organisation	Instrument	Date of coming into force	Number of contracting States	Combined merchant fleets of contracting States as percentage of world gross tonnage
IMO	SOLAS 1960	26.5.65	22	(not given)
	SOLAS 1974	25.5.80	106	97
	SOLAS PROTOCOL 1978	1.5.81	70	90
	LOAD LINES 1966	21.7.68	118	98
	COLREG 1960	1.9.65	8	(not given)
	COLREG 1972	15.7.77	106	96
	STCW 1978	28.4.84	77	75

Organisation	Instrument	Date of coming into force	Number of ratifications, formal confirmations, accessions or successions
United Nations	CHS 1958	30.9.62	58
	LOS Convention 1982	*	42

* Will come into force 12 months after the deposit of the 60th instrument of ratification or accession.

Sources: IMO (Legal Affairs and External Relations Division) and UN (Treaty Section), respectively. Position on 31.12.89.

Price: 25 Swiss francs

ISBN 92-2-107060-3