

**International Labour Conference, 94th (Maritime) Session, 2006**

**Report II**

# **Report of the Director-General on developments in the maritime sector**

**International Labour Office Geneva**

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# Contents

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	<i>Page</i>
1. Introduction.....	1
2. Recent activities of the International Labour Organization in the maritime sector.....	5
2.1. The promotion and ratification of ILO maritime labour standards .....	5
2.2. Development of the proposed consolidated maritime labour Convention.....	7
2.3. Development and adoption of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185).....	10
3. Technical cooperation and outreach activities undertaken by the International Labour Office in connection with the promotion of maritime labour standards and decent work .....	15
3.1. Promoting decent work and technical support.....	15
3.2. Regional activities of the ILO .....	16
3.3. Cooperation with other organizations.....	17
4. Activities of the Organization in connection with current issues and concerns in the maritime sector .....	27
4.1. Claims for injury and death and abandonment of seafarers .....	27
4.2. Fair treatment of seafarers – Criminalization of seafarers.....	31
4.3. Security at sea including piracy, robbery and other threats.....	33
4.4. Equal opportunities and treatment policies .....	34
4.5. Attracting and retaining workers in the maritime sector.....	37
4.6. Seafarers' education, training and professional development .....	38
4.7. International registers .....	40
4.8. Wage benchmarks and standards .....	40
4.9. Occupational safety and health.....	42
5. The ILO's maritime programme – A partnership for the future .....	43
5.1. Follow-up to the adoption of the proposed consolidated maritime labour Convention .....	44
5.2. Technical cooperation and promotion of ratification of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185).....	47
5.3. Cooperation with other organizations.....	47
5.4. Ongoing promotion of the ILO Decent Work Agenda and related programmes.	48
5.5. Conclusion.....	49

# 1. Introduction

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1. This Report of the Director-General to the Maritime Session of the International Labour Conference deals with the activities of the Organization in the maritime sector and recent developments affecting that sector. It is submitted to the Conference in accordance with article 12 of the Standing Orders, as adjusted by the Note for Maritime Sessions of the International Labour Conference.

2. The Office recently published an important review of the labour situation in the maritime sector.<sup>1</sup> In 2001, the Office provided the Joint Maritime Commission with a full report on developments in the industry.<sup>2</sup> In 2003, the Office also undertook a review of gender issues in the maritime sector and published a report on the conclusions.<sup>3</sup> In addition to preparing these comprehensive studies, the Office has been actively engaged, since 2001, in a major exercise involving the consolidation of the great majority of the existing maritime labour standards into a single instrument – the proposed consolidated maritime labour Convention now before this Conference – as well as its ongoing work to promote the ratification and implementation of the existing maritime labour standards and the ILO’s Decent Work Agenda. The Office has also responded to the important issues that have affected the maritime sector as a result of increased concerns about security both on board ships and ashore. Other matters that have been of importance to the sector and of concern to the Office include: the increasing incidence of piracy; the criminalization of seafarers following marine pollution incidents; the expansion in number and tonnage of international registers; the elimination of discrimination, including gender discrimination, in the sector; the improvement of occupational safety and health on board ships; facilitation of technical cooperation and support of international social dialogue, including the important wage-setting work of the Joint Maritime Commission; and cooperative activities with concerned international and other organizations.

3. This 94th (Maritime) Session of the International Labour Conference marks a significant point in the ILO’s standard-setting activities in the maritime sector. This Conference, which aims to adopt a single Convention of unprecedented importance in the history of the ILO’s maritime activities, must also be viewed in the broader context of developments in the ILO’s approach to standard setting and to ensuring the relevance of its standards in this era of globalization of industries and workers. The adoption of a single comprehensive Convention reflects a new approach to standard setting in this sector, and one which aspires to respond to a range of contemporary concerns affecting this and other sectors. Previous Maritime Sessions of the Conference have nearly always

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<sup>1</sup> ILO: *The global seafarer: Living and working conditions in a globalized industry* (Geneva, 2004).

<sup>2</sup> ILO: *The impact on seafarers’ living and working conditions of changes in the structure of the shipping industry*, report for discussion at the 29th Session of the Joint Maritime Commission (Geneva, 2001).

<sup>3</sup> ILO: *Women seafarers: Global employment policies and practices* (Geneva, 2003).

adopted more than one instrument, both Conventions and Recommendations, addressing specific issues in the sector.<sup>4</sup> At this session, the Conference has before it a forward-looking maritime instrument which covers almost all the issues within the mandate of the ILO in this sector. Importantly, this proposed Convention explicitly recognizes the increasingly rapid changes affecting working conditions in this sector, and provides a mechanism for future updating of its more technical standards without the need to adopt a Convention with entirely new substantive provisions.

4. Although the proposed Convention has been described as reflecting a new approach, it is also important to view this and other developments in the historical context of long-standing ILO initiatives and aspirations. The idea of a comprehensive set of standards for the maritime sector is not an entirely new direction for the ILO. In 1920, the ILO adopted the National Seamen's Codes Recommendation, 1920 (No. 9). That Recommendation refers to the idea of establishing an international seamen's code, which would ensure that the seafarers of the world, "whether engaged on ships of their own or foreign countries, may have a better comprehension of their rights and obligations".

5. On this historic occasion of the consolidation of most of the existing maritime labour standards, it is also useful to be reminded of the special place of seafarers in the ILO's standard-setting machinery. In 1921, a Conference resolution stated that:

Seeing that misunderstanding may arise as to the position of those employed in the Mercantile Marine with regard to Conventions and Recommendations to be passed by International Labour Conferences, it is hereby resolved that, no such Conventions or Recommendations shall apply to those employed in the Mercantile Marine unless they have been passed as a special maritime question on the Agenda. All questions on maritime affairs put forward for consideration by Conferences should be previously considered by the Joint Maritime Commission of the International Labour Office.<sup>5</sup>

6. As a result of this, maritime questions were considered by special Maritime Sessions of the Conference, except on rare occasions, the last one being the general session which saw the adoption of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185).

7. The International Labour Conference has to date held nine Maritime Sessions. The current 94th Session will be the Tenth Maritime Session of the International Labour Conference. The general sessions have also had shipping items on their agendas on several occasions. To date, the Conference has adopted 40 Conventions, 29 Recommendations and one Protocol to a Convention of relevance to the maritime sector.<sup>6</sup>

8. It is important to note that the maritime activities of the ILO and the adoption of standards for the industry have always been driven by the Joint Maritime Commission

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<sup>4</sup> For example, at the last Maritime Session, in 1996, three Conventions, one Protocol and three Recommendations were adopted.

<sup>5</sup> Resolution proposed by the Maritime Commission, International Labour Conference, Third Session, Geneva, 1921.

<sup>6</sup> Some of the Conventions and Recommendations revised earlier Conventions. Some of the earlier instruments are not relevant as they have been replaced by more recent ones. There are also Conventions and Recommendations that have been adopted to address conditions in the fishing sector and to address labour standards in connection with dock work. The most recently adopted Convention concerning seafarers is the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185).

representing shipowners and seafarers, which has provided the Governing Body with the advice needed to guide the work of the Organization in this sector.<sup>7</sup>

9. The maritime work of the ILO has had a profound effect on the industry. The ratification record of some maritime Conventions may at first glance appear surprisingly low, considering the amount of standard-setting activity for the sector and the strong support these instruments receive from the social partners. This can partly be explained by the fact that a number of ILO member States do not have strong interests in the maritime industry. Irrespective of the ratification record, the relevant provisions in an ILO maritime labour Convention are in fact applied widely in the world fleet and also provide a reference point for collective bargaining in this sector. Perhaps the best examples are the continuing relevance of ILO requirements with regard to medical examinations for seafarers<sup>8</sup> and standards of accommodation on board ships.<sup>9</sup> In addition, the application of many maritime labour standards referred to in the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and its Protocol of 1996, has been further promoted and accepted through the inclusion of these two instruments in the regional port state control agreements.

10. This is why the objective of this consolidation exercise, which is discussed in more detail in the next section of this Report, is to have a globally accepted, widely ratified and fully implemented and enforced Convention. The minimum standards contained in the proposed Convention are largely based on accepted industry practice and set a minimum threshold for living and working conditions that are considered to constitute decent work in this sector.

11. This Report comprises four main interrelated sections and a concluding section (section 5). Three of these sections (2, 3 and 4) describe the recent activities of the ILO in the maritime sector with an emphasis on standard setting and the promotion of decent work, as well as a number of other labour-related issues considered important for the industry. In the light of these issues, and considering the recent activities of the Office, section 5 of this Report outlines a number of strategic activities that could be fruitfully pursued by the Organization to further promote the Decent Work Agenda for this sector after the adoption of the proposed Convention. In particular, the Report tends to show the need for increased technical cooperation activities on the part of the Office in order to provide assistance to Members which may, as yet, lack the capacity to effectively implement and enforce key maritime labour standards, and in particular to meet their obligations under the proposed consolidated maritime labour Convention and the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185). In order to provide an effective response to the effects of the globalization of the international economic system, international labour standards must be equally "globalized" and must, accordingly, achieve as close to universal adoption and implementation as is possible.

12. The ideas contained in this Report can be used as a basis on which the Conference may provide guidance on the future activities of the Organization in the maritime sector.

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<sup>7</sup> The Joint Maritime Commission has held 30 sessions since its First Session in 1920.

<sup>8</sup> Medical Examination (Seafarers) Convention, 1946 (No. 73).

<sup>9</sup> Accommodation of Crews Convention (Revised), 1949 (No. 92), and Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133).

## **2. Recent activities of the International Labour Organization in the maritime sector**

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13. Since the last Maritime Session of the Conference (1996), the ILO has been actively engaged in social dialogue and intensive consultation activities related to the review and consolidation of the majority of existing maritime labour standards. The result, the proposed consolidated maritime labour Convention, is the main agenda item for this session of the Conference. It has placed a significant demand on the Office's resources.

14. The impact of heightened security concerns on a global level since 2001 has had a significant impact on the maritime sector in general and on the working conditions of seafarers in particular. The Organization responded to this concern in cooperation with other concerned organizations, in particular the International Maritime Organization (IMO), and rapidly developed a revised Convention, the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), which sought to respond to security concerns and at the same time to alleviate the negative impact on seafarers' ability to obtain employment and exercise the welfare-related right to shore leave. This Convention, which entered into force in 2005, also required extensive consultation and support related to the development of technical standards and the testing of a relatively new technology (biometrics).

15. In addition to these major standard-setting activities, the Office continued its ongoing activities to promote the ratification and implementation of the existing maritime labour standards and to promote improvements in conditions of work for seafarers, especially in connection with equality and occupational safety and health practices. It is also engaging in extensive outreach activities involving training and technical cooperation.

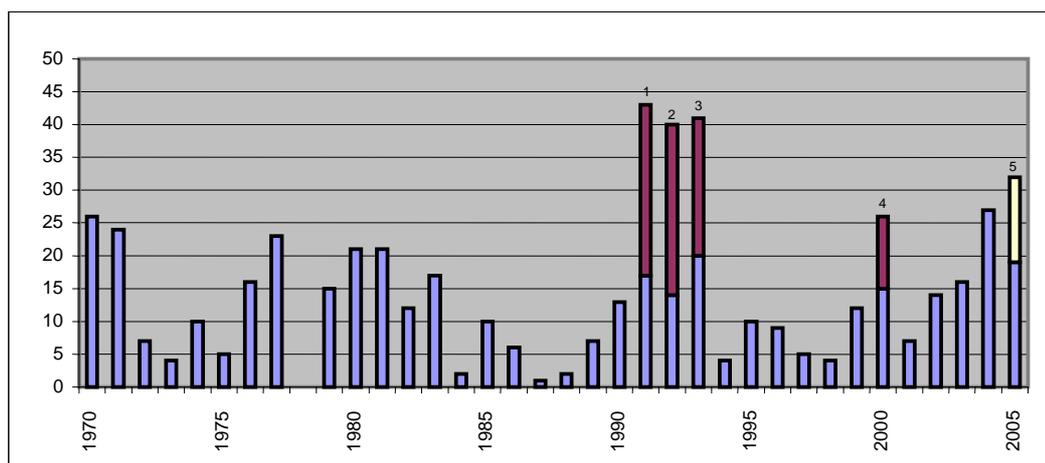
### **2.1. The promotion and ratification of ILO maritime labour standards**

16. Since the 1970s, the annual number of ratifications for the ILO's maritime instruments has varied considerably, as figure 1 shows. A total of 429 ratifications of maritime Conventions were received between 1 January 1970 and 30 July 2005. This represents an annual average of 12.4 ratifications per year. Actual ratification rates are, however, very unevenly distributed. Peaks were recorded in 1978, 1991, 1992 and 1993, as well as in 2000 and 2004. The estimated ratification rate for 2005 is also expected to peak, since the data used refer only to the first seven months of that year.

17. Most of these peaks can be explained. The high ratification rates from 1991 to 1993 result from the advent of new States following the fall of the Berlin Wall (1991: Croatia and The former Yugoslav Republic of Macedonia; 1992: Azerbaijan, Kyrgyzstan

and Slovenia; 1993: Tajikistan and Bosnia and Herzegovina). If these ratifications were not recorded, ratification rates for the years 1991, 1992 and 1993 would have been much lower (17, 14 and 20 respectively, instead of 43, 40 and 41). The second peak in 2000 stems from ratifications by a single member State (11 ratifications of maritime Conventions by Serbia and Montenegro). Without these, only 15 ratifications would have been reported for 2000. These exceptional ratifications by a few member States are represented in a different shade.

Figure 1. Annual ratification rates of maritime labour standards between 1970 and 2005



1 to 3: Exceptionally high ratification rates from 1991 to 1993 result from the advent of new States following the fall of the Berlin Wall (1991: Croatia and The former Yugoslav Republic of Macedonia; 1992: Azerbaijan, Kyrgyzstan and Slovenia; 1993: Tajikistan and Bosnia and Herzegovina).

4: The exceptionally high ratification rate achieved in 2000 resulted from 11 ratifications by a single Member (Serbia and Montenegro).

5: Estimated ratifications based on data for first seven months of 2005.

18. If these atypical peaks were excluded from the analysis by using corrected figures, a cyclic pattern could be observed. This shows that higher numbers of ratifications are usually registered following Maritime Sessions of the Conference, such as the 1976 and 1987 sessions. Five to seven years after such events, ratifications can be seen to decrease.

19. Since the last Maritime Session of the Conference took place in 1996, a slowing down of ratification activity might have been expected between 2000 and 2005. Instead, however, a steady increase in ratifications has been observed. It is the Office's understanding that this constant increase in ratification rates is directly linked to the intensification of the work undertaken in the maritime sector. It suggests that the approach taken by the Office to considerably increase "ownership" of member States in the creation of maritime labour standards has not only contributed to the proposed new instrument, but has also raised awareness and reawakened interest in improving working and living conditions in the shipping industry. The Office's programme on decent work in the maritime industry played a major role in improving the promotion of maritime labour standards and contributed to many of these ratifications.

## 2.2. Development of the proposed consolidated maritime labour Convention

20. Before discussing the development of the proposed Convention, it is useful to consider it in the broader context of developments in the ILO's approach to standard setting and the Decent Work Agenda.

21. One approach to achieving improvements at a global level in the working and living conditions of all workers might be to adopt new labour standards in a given sector, which would seek to respond to the diversity of national situations.<sup>1</sup> However, any new standards should at the very least respond to the primary role of the ILO today – which is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. This overall goal was endorsed by the International Labour Conference within the context of the global economy. “Decent work” is considered relevant for all countries, whether developed, developing or transition economies. It is equally applicable to all sectors of the global economy – not least the maritime industry.

22. Attention has already been drawn to the importance of enhancing the ILO's standards-related work through a number of actions in this area.<sup>2</sup>

23. These actions include:

- preparing the ground more thoroughly for new standards;
- exploring new methods of standard setting;
- engaging in deeper analysis of existing standards, their synergy, lacunae, and impact on various groups;
- accelerating the revision of outdated instruments to build on progress already made, and promoting priority standards as problem-solving tools;
- enhancing the impact of supervision of standards; and
- reasserting the role of ILO standards in the broader world context.

24. The development of the proposed Convention has followed these broad ILO approaches and objectives.

25. The 29th Session of the Joint Maritime Commission (2001) marked the beginning of the historic effort to prepare the proposed Convention.

26. The Office had prepared a report<sup>3</sup> as the basis for the Commission's discussions. This 2001 report highlighted, inter alia, changes in ownership, the financing and management of shipping fleets, new forms of registers, dramatic shifts in the origin of labour supply, the growth of multinational and multicultural crews, and developments in the turnaround times of ships coupled with reduced crewing levels. These structural changes have all had an impact in various ways on the living and working conditions of seafarers. Shipping had long been regarded as a global industry by virtue of its international nature. However, in addition to the structural changes which have occurred

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<sup>1</sup> See, for example, ILO: *Decent work*, Report of the Director-General, International Labour Conference, 87th Session, Geneva, 1999, p. 17.

<sup>2</sup> *ibid.*

<sup>3</sup> ILO: *The impact on seafarers' living and working conditions of changes in the structure of the shipping industry*, report for the 29th Session of the Joint Maritime Commission, Geneva, 22-26 January 2001.

in the industry in the last quarter of the twentieth century and to which that report refers, the emergence of a global labour market for seafarers has effectively transformed the shipping industry, making it the world's first genuinely global industry.

27. The 2001 report drew attention to the weakening of national regulatory regimes with the accelerated development of international registers. The connection between the flag State and the seafarers on its ships had been further weakened with the increasing variety of forms of ownership, management and control of ships and large-scale recruitment in a number of labour-supplying countries for service on foreign-flag ships. The lack of capacity in some countries to regulate ships under their flags, coupled with increased international competition and the requirement for mandatory compliance with technical standards for other aspects of ships' operations, meant that labour conditions became a major point of competitive advantage for some ship operators. The report recalled the need for changes in the industry to break the vicious circle of low freight rates, extremely poor conditions and standards, weak national regulatory mechanisms and the general reluctance to enforce internationally applicable labour standards. It recognized that seafarers on board many ships, particularly those of flag States with high standards, enjoyed decent working and living conditions. Conditions in certain parts of the industry, however, were a matter of concern.

28. The Joint Maritime Commission considered the 2001 report and decided that it required a global response, an international regulatory framework – global standards applicable to the entire industry. It called for standards which would ensure decent shipping fleets, decent safety standards and decent social standards for all seafarers, as called for in the Report, *Decent work*.<sup>4</sup>

29. The advice to the ILO on how to “globalize” labour standards took the form of a resolution by the Joint Maritime Commission setting out the so-called “Geneva Accord” of 2001. This new approach was endorsed by the Governing Body at its 280th Session.<sup>5</sup> Rather than developing entirely new standards, the Commission and the Governing Body sought to implement the Decent Work Agenda by consolidating and updating the majority of existing maritime Conventions in a new framework Convention.

30. If the proposed consolidated maritime labour Convention is adopted by the Conference, it will result in one major flagship instrument becoming a “one-stop” point of reference on labour standards for the maritime industry. It will represent a clear and comprehensive codification of responsibilities and rights with regard to labour and social matters in the maritime sector, and will be an effective global response for a truly global industry.

31. As can be seen in more detail in Report I(1A) of the Office to this Conference,<sup>6</sup> the proposed Convention is the result of an intensive tripartite consultation and negotiation process carried out between 2001 and 2005. It was carried out under the auspices of a High-level Tripartite Working Group established by the Governing Body in 2001. At its last meeting in January 2004, this Working Group, which was originally expected to be a fairly small body, attracted more than 126 delegates, including 45 governments. The Preparatory Technical Maritime Conference in September 2004 attracted over 500

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<sup>4</sup> ILO: *Decent work*, Report of the Director-General, op. cit.

<sup>5</sup> ILO: Governing Body doc. GB.280/5(Corr.).

<sup>6</sup> ILO: *Adoption of an instrument to consolidate maritime labour standards*, Report I(1A), International Labour Conference, 94th (Maritime) Session, Geneva, 2006.

delegates. This indicates both considerable commitment to the process and interest in the topic.

32. The preparation of the proposed Convention was also influenced by a Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers, which was held in Geneva in 2002. That Meeting, which followed shortly after the Joint Maritime Commission's advice to the Governing Body of the ILO with respect to the need for an international regulatory framework, resulted in important conclusions and suggestions for a way forward to address these concerns. These were set out in the "Consensual statement of the Meeting of Experts".<sup>7</sup> The text of that statement serves as a reference for many of the responsibilities of member States as reflected in the proposed Convention.

33. The process of developing this Convention has differed from the more usual process of drafting international labour instruments. Although the Office has remained responsible for the overall text, both the underlying structural approach and principles and much of the text, particularly in areas such as social security protection or enforcement, which can pose a challenge to the development of global standards, are the result of proposals from the governments and the social partners. Quite apart from its impact on the maritime industry and on the conditions of work of seafarers, the development of this Convention will serve as an excellent example – as proof that tripartism can provide a way forward in developing solutions to some of the more difficult, often seemingly intractable, issues that face this and other sectors in the context of globalization.

34. The Office's report to this Conference also points out that the proposed Convention contains a number of innovations as far as ILO standards are concerned. However, it is also noted that the underlying approach, based on approaches that have been successful in other widely accepted international Conventions for this sector, is based on the idea of "standing firm" on rights while providing for some flexibility as to national methods of implementation. Such an approach seems necessary in order to address the diverse legal and economic situations of ILO Members. There is broad consensus on the rights at stake and, in particular, on the right to decent work; however there may be many equally acceptable paths that lead to this goal. In addition, as a result of this Convention, we will also see an important innovation in the elaboration of what is believed will be an effective enforcement and compliance system that will draw on the best of existing practices in the maritime sector while adding further elements related to the ILO's well-established supervisory system and complaints mechanism. This is a major step forward in ensuring better protection of workers, particularly in the context of workers employed in transnational and global sectors. At the same time, the approach set out in the proposed Convention remains well within the bounds of existing international law and practice. The development of this system and, it is to be hoped, of the related ILO infrastructure, will be a major accomplishment and may provide the impetus and support for equally progressive approaches in other sectors.

35. Some specific suggestions for follow-up activities on the part of the Organization, consequent upon the adoption of the Convention, are outlined in section 5 of this Report. Although budget concerns are always present, we should not let this stand in the way of achieving the objectives of the proposed Convention. We should keep in mind the primary objective, as identified by the Joint Maritime Commission, which is to have

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<sup>7</sup> Final report (MEWLCS/2002/8), Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers, Geneva, 6-8 May 2002.

global standards that are applicable to the entire industry and will contribute to the achievement of decent employment and social conditions for all seafarers. This is entirely consistent with the ILO's Decent Work Agenda. Although the Convention has provisions which, if adopted, can ensure broad applicability of its standards, even without ratification, that objective can be achieved only if the number of ratifications is high enough to make the Convention both a "global" and a globally enforced instrument. All member States should be urged to move towards ratification of the Convention and then towards effective implementation.

36. However, it is also important to understand that the proposed Convention, even before its adoption, has already had a significant impact on this sector simply because of the extremely high level of interest and participation in the process of developing the proposed text. The problems discussed and the solutions developed on a tripartite basis have improved awareness of maritime labour issues and have influenced both the ILO and other organizations. This process has already had an effect at the national level, as a number of Members have started to take action to ensure that they are well placed to ratify the Convention once it is adopted.

### 2.3. Development and adoption of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)

37. One of the issues considered crucial for improving maritime security is that of ensuring that seafarers have documents which allow their "positive and verifiable identification".<sup>8</sup> Many countries will be requiring such identification before they are prepared to grant special facilities enabling seafarers to have shore leave and to engage in transit-related activities necessary for their work and well-being. Following the events of 11 September 2001, the IMO and the ILO took steps towards improved on-board maritime security. The IMO adopted amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS Convention), including the International Ship and Port Facility Security (ISPS) Code. This was the background to the ILO's decision to revise the Seafarers' Identity Documents Convention, 1958 (No. 108), which concerns minimum standards for seafarers' identity documents, by introducing, inter alia, a biometric identifier to facilitate confirmation of the seafarer's identity and to help improve security in the production and issue of the new document by the seafarer's State of nationality or permanent residency. The Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), adopted by the Conference at its 91st Session in June 2003, entered into force on 9 February 2005. It is expected that in due course, more than 100 member States will ratify the Convention, including all the major providers of labour to the maritime industry.<sup>9</sup>

38. As the Conference will recall, Convention No. 185 provides for seafarers' identity documents (SIDs) to facilitate the movement of seafarers, but not to replace a passport. It puts in place a comprehensive security system that enables the first global implementation of biometric identification technology on a mandatory basis, thus allowing positive identification of the holder of the document. It introduces a viable

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<sup>8</sup> See, for example, ILO: *Improved security of seafarers' identification*, Report VII(1), International Labour Conference, 91st Session, Geneva, 2003, Introduction.

<sup>9</sup> As of July 2005, four countries had already ratified the Convention – namely France, Jordan, Nigeria and Hungary. Many more, including the most important sources of maritime labour (Philippines, Indonesia and India), have informed the Office that they are taking measures to ratify the Convention.

system for meeting contemporary security concerns while facilitating shipping and recognizing the needs of seafarers. The Convention requires each ratifying country to put in place a comprehensive security regime. This covers not only the production by the national authorities of a modern identity document embodying security features, but also the maintenance of the national databases relating to the documents issued. In addition, the processes and procedures for the production, personalization and issue of these documents, including quality control of the entire national system, are subject to international oversight (Article 5 and Annex III of the Convention).

39. The Conference, in Convention No. 185 itself and in resolutions which it adopted at the same time, left three tasks to be performed before the Convention could be fully operational:

- (a) The first task was conferred by the Conference resolution concerning the development of the global interoperable biometric.<sup>10</sup> It requested the Organization to arrange for the development “by the appropriate institutions” of a technical standard containing the specifications for the biometric template required by the Convention. This was to be based on a fingerprint printed as numbers in a bar code. As there was no other institution in a position to adopt such a standard within the “fast track” time frame required for the implementation of the Convention, the Office itself prepared a draft for such a standard, with the assistance of experts commissioned by it, as well as experts from the International Organization for Standardization (ISO) and the International Civil Aviation Organization (ICAO). The resulting document was submitted to the Governing Body at its 289th Session (March 2004) as a matter of urgency. It was accompanied by draft technical reports which called for a decision on the selection of the type of fingerprint biometric template, i.e. either “pattern-based” or “minutiae-based”.<sup>11</sup> After lengthy discussion, the Governing Body selected the “minutiae-based” method (ILO-SID 0002), embodying the standard for the fingerprint template required under the Convention. Under this standard, the biometric template of two fingerprints will be contained in a PDF417 bar code to be printed on the SID. The technical documents were prepared in such a way as to facilitate the endorsement by the ISO of a future standard on the subject.
- (b) Another task, relating to the international oversight mentioned above, was given to the Governing Body by the Conference resolution concerning the establishment of a list of member States complying with the Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185).<sup>12</sup> Article 5, paragraphs 6 to 8, of the Convention refers to arrangements to be made by the Governing Body for the establishment of a list of Members which fully meet the minimum requirements of the Convention concerning their national processes and procedures for the issue of seafarers’ identity documents. These arrangements were adopted by the Governing Body at its 292nd Session (March 2005).<sup>13</sup> Their purpose is to ensure that there is a reliable and up-to-date list of Members that are found to meet the minimum requirements concerned, and they include procedures safeguarding the position of

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<sup>10</sup> ILO: *Provisional Record*, International Labour Conference, 91st Session, Geneva, 2003, No. 20, Part II, p. 109.

<sup>11</sup> ILO: Governing Body doc. GB.289/7.

<sup>12</sup> ILO: *Provisional Record*, op. cit., p. 110.

<sup>13</sup> ILO: Governing Body doc. GB.292/LILS/11.

Members in the case of disputes concerning their inclusion on the list, which also take account of needs for technical cooperation referred to below.

- (c) Finally, the need for technical cooperation, particularly important in the context of this Convention, was stressed in the Conference resolution concerning technical cooperation relating to seafarers' identity documents.<sup>14</sup> During the Governing Body's 289th Session (March 2004), many countries emphasized that the implementation without delay of the Convention should be accompanied by technical assistance, and urged industrialized countries to provide that assistance.<sup>15</sup> Indeed the compromise in favour of a minutiae-based biometric was made possible by the commitment of industrialized nations to technical cooperation. The Governing Body endorsed the need to provide technical assistance to developing countries, in particular to enable them to ratify and implement the Convention and the biometric standard adopted. In April 2005, taking advantage of a major maritime meeting,<sup>16</sup> the Office organized demonstrations by vendors of systems complying with the requirements of the Convention in terms of interoperability. Towards the end of the same Meeting, the Office also organized a donors' meeting to draw attention to the needs of many member States for technical cooperation.

40. The Conference resolution not only referred to cooperation measures by which countries with advanced technology and processes would assist Members that are less advanced in those areas, but also urged Members to share their technology, expertise and resources, where appropriate. The Office has been investigating the kinds of cooperation which could avoid duplication of effort and expense in this respect among Members implementing the Convention. In this context, the Office has taken concrete action in the area of the global interoperable standard referred to above. It has tested biometric products submitted by potential vendors or integrators of biometric systems for conformity with the standard and for effective performance, as well as for interoperability with other products or systems, with a view to ensuring that the bar code for a biometric template of a seafarer's fingerprint, produced in accordance with the standard, will be correctly recognized as matching the fingerprint or (where applicable) as not matching it, when the systems complying with the standard are used. The main test carried out so far took place in 2004<sup>17</sup> in a real-life situation on a cruise ship, with the cooperation of the International Shipping Federation (ISF) and the crew of the ship concerned, and assistance from the International Transportation Workers' Federation (ITF). A follow-up test was carried out in early 2005,<sup>18</sup> thanks to support from the United States-based National Biometric Security Project and expertise provided by ISO experts. Three biometric products have so far been found to meet the required standards.<sup>19</sup> Future tests of this kind are planned in cooperation with an ISO subcommittee. To help ensure the development and acceptance of the new biometric system, the Office will also continue to work closely with the ICAO and the ISO on the technical aspects of the Convention.

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<sup>14</sup> ILO: *Provisional Record*, op. cit., p. 108.

<sup>15</sup> ILO: Governing Body doc. GB.289/PV, pp. I/12 and VI/7.

<sup>16</sup> Tripartite Intersessional Meeting on the Follow-up to the Preparatory Technical Maritime Conference, Geneva, 21-27 April 2005.

<sup>17</sup> <http://www.ilo.org/public/english/dialogue/sector/papers/maritime/sid-test-report1.pdf> .

<sup>18</sup> <http://www.ilo.org/public/english/dialogue/sector/papers/maritime/sid-test-report2.pdf> .

<sup>19</sup> <http://www.ilo.org/public/english/dialogue/sector/papers/maritime/sid-vendors.pdf> .

41. It will be recalled that the Conference also adopted, at the same time as the Convention, a resolution concerning decent work for seafarers.<sup>20</sup> Among other things, it requested the Director-General to take all possible measures to promote decent work for seafarers, including access to shore leave and facilitation of transit.

42. Since then, many countries have tightened the conditions of entry into their territory. There have been numerous reports of countries requiring seafarers, sometimes of certain nationalities only, to have visas for shore leave and transit for the purpose of joining ship or repatriation. Some States have changed their policies, abolishing the long-established practice of issuing crew list visas. Consequently, seafarers from some countries have experienced serious difficulties in taking up employment owing to delays in acquiring the necessary visas. Shipowners have also faced difficulties, as ships have been delayed upon arrival in certain countries. In certain labour-supplying countries, substantial numbers of seafarers are reported to have lost their jobs as shipowners turn to other sources of maritime labour. Some island States have substantial numbers of seafarers who work on foreign-flag vessels and whose earnings account for a high proportion of national income. The loss of substantial numbers of jobs in such cases would have disastrous consequences not only for the seafarers but also for the economies of those States. Shipowners prefer to employ seafarers who are in possession of all the necessary documentation, including acceptable identity documents and appropriate visas to allow shore leave and facilitate joining and leaving of vessels. If there are delays in obtaining such documentation in some countries, shipowners may well be tempted to turn to alternative sources of maritime labour.

43. In accordance with the resolution, the Office has written to member States urging them to take account of the “human element”, the need to afford special protection and facilitation to seafarers and the critical importance of shore leave, when implementing maritime security measures. The Office has taken every opportunity to remind member States of the need to continue to facilitate access to shore leave and transit for seafarers. Whenever special difficulties have been reported regarding a member State, the Office has written to that State in the spirit of the resolution. In many cases, discussions have been held with national authorities to urge them to apply facilitated procedures to seafarers in accordance with the provisions of Convention No. 185.

44. It is expected that difficulties will continue to arise in some cases. Member States are urged to ratify Convention No. 185, to issue the relevant identity documents to seafarers and to provide seafarers with the necessary access to shore leave and transit facilities. This is important for seafarers in terms of their rights and welfare, but also for shipowners in ensuring that world trade is not affected by unnecessary delays.

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<sup>20</sup> ILO: *Provisional Record*, op. cit., p. 107.

### **3. Technical cooperation and outreach activities undertaken by the International Labour Office in connection with the promotion of maritime labour standards and decent work**

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45. Technical cooperation and outreach activities are among the means of action through which the ILO is able to support the implementation and ratification of Conventions and other aspects of the ILO's Decent Work Agenda. These activities have two major sources of funding: the ILO itself, through the regular programme and budget; and external donors. Funding from donors may come in several forms, including financial support for specific activities (such as meetings of experts, seminars and missions), funding for additional staff to supplement the ILO's existing staff, or both.

#### **3.1. Promoting decent work and technical support**

46. The promotion of the ILO's Decent Work Agenda in the shipping industry has been enhanced in the past five years by the support of donors, in particular the International Transport Workers' Federation (ITF) and the Government of France (Ministry of Transport). Since 2000, the ITF has supported the International Programme for the Promotion of Decent Work in the Maritime Industry. The Government of France has supported a project entitled "Travail décent dans le secteur maritime", which complements this programme. The Government of the Republic of Korea has continued to support the ILO maritime programme by seconding staff for a period of three years.

47. The following are examples of the kinds of technical cooperation activities, using both internal and external funds, undertaken by the ILO in recent years.

##### **Regional and national seminars and workshops**

48. To promote existing maritime labour standards as well as enhancing regional discussion of the development of the proposed maritime labour Convention, the ILO held regional maritime meetings in the Asia-Pacific and the Americas regions. A regional maritime symposium for the African region is planned for 2006.

49. National seminars and workshops on the promotion and implementation of ILO maritime labour standards have been held in Bulgaria, Egypt, Malta, the Republic of Korea, and the Russian Federation.

##### **Training programmes and materials**

50. The ILO has participated in training programmes or other events for ship inspectors in the Paris MOU (Memorandum of Understanding) region, the Tokyo MOU region, the Russian Federation, Singapore and Ukraine.

51. Spain has also sponsored a number of training courses, either for government officials, employers, workers, or officials from all three groups, at the ILO's International Training Centre in Turin.

#### International meetings

52. The Government of France also provided the necessary financial support to allow the High-level Tripartite Working Group on Maritime Labour Standards to hold an additional fourth meeting on the development of the proposed Convention, in Nantes, in January 2004. The Government also provided resources for an associate expert for two years.

53. The Government of Denmark provided support for a project that enabled the ILO to prepare and hold the Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers, in Geneva, in May 2002, referred to in section 4.7 of this Report.

#### Implementation of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)

54. The development and promotion of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) has been enhanced by financial assistance from the Governments of the United Kingdom and the United States.

#### Other activities

55. In parallel, the following supporting educational, training and promotional products have been developed. These include web sites and CD ROM-based training and promotional material. The training material has been translated into many languages, often with funds provided from external donors. A very successful video/CD ROM-based film entitled "The Vital Link" produced by the ILO was widely distributed and has greatly contributed to bringing the maritime work of the ILO to the international media.

### 3.2. Regional activities of the ILO

56. The ILO has sought to promote the ratification and implementation of its maritime labour standards and decent work objectives in the maritime sector at the regional as well as national levels. As noted above, many of its activities, for example regional seminars and workshops, are aimed at several countries at one time. Cooperation between the ILO and the various port state control organizations (for example, the Paris, Tokyo and Caribbean MOUs) is another form of regional cooperation.

57. These and other regional activities are carried out in collaboration with the ILO's field offices. In recent years, an effort has been made to draw upon the ILO's field officials, for example its international labour standards specialists, to assist in promoting maritime Conventions and Recommendations. Of particular importance since 2003 has been the support given by the field offices in promoting the ratification and implementation of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185). Such internal ILO cooperation needs to continue with the promotion of the proposed consolidated maritime labour Convention.

58. The Office is also seeking new ways of working with regional organizations in the implementation of the Organization's Decent Work Agenda in the maritime sector. Increased cooperation with regional organizations, such as the European Union, will be

an important means of achieving the Organization's objectives. A stronger presence in regional organizations and regional maritime events and meetings is required.

### 3.3. Cooperation with other organizations

#### 3.3.1. Cooperation with the United Nations Division for Ocean Affairs and the Law of the Sea (DOALOS)

59. The Office actively cooperates with and consults the United Nations Division for Ocean Affairs and the Law of the Sea (DOALOS). In particular it provides DOALOS with information on the ILO's maritime activities, which is used in the preparation of the annual report *Oceans and law of the sea*, report of the Secretary-General to the General Assembly. In addition, the Office has worked with other international agencies as part of a Consultative Group on Flag State Implementation, an inter-agency task force formed by the Secretary-General in response to the failures of some ships and vessels to conform to international requirements regarding ship safety, labour conditions, fisheries conservation and protection of the marine environment. The report of the Consultative Group was considered by the General Assembly in 2004.<sup>1</sup> On 7-8 July 2005, the Office participated in an ad hoc Consultative Meeting of Senior Representatives of International Organizations, organized by the IMO. This Meeting was called in response to the United Nations General Assembly resolutions<sup>2</sup> requesting that the IMO and other competent organizations "study, examine and clarify the role of the 'genuine link' in relation to the duty of the flag States to exercise effective control over ships flying their flags, including fishing vessels".

#### 3.3.2. Cooperation with international organizations

##### International Maritime Organization (IMO)

60. The maritime activities of the ILO and the IMO are complementary. Some of these activities have been developed on a parallel but separate basis. One example is the setting of standards for seafarers' training, competencies and certification. The ILO has adopted Conventions such as the Officers' Competency Certificates Convention, 1936 (No. 53), the Certification of Ships' Cooks Convention, 1946 (No. 69), and the Certification of Able Seamen Convention, 1946 (No. 74). In 1978, the IMO adopted the International Convention on Standards of Training, Certification and Watchkeeping (STCW), 1978, amended in 1995. The IMO/ILO Joint Committee on Training has periodically met to discuss training issues of interest to both organizations.

61. The adoption of the proposed Convention will create an opportunity for the development of new competencies for able seafarers previously covered by the Certification of Able Seamen Convention, 1946 (No. 74), within the framework of the IMO's regulations.

62. Other activities fall into categories not fully dealt with by permanent committees or subcommittees at IMO level, or by the ILO Governing Body, and are subject to common work between both agencies, usually in the form of Joint IMO/ILO Ad Hoc Expert Working Groups, such as the ongoing Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and

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<sup>1</sup> See United Nations: *Oceans and the law of the sea*, report of the Secretary-General, General Assembly doc. A/59/63, Fifty-ninth session, 2004.

<sup>2</sup> United Nations: Resolutions, docs. Nos. A/Res/58/240, para. 28; A/Res/58/14, para. 22; A/Res/59/24, para. 41.

Abandonment of Seafarers, and the Joint IMO/ILO Ad Hoc Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident.

63. Both agencies keep one another informed of their respective current activities, in particular by attending, as far as feasible, one another's important meetings. For example, the ILO has sought to attend as regularly as possible the Maritime Safety Committee and the Legal Committee of the IMO, as well as certain subcommittees such as the Standards of Training and Watchkeeping (STW) Subcommittee. The IMO has been present at certain ILO meetings, such as those concerning the preparation of the most recent maritime labour instruments, namely the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and the proposed consolidated maritime labour Convention.

64. In the interest of the entire industry, it is important that both agencies continue to work in close cooperation in a number of fields where maritime labour, safety and environmental issues are intertwined.

### World Health Organization

65. The ILO works closely with the World Health Organization (WHO) on issues relating to the health of seafarers, often through the Joint ILO/WHO Committee on the Health of Seafarers. Since the Committee's last meeting in 1993,<sup>3</sup> the two Organizations held, in 1997, the ILO/WHO Consultation on Guidelines for Conducting Pre-Sea and Periodic Medical Fitness Examinations for Seafarers.<sup>4</sup>

66. The last three years have seen renewed cooperation with the WHO on seafaring-related issues: a revision of the *International Medical Guide for Ships* is under way and the WHO is expected to publish the third edition in late 2006. The Office has been working very closely with WHO, facilitating the participation of the social partners in this exercise. Much of the drafting of the revised Medical Guide, done by the experts of the International Maritime Health Association (IMHA), has been financed by the Seafarers' Trust of the International Transport Workers' Federation (ITF).

67. The WHO is also revising the *Guide to ship sanitation*.<sup>5</sup> The revised publication will be the global reference on health requirements for the construction and operation of ships. The primary aim of the revised Guide will be to highlight the importance of applying appropriate control measures to ensure proper sanitation and a healthy environment on board ship.

68. In the immediate future, the ILO will continue to work with the WHO on the revision of the ILO/IMO/WHO *International Medical Guide for Ships*. There may also be a need to revise the Guidelines for Conducting Pre-sea and Medical Fitness Examinations for Seafarers, referred to above, in the light of the experience gathered in its application.

### 3.3.3. Cooperation with intergovernmental organizations (IGOs) and regional economic organizations

#### Regional Memoranda of Understanding on Port State Control

69. The inspection by a State of foreign ships visiting its ports for compliance with international requirements concerning maritime safety, marine pollution prevention, and

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<sup>3</sup> ILO: Governing Body doc. GB.258/STM/3/4.

<sup>4</sup> ILO: Governing Body doc. GB.271/STM/5.

<sup>5</sup> World Health Organization: *Guide to ship sanitation*, second edition (Geneva, 1987).

living and working conditions on board is usually referred to as “port state control”. The Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) provides in Article 4, *inter alia*, that

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.

This provision was a major step forward in the enforcement of international standards relating to seafarers’ conditions.

70. In accordance with decisions taken by the Governing Body of the ILO at its 241st Session (November 1988), a Meeting of Experts on Procedures for the Inspection of Labour Conditions on Board Ships was held in Geneva in October 1989 for the purpose of drawing up guidelines based on the provisions of Convention No. 147. Experts were appointed following consultations with Governments, the Employers’ group and the Workers’ group of the Governing Body. Several IGOs, NGOs (such as the International Shipping Federation (ISF) and the ITF) and other organizations also participated. The experts reviewed and amended a working document containing draft guidelines for procedure for the inspection of labour conditions on board ships which had been prepared by the Office. This document was put to the Governing Body at its 245th Session (February-March 1990) and was published by the ILO in 1990 as *Inspection of labour conditions on board ship: Guidelines for procedure*.

71. The Guidelines have been an important contribution to the improvement of living and working conditions of seafarers. It is used as guidance by port state control officers, when carrying out inspections under Convention No. 147.

72. Shortly after the adoption of Convention No. 147, the Hague Memorandum of 1978, which specifically referred to the Convention, was signed by eight European countries for the purpose of ensuring a coordinated approach to port state control. However, in 1982, before the Memorandum could be fully implemented, the *Amoco Cadiz* grounding and the resultant oil spill increased interest in such inspections and led to the adoption, in 1982, of the Paris Memorandum of Understanding on Port State Control, a more comprehensive document, signed by 14 countries. The Paris MOU, as of 1 July 2005, has been signed by 22 maritime authorities and has served as a model for other port state control regional agreements. Countries that are party to the Paris MOU have agreed to inspect ships for compliance with Convention No. 147.

73. The following regional arrangements on port state control are now in place: the Paris MOU; the Acuerdo de Vina del Mar (Vina del Mar or Latin-America Agreement), signed in Vina del Mar (Chile) on 5 November 1992; the Memorandum of Understanding on Port State Control in the Asia-Pacific Region (Tokyo MOU), signed in Tokyo on 2 December 1993; the Memorandum of Understanding on Port State Control in the Caribbean Region (Caribbean MOU), signed in Christchurch on 9 February 1996; the Memorandum of Understanding on Port State Control in the Mediterranean Region (Mediterranean MOU), signed in Valleta on 11 July 1997; the Indian Ocean Memorandum of Understanding on Port State Control (Indian Ocean MOU), signed in Pretoria on 5 June 1998; the Memorandum of Understanding for the West and Central African Region (Abuja MOU), signed in Abuja on 22 October 1999; the Memorandum of Understanding on Port State Control for the Black Sea Region (Black Sea MOU),

signed in Istanbul on 7 April 2000; and the Memorandum of Understanding on Port State Control for the Arab Gulf Region (Riyadh MOU), signed in Riyadh on 30 June 2004. Port state control in the United States is conducted by the United States Coast Guard which, although not a signatory, actively participates as an observer in several regional MOUs.<sup>6</sup>

74. Regional arrangements are governed by port state control committees (PSCC) composed of the representatives of the participating maritime authorities. In the Paris MOU, the European Commission is also represented. Representatives of the IMO and the ILO (where Convention No. 147 is a relevant instrument) participate as observers or representatives in the meetings of the port state control committee, as do representatives of cooperating maritime authorities and other regional agreements on port state control.

75. All these regional MOUs, except the Acuerdo de Vina del Mar, include ILO Convention No. 147 in their “list of relevant instruments”. However, the Paris MOU is the only agreement where all member maritime authorities belong to countries that have also ratified Convention No. 147. In other regions, this lack of ratification of Convention No. 147 has inhibited port state control inspections of labour conditions on board ships.

76. In the framework of the Paris MOU, there has been a long-standing arrangement, established following the adoption by the 26th Session of the Joint Maritime Commission of a resolution concerning the promotion of the principle of port state control that invited the Governing Body to request the Director-General to “take the necessary steps in order to enable seafarers’ and shipowners’ organizations to be directly represented, as advisers to the ILO participant, at meetings of member States of the Memorandum of Understanding on Port State Control”.<sup>7</sup> At the time, the Paris MOU was the only regional port state control arrangement. The resolutions resulted in the ILO observer generally being accompanied, at Paris MOU PSCC meetings, by ISF and ITF advisers, thus bringing the concept of social dialogue into the very essential area of regional port state control. The Office has also participated in events organized by other port state control organizations and in meetings and training courses concerning the inspection of labour conditions on board ship. However, such participation has been limited in some regions owing to limitations on human and financial resources.

77. “Concentrated inspection campaigns” (CICs) are a means by which regional port state control agreements may place particular attention on certain inspection areas. For example in the Paris MOU, such campaigns, lasting about three months, are carried out on a regular basis. In 1997 and 2004, the Paris MOU held two campaigns on seafarers’ living and working conditions. The Office assisted in preparing guidance for such inspections, including guidance on the inspection of ships for compliance with the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) – in particular the issue of seafarers’ hours of work and rest, bearing in mind that the ILO’s Guidelines for procedure have not yet been updated to reflect the adoption of the Protocol, the Seafarers’ Hours of Work and the Manning of Ships Convention, 1996 (No. 180), or the Labour Inspection (Seafarers) Convention, 1996 (No. 178). Besides their immediate value of drawing attention to the issue of seafarers’ conditions on board, these campaigns, which have been analysed within the Paris MOU organization, may provide valuable “lessons learned” for future inspections and related guidance.

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<sup>6</sup> International Maritime Organization: Progress Report on Regional Port State Control Agreements, FSI 13/6, 13 Feb. 2005, Sub-Committee on Flag State Implementation, 13th Session, London, 7-11 March 2005.

<sup>7</sup> ILO: Governing Body doc. GB.252/3/2.

78. The Paris MOU has also cooperated with the Organization by providing advice during the development of the proposed consolidated maritime labour Convention. It is expected that this cooperation will extend to the follow-up activities discussed later in this Report and to the elaboration of revised guidelines for the inspection of ships and training of inspectors.

79. The Tokyo MOU, since 1994, has also established an effective port state control regime in the Asia-Pacific region through cooperation between its 18 members in the harmonization of their activities for inspection of substandard vessels. The ILO has been involved as an observer in the Tokyo MOU from the preparatory stage, encouraging States to ratify and implement the Convention. Nevertheless, as of 1 July 2005, only four countries<sup>8</sup> participating in the MOU have ratified Convention No. 147. The Tokyo MOU covers a large area of increasing commercial importance with heavy maritime traffic.

80. Many of the maritime authorities that are parties to the Tokyo MOU are from developing economies. The Office should cooperate more closely with the Tokyo MOU to achieve a better ratification record for maritime labour standards in the Asia-Pacific region.

81. Several of the regional MOUs have also organized regional training programmes for ship inspectors. The Office has assisted these efforts by providing training materials and lecturers – resources permitting.

82. The changing nature of international shipping, with more focus on safety, pollution prevention, working and living conditions and on human rights issues, has led to more attention being given to the need for a stronger and more coordinated system of port state control.

## European Union

83. The Office has in recent years been working more closely with the European Union. The European Commission, which has competence under its governing arrangements in some areas addressed in maritime labour Conventions, has attended a number of ILO maritime meetings as an observer. In addition to the adoption and promotion of existing maritime labour Conventions in the form of Directives adopted by the European Council and European Parliament,<sup>9</sup> the European Union has, through the various presidents of its Council of Ministers, and along with individual European Union Member States, been an active participant in the development of the proposed consolidated maritime labour Convention. Although the European Union is not a Member of the ILO, it has, through the revolving presidency, facilitated the development of coordinated views by the ILO Members that are also part of the European Union, in order to address specific problems that would be encountered by Members, as a result of the allocation of legislative responsibilities under its regional arrangements. The Office has been providing information to the European Commission to ensure cooperation and coordination.<sup>10</sup> In

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<sup>8</sup> Canada, China, including the Hong Kong Special Administrative Region, Japan and the Russian Federation.

<sup>9</sup> For example, Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST).

<sup>10</sup> Joint conclusions of the third high-level meeting between the European Commission Services and the International Labour Office, Geneva, 13 October 2004, see point F (available online at [http://sed-trade-forum.itcilo.org/eng/Papers/eu/4\\_Joint\\_CCL\\_EC\\_ILO\\_07.12.04\\_final.doc](http://sed-trade-forum.itcilo.org/eng/Papers/eu/4_Joint_CCL_EC_ILO_07.12.04_final.doc)).

August 2005, the Commission agreed to provide much-needed financial support to assist the ILO in holding this Maritime Session of the International Labour Conference in 2006.

### 3.3.4. Cooperation with international non-governmental organizations

84. The Office cooperates with a significant number of international non-governmental organizations (NGOs) in the maritime sector. Some of these, such as the International Transport Workers' Federation (ITF), the International Shipping Federation (ISF), the International Association of Classification Societies (IACS), the International Christian Maritime Association (ICMA), the International Federation of Shipmasters' Associations (IFSMA) and the International Group of P&I Clubs, are regularly invited by the Governing Body to be represented as observers at maritime meetings. Of these organizations, the ITF and ISF are especially important to the maritime programme owing to their strong representation in the Joint Maritime Commission.

#### 3.3.4.1. *International social dialogue and cooperation with international shipowners' and seafarers' organizations*

85. The Office promotes international social dialogue and actively engages with international organizations of employers and workers in the maritime sector. An example of Office initiatives, such as securing the attendance of these organizations at the Paris MOU meetings, was noted earlier. The 1990s witnessed the development of global collective bargaining in the shipping sector. In the early part of that decade, shipowners formed the International Maritime Employers' Committee (IMEC) for the purpose of negotiating a global industry pay agreement with the ITF for seafarers working on board "flag of convenience" (FOC) ships. The first such agreement was negotiated in 2001. This was followed by the formation of the Joint Negotiating Group, which itself negotiates with the ITF Fair Practices Committee through the International Bargaining Forum. These negotiations take into account standards and guidelines contained in ILO Conventions and Recommendations.

#### International Shipping Federation (ISF)<sup>11</sup>

86. Founded in 1909, the ISF is the international employers' organization for shipowners concerned with labour affairs and training issues. Its membership comprises national shipowners' associations representing all sectors and trades from 34 leading maritime countries and also includes associate members from across the industry. The ISF provides advice and guidance to members either directly or via its extensive range of global contacts by representing them in all relevant forums where issues are regulated. The ISF represents global interests impartially, by acknowledging and accommodating different views whilst exerting influence in a measured, professional and consistent manner without regard to national or regional interests.

87. The principal policy-making body of the ISF is its Council, which meets twice a year and comprises a representative from each of its member associations. The ISF has two major operating committees to prioritize work undertaken, one covering labour affairs and one covering staffing and training issues. Further subgroups may be established to handle specific topics.

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<sup>11</sup> Information on the International Shipping Federation has been taken, in part, from <http://www.marisec.org/>, visited 8 July 2005.

88. The ISF has consultative status with the ILO, where it coordinates the Shipowner position at meetings concerning shipping-related issues. It works in conjunction with the International Organisation of Employers (IOE) to ensure that policy decisions are taken in line with the wider Employers' group. Within the ILO, the ISF coordinates the whole Shipowners' group including national shipowner association representatives who are not ISF members.

89. The ISF has been the primary organizer of the Shipowners' group at the Joint Maritime Commission and all meetings concerning the development of the proposed Convention. It serves a similar role at the IMO, in conjunction with its sister organization, the International Chamber of Shipping.

90. In recent years the ISF has been active in promoting the concept of the proposed Convention and the seafarers' identity document in compliance with Convention No. 185, as well as in discussions on fair treatment of seafarers and many other issues.

#### International Transport Workers' Federation (ITF)<sup>12</sup>

91. The ITF was founded in 1896 as the International Federation of Ship, Dock and River Workers. In 1898 it expanded to include transport workers in non-maritime industries. The organization had its roots in various special conferences and federations of European seafarers and railway workers in the early 1890s, and in the international cooperation of European transport unionists during the 1896-97 dock strikes in Rotterdam and Hamburg. Following disruptions caused by the First World War, the federation was re-established in 1919 as the International Transport Workers' Federation.

92. The ITF's membership consists of 624 unions representing 4,400,000 transport workers in 142 countries. It is one of several Global Federation Unions allied with the International Confederation of Free Trade Unions (ICFTU). The ITF Seafarers' Section provides international coordination for, and support to, affiliated unions and individual seafarers. It does this through its involvement with the ILO, the IMO and the Organisation for Economic Co-operation and Development (OECD) and other international agencies; by assisting seafarers; by maintaining a network of over 100 ITF inspectors around the world; through ITF agreements for FOC ships which specify minimum conditions of employment for crews, including wages; in policy-making activities through committees where affiliated unions are represented; and by providing and disseminating information.<sup>13</sup> The ITF's FOC campaign is coordinated by the ITF Secretariat in London. The Fair Practices Committee (comprising ITF and national trade union officers) sets FOC campaign policy.

93. The ITF, working with the ICFTU, organizes the Seafarer position at ILO maritime meetings in the Joint Maritime Commission and all the meetings that have been held to develop the proposed Convention.

#### 3.3.4.2. *Cooperation with other concerned international non-governmental organizations in the maritime sector*

94. In addition to the ITF and ISF, the ILO cooperates with a wide range of international NGOs, many of which have observer status to attend meetings for the sector.

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<sup>12</sup> Information from <http://www.warwick.ac.uk/services/library/mrc/ead/159.htm> , visited 8 July 2005.

<sup>13</sup> Information from <http://www.itfglobal.org/seafarers/about.cfm> , visited 8 July 2005.

#### International Committee on Seafarers' Welfare (ICSW) <sup>14</sup>

95. The ICSW is a voluntary organization established for the purpose of bringing together appropriate interests in the field of seafarers' welfare, and thus providing a forum for information exchange as well as for the coordination of projects on the care of seafarers. It has 24 members. The main objective of the ICSW is to promote the ratification as well as the practical implementation of relevant ILO and other United Nations instruments, in particular those regarding seafarers' welfare. Since its inception, the ICSW has reserved an observer's seat for the ILO in its Presidium. As a consequence, the ILO has regularly and actively participated in various ICSW meetings and general assemblies. Regional seminars were held for the Indian Ocean and South-East Africa region in Mauritius in 2000; for the West Africa region in Accra, Ghana, in 2002; for the North and Central Latin America region in Vera Cruz, Mexico, in 2003; and for the South Asia region in the last quarter of 2005.

96. The ICSW implements its welfare activities through a number of projects and programmes which have specific targets. For example a group of projects is composed of regional programmes which seek to promote the sensitization of national and local authorities to seafarers' issues by promoting the ratification and effective implementation of the Seafarers' Welfare Convention, 1987 (No. 163). It is also active in promoting the building or refurbishing of seafarers' centres in ports, or similar activities.

97. In parallel with its regional activities, the ICSW implements a number of target-specific projects including the Seafarers' Health Information Programme; Sports of the Seven Seas; and IT Service Pack and Voice-over-Internet Protocols (VoIP) (access to telephone and email communication).

#### International Christian Maritime Association (ICMA) <sup>15</sup>

98. The ICMA comprises 27 Christian non-profit organizations engaged in welfare work for seafarers, including those working on merchant, fishing and passenger vessels. It was founded in 1969 to encourage ecumenical collaboration and mutual assistance between these different organizations at local port, as well as national and international levels. At present, ICMA members represent 526 seafarers' centres and 927 chaplains in 126 countries.

99. The ICMA has participated as an observer at various meetings and conferences concerned with the development of Convention No. 185 and the proposed Convention. It has also worked through the ICSW to promote ILO standards concerning seafarers, in particular Convention No. 163.

#### International Maritime Health Association (IMHA) <sup>16</sup>

100. The IMHA was founded in 1997 during the Fourth International Symposium on Maritime Health in Oslo. A non-profit organization registered in Belgium, the IMHA is "dedicated to foster scientific progress, improve the quality of the health of maritime workers worldwide (seafarers, fishermen, offshore oil industry installation workers, divers, etc.) and to create a forum where ideas, experiences, efforts, research and questions on maritime health may be exchanged for the benefit of the international maritime community". The IMHA cooperates closely with the WHO, IMO and ILO and

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<sup>14</sup> <http://www.seafarerswelfare.org> , visited 1 July 2005.

<sup>15</sup> <http://www.icma.as/> , visited 1 July 2005.

<sup>16</sup> <http://www.imha.net> , visited 1 July 2005.

strives to be a source of reference and consultation for governments, shipowners, trade unions and other organizations on maritime health issues. The IMHA has been consulted by the Office on matters relating to the health of seafarers. It contributed, soon after its creation, to the adoption by the ILO of the *Guidelines for Conducting Pre-Sea and Periodic Medical Fitness Examinations for Seafarers*. It is currently working on the draft of the third edition of the *International Medical Guide for Ships*, which is to be published by the WHO in 2006. It also cooperates with the ICSW and the ITF in the implementation of health projects in the maritime industry.

#### International Association of Classification Societies (IACS)

101. Classification societies are private entities which supervise the construction and maintenance of vessels with regard to their seaworthiness, and the placing of vessels in grades or “classes” according to the society’s rules for each particular type. Classification societies may be authorized to inspect ships and issue the relevant safety certificates on behalf of the States where ships are registered. The proposed Convention provides, inter alia, that a ratifying State may, where appropriate, authorize public institutions or other organizations which it recognizes as competent and independent to carry out inspections or issue maritime labour certificates, or both. It is envisaged that classification societies may be the organizations that will be authorized to do this work. It is therefore important, in order to ensure consistency in the implementation of the Convention, that classification societies, in particular their surveyors, develop in-house expertise on its provisions.

102. The IACS was founded in 1968. Its membership comprises the American Bureau of Shipping (ABS), Bureau Veritas (BV), the China Classification Society (CCS), Det Norske Veritas (DNV), Germanischer Lloyd (GL), the Korean Register of Shipping (KR), Lloyd’s Register (LR), Nippon Kaiji Kyokai (NK), Registro Italiano Navale (RINA), and the Russian Maritime Register of Shipping (RS), as well as its associate member, the Indian Register of Shipping (IRS).<sup>17</sup> The association has closely followed, and participated as an observer in, the most recent meetings concerning the preparation of the proposed Convention. It is expected that the IACS will be consulted in the development of inspection guidelines for the proposed Convention and, subject to approval by the Governing Body of the ILO, may be invited to participate as an observer in any meeting of experts convened for the purpose of developing such guidelines.

#### Other organizations

103. The ILO has also worked closely with other organizations, such as the International Federation of Shipmasters’ Associations (IFSMA) and the International Group of P&I Clubs, on relevant specific issues.

#### 3.3.5. Links with educational institutions

104. As well as participating in meetings with other organizations and outreach activities related to technical cooperation, the Office also regularly undertakes activities to promote greater awareness of the work of the ILO and capacity building in the sector by delivering lectures at maritime education and training institutions. For example, ILO officials regularly lecture at the World Maritime University in Malmo, Sweden, and the International Maritime Law Institute in Malta.

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<sup>17</sup> <http://www.iacs.org.uk/index1.htm> , visited 29 Sep. 2005.

105. Academics from several research and teaching institutions collaborate with the ILO. Recently, cooperation with the Seafarers' International Research Centre in Cardiff resulted in two publications, *The global seafarer: Living and working conditions in a globalized industry* and *Women seafarers – Global employment policies and practices*. In addition to the research and studies published under the auspices of the ILO, these maritime experts frequently contribute to relevant industry publications, providing information regarding ILO activities and developments in the maritime sector.<sup>18</sup>

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<sup>18</sup> For example, *Lloyd's List*; *WMU Journal of Maritime Affairs* (World Maritime University); and *Keesing Journal of Documents and Identity*.

## **4. Activities of the Organization in connection with current issues and concerns in the maritime sector**

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106. Many of the cooperation and outreach activities discussed in section 2 relate to issues which, while relevant to the Decent Work Agenda and important to the maritime industry, are not necessarily addressed in existing maritime labour standards. This section highlights initiatives being undertaken by the ILO, often in cooperation with other organizations, to address some issues of current concern to the industry.

107. These issues and activities, although dealt with individually below, are often interrelated. What they have in common is that they all, or nearly all, concern the need to ensure that flag States exercise control over conditions on ships that fly their flag.

### **4.1. Claims for injury and death and abandonment of seafarers**

108. At its 26th Session in October 1991,<sup>1</sup> the Joint Maritime Commission adopted a resolution concerning the protection of wages and stranded seafarers. The resolution “recognises the problem of stranded seafarers who could be subject to considerable hardships” and urges the ILO Governing Body to request the Director-General to recommend to member States that legislation and practical measures be adopted to protect the wages and other entitlements of seafarers where the shipowner or manager became insolvent, especially in cases where seafarers were left stranded in a port. The Joint Maritime Commission noted that, notwithstanding the relevant provisions in the Repatriation of Seamen Convention, 1926 (No. 23), the Repatriation of Seafarers Convention (Revised), 1987 (No. 166) and the Repatriation of Seafarers Recommendation, 1987 (No. 174), seafarers were still stranded without recourse to paid repatriation following the abandonment by shipowners of their vessels on account of poor finances or for other reasons and thus become a charge on the already stretched resources of voluntary agencies and charities. The Commission recognized the problem of stranded seafarers who could be subject to considerable hardships when shipowners go bankrupt, and that in such situations timely help may not be forthcoming from flag States or port States because of bureaucratic delays or because of the absence of ratification or non-entry into force of the ILO Conventions concerned.

109. At its 77th Session in April 1998, the IMO Legal Committee agreed to ensure, through the use of appropriate international instruments, the rights of seafarers to adequate compensation for loss of life, personal injury and abandonment.<sup>2</sup> The Committee, recognizing the complementary role of the IMO and ILO on these issues, indicated its support for the establishment of a Joint IMO/ILO Ad Hoc Expert Working

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<sup>1</sup> ILO: Governing Body doc. GB.252/3/2.

<sup>2</sup> ILO: Governing Body doc. GB.273/STM/5.

Group to coordinate consultations between both organizations. Having been approved by the IMO Council and the ILO Governing Body at its 273rd Session (November 1998), the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers was established under the relevant provisions of the agreement of cooperation between the organizations. At the same session, the ILO Governing Body also nominated four Shipowner and four Seafarer representatives to the Committee. The IMO Legal Committee, at its 79th Session in April 1999, endorsed the nomination of eight IMO representatives from Cyprus, France, Ghana, Greece, Republic of Korea, Philippines, United Kingdom and United States. It was also agreed that participation in the Joint Working Group would be open to all member States as observers.<sup>3</sup>

110. The Joint Working Group's initial terms of reference determined that it should assess and evaluate the extent of the potential problems relating to liability and compensation in connection with crew claims for death, personal injury and abandonment, as well as the adequacy and effectiveness of existing applicable international instruments. It was also to formulate suitable recommendations to the IMO Legal Committee and the Governing Body of the ILO, as appropriate.

111. The Joint Working Group has met regularly since its establishment. Its most recent meeting took place in September 2005.

112. At its First Session<sup>4</sup> the Joint Working Group considered that there was general acceptance that abandonment of seafarers was a serious problem, which required urgent remedial action. It considered that the 1982 United Nations Convention on the Law of the Sea (UNCLOS) established a general duty of flag States to exercise effective control over vessels flying their flags, including labour and social aspects, thus recognizing the importance of the human element. It also recognized that the issues arising from abandonment included the following: repatriation, support for crew members/seafarers while stranded, immigration status and the question of payment of outstanding remuneration. The Joint Working Group, having identified relevant ILO and IMO Conventions as well as other international instruments, concluded that although a considerable number of these dealt with certain aspects of the problem under review, none of them adequately addressed it in a comprehensive manner. Regarding the issue of liability and compensation concerning claims for personal injury and death, the Joint Working Group concluded that there was a problem, but that further studies were required to examine all aspects of this issue. It also agreed on a list of relevant international instruments, noting that the existing instruments did not adequately address the issue.

113. The Joint Working Group considered that it required further information from member States and relevant institutions concerning existing mechanisms, and that it should meet again to assess the material and to consider longer-term arrangements, such as the establishment of an international fund or national measures of comparable effectiveness.

114. Following approval of the Joint Working Group's recommendations and its next session by the Governing Body of the ILO and the Legal Committee of the IMO, the Joint Working Group, at its Second Session,<sup>5</sup> analysed national law and practice in

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<sup>3</sup> ILO: Governing Body doc. GB.277/STM/4, appendix, para. 1.2.

<sup>4</sup> *ibid.*, Annex 5, para. 1.

<sup>5</sup> ILO: Governing Body doc. GB.280/STM/5.

respect of abandonment and personal injury and death. To this effect, the Office prepared a report<sup>6</sup> which reflected the complexity of the issues and problems to be addressed. On the basis of this analysis, the Joint Working Group considered a possible two-step response to the issues discussed. The first step, or short-term approach, would be the development of one or more IMO/ILO resolutions to which would be annexed codes or guidelines concerning the provision of financial security in cases of death, personal injury and abandonment. The second step, or longer-term approach, could include the possible development of a mandatory instrument or instruments to be adopted by both organizations. It prepared two draft resolutions for further consideration at a proposed third session. The first draft resolution concerned guidelines on provision of financial security in cases of abandonment of seafarers; the second concerned guidelines on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers.

115. The Joint Working Group called on the ILO and IMO secretariats to ensure that the wording of the draft resolutions was consistent with the practice of the two organizations; to study the feasibility of combining the two draft resolutions into a single draft resolution, provided that a decision on this matter would be taken at the next session; and to collect further information from States which had not yet responded to the law and practice questionnaire and on financial security of contractual claims for personal injury to or death of workers in other economic sectors. The Joint Working Group's considerations were endorsed by the ILO Governing Body at its 280th Session (March 2001) and also shared by the Joint Maritime Commission at its 29th Session.

116. On the basis of the drafts it had developed at its Second Session, the Joint Working Group, at its Third Session, finalized two draft resolutions. One concerned guidelines on provision of financial security in cases of abandonment of seafarers, and the other concerned guidelines on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers. In adopting these two draft resolutions, the Joint Working Group agreed that the resolutions and guidelines recognized that a number of States already had legislation and regulations in place giving effect to the guidelines. The guidelines accordingly took into account the fact that a body of legal and administrative decisions might exist at the national level which might need to be considered when giving effect to the guidelines. The Joint Working Group agreed that each State should determine the manner in which it would give effect to the guidelines, and may need to supplement them, where it deemed necessary, in order to address specific issues adequately. It concurred that the guidelines were not exhaustive and formed a first step for the IMO and ILO in this area. Their purpose was to assist States, when establishing their national requirements, to identify the most crucial issues. The Joint Working Group agreed that the measures recommended in the guidelines should be implemented by shipowners to ensure that adequate financial security could be provided. To this effect, the guidelines outlined the main features and scope of coverage of financial security systems to address the issues. The draft resolutions<sup>7</sup> were approved by the ILO Governing Body at its 282nd Session (November 2001) and by the IMO Legal Committee at its 83rd Session (October 2001) and adopted by the 22nd Session of the IMO Assembly (November 2001).

117. Since the Joint Working Group had recognized that the guidelines were intended to be revised in the light of practical experience gained from their application, at its Fourth

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<sup>6</sup> *ibid.*, report of the Working Group, appendix, para. 5.1.

<sup>7</sup> ILO: Governing Body doc. GB.282/STM/5.

Session,<sup>8</sup> it discussed the implementation of the resolutions, the monitoring of their implementation and the options for long-term sustainable solutions to the problems. It agreed that the mechanism for monitoring the implementation of the resolutions and guidelines should be maintained. To this effect, the Joint Working Group devised two questionnaires that would allow progress in implementation to be assessed. The Joint Working Group also decided that a joint database on incidents of abandonment of seafarers should be established and maintained by the ILO and the IMO. It was agreed that the database should contain salient information on instances of abandonment to facilitate monitoring of the problem in a comprehensive and informative manner. At its 286th Session (March 2003), the Governing Body approved the recommendations of the Joint Working Group and the holding of a Fifth Session of the Joint Working Group in January 2004.

118. At this Fifth Session (January 2004), the Joint Working Group considered that two different situations existed with regard to abandonment and the issue of financial security in respect of compensation in case of death and personal injury. Regarding the development of a longer-term sustainable solution to the problems of financial security with regard to compensation in case of death and personal injury, the Joint Working Group agreed that the time had come for the ILO Governing Body and the IMO Legal Committee to authorize it to proceed with the development of a longer-term sustainable solution. Concerning the problem of abandonment of seafarers, the Group determined that, in the light of the data received so far, the resolution and guidelines had not yet been fully implemented. It also agreed that this preliminary determination was subject to a possible revision at the next session.

119. On the basis of a report on the replies received to the questionnaire, and in view of the number of cases of abandonment which had been reported, the Seafarer representatives and some Government representatives considered that the only way forward would be to recommend the drafting of a mandatory instrument. However, the Shipowner representatives and some Government representatives were of the view that, in the light of the limited data available and the fact that the resolution and the guidelines had not yet been fully implemented, it was premature to take such a decision at this stage.

120. The Joint Working Group agreed that the time had come for it to reach decisions on the advice to be offered to the IMO Legal Committee and the ILO Governing Body on whether a longer-term sustainable solution would be required to deal with cases of abandonment, and thus agreed to take its final decision at its next session, on the recommendation to be made to the ILO Governing Body and the IMO Legal Committee. It therefore recommended that the revised circular on reporting of incidents of abandonment and the revised circular containing the questionnaire on monitoring the implementation of the guidelines on provision of financial security in case of abandonment of seafarers adopted by IMO resolution A.930(22) should be re-sent, so that, at its next session, the preliminary determination regarding the implementation of the resolution and of the guidelines in the light of all the answers to the questionnaire and data relating to abandonment available at that time could be reviewed. Regarding the Joint Working Group's decision, taken at its Fourth Session, that a database on reported cases of abandonment should be established, the Office informed the Joint Working Group that it had examined the question of the creation of a database on abandonment, had carried out the relevant studies and had decided, in consultation with the IMO Secretariat, to host the database.

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<sup>8</sup> ILO: Governing Body doc. GB.286/STM/3.

121. The ILO Governing Body, at its 289th Session, as well as the IMO Legal Committee, at its 88th Session, agreed with the Joint Working Group's recommendations and approved communication of the revised circulars. The ILO Governing Body also reaffirmed its support for the database on reported cases of abandonment.<sup>9</sup> Subsequently, the Office explored the financing aspects of the set-up costs. The International Ship Suppliers' Association agreed to support the establishment and, as of August 2005, this database is technically ready, although at a test stage, pending approval of the design and the procedures to be followed by the Joint Working Group at its Sixth Session, 19-21 September 2005.

#### 4.2. Fair treatment of seafarers – Criminalization of seafarers

122. Several environmental disasters arising from major oil spills from ships and the resulting responses by coastal States affected by spills have highlighted the need to ensure fair treatment of seafarers in the event of a maritime accident. In some countries, seafarers, in particular ships' masters, have been imprisoned as a means of securing coverage of clean-up costs and compensation by the relevant shipowner and insurer. Measures taken in these instances have often been resented as unfair by the shipping community, which has stressed the vulnerability of seafarers in these situations, given crew members' lack of familiarity with local laws and regulations, language barriers, and practical problems concerning the provision of legal advice or financial guarantees, the absence of which is often understood by national authorities to justify detention under local laws.

123. At its 29th Session in January 2001,<sup>10</sup> the Joint Maritime Commission noted that, in the event of maritime accidents, some administrations had placed seafarers, in particular ships' masters, under arrest. These measures had been taken immediately after an accident and before any investigation had taken place, while the seafarers concerned were in a state of deep distress, and in spite of the action taken by the master and seafarers to save lives and mitigate damage. The Commission expressed its concern and requested the Director-General of the ILO to bring this issue to the attention of member States and advise the Secretary-General of the International Maritime Organization of the action taken. The Governing Body of the ILO endorsed these requests at its 280th Session in March 2001.

124. In subsequent years at least two other major accidents leading to oil pollution took place off the coast of France and Spain (the *Prestige*, November 2002) and off the coast of Pakistan (the *Tasman Spirit*, July 2003). In both cases crew and masters were detained for several months.

125. Following the *Prestige* incident, the European Union decided in March 2003 to speed up the phasing-out of single-hull tankers carrying the heaviest grades of oil in Community ports, terminals and anchorage areas (with effect from 2005). This was also the starting point for discussions within the European Union concerning the adoption of a Directive on ship-source pollution and on the introduction of sanctions for infringements (7 March 2003) that would address the problem of pollution in EU

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<sup>9</sup> ILO: Governing Body doc. GB.289/STM/8/2, para. 6.

<sup>10</sup> ILO: Sectoral Activities Programme, Final report, Joint Maritime Commission (29th Session), Geneva, 22-26 January 2001, Appendix 14, resolution concerning action taken against seafarers in the event of maritime accidents.

Member States' waters and provide, inter alia, for procedures to be followed in order to identify and prosecute polluters.

126. Referring to the case of the *Tasman Spirit*, the ILO High-level Tripartite Working Group on Maritime Labour Standards, during its fourth meeting, held in Nantes (France) in January 2004, drafted a declaration expressing its sympathy with the victims of the accidental grounding of the vessel in question, as well as its conviction that the ships' crew members were also victims.<sup>11</sup> It expressed the hope that the national authorities could release the crew and allow their repatriation. It also requested the Director-General of the ILO to raise this issue with the Government involved in this affair, and to raise the issue of the growing problem of the criminalization of seafarers following a maritime accident, with the Secretary-General of the IMO, with a view to promoting an appropriate response. The Governing Body of the ILO was informed of the declaration and of the Office's actions in this respect at its 289th Session in March 2004. Some governments and regional organizations also directly expressed their concern. The crew was repatriated after this series of actions.

127. The ILO and the IMO created a Joint Working Group to address this matter. At its 290th Session (June 2004), the Governing Body approved the establishment of a Joint ILO/IMO Ad Hoc Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident (Joint Working Group), composed of eight Government experts nominated by the IMO, and four Shipowner and four Seafarer experts to be nominated by the ILO after consultations with the secretariats of their respective groups. The IMO Legal Committee nominated eight member States (China, Egypt, Greece, Nigeria, Panama, Philippines, Turkey and the United States) with the proviso that any other government could attend the meeting as an observer.

128. The terms of reference of the Joint Working Group were submitted to and approved at the 291st Session of the ILO Governing Body (November 2004) and by the Legal Committee of the IMO at its 89th Session (25-29 October 2004). According to the terms of reference, the Joint Working Group was tasked with the preparation of suitable recommendations for consideration by the IMO Legal Committee and the ILO Governing Body, including draft guidelines on the fair treatment of seafarers in the event of a maritime accident.

129. At its First Session (17-19 January 2005), the Joint Working Group began work on the draft guidelines. Since it considered that it was premature to envisage producing valid guidelines during its first meeting, it adopted a two-pronged approach that would allow for sufficient time to be given to the Joint Working Group to draft guidelines, while at the same time addressing the problem in the short term. The Joint Working Group agreed, as an immediate measure, to the adoption of a resolution that would stress the concern of the entire maritime industry on the matter and contain elements that should be taken into account by member States. In order to create a basis for developing draft guidelines, the Joint Working Group particularly focused on determining the responsibilities of all parties involved in these cases.

130. The resulting draft resolution urged all States to respect the basic human rights of seafarers involved in maritime accidents; to expeditiously investigate maritime accidents to avoid any unfair treatment of seafarers; and to adopt procedures to allow the prompt repatriation or re-embarkation of seafarers following maritime accidents. It also invited

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<sup>11</sup> ILO: High-level Tripartite Working Group on Maritime Labour Standards (fourth meeting), doc. TWGMLS/2004/19, Nantes, 19-23 January 2004, Annex 7.

member Governments and non-governmental organizations with consultative or observer status in the IMO or ILO, as appropriate, to record instances of unfair treatment of seafarers in the event of maritime accidents. It also authorized the promulgation of the guidelines as soon as they were finalized, and asked the ILO and IMO to keep the problem under review, as well as periodically to assess its extent. The resolution was adopted by the Governing Body at its 292nd Session in March 2005<sup>12</sup> and by the IMO Assembly at its 24th Session (November 2005).

131. The Second Session of the Joint Working Group is scheduled for March 2006.

#### 4.3. Security at sea including piracy, robbery and other threats

132. The Constitution of the ILO stipulates in its Preamble that one of the fundamental objectives of the Organization is “the protection of the worker against sickness, disease and injury arising out of his employment”. The 1944 ILO Declaration of Philadelphia, annexed to the ILO Constitution, states that: “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”. It specifically recognizes the right of the individual to protection in the exercise of his or her profession.

133. Section 2.3 has already dealt with the development of the seafarers’ identity document as part of the ILO’s contribution to improved security in the maritime industry. The ILO and IMO have also adopted a code of practice on security in ports.<sup>13</sup>

134. In addition to the threat of terrorism, the maritime industry is faced with an increase in the number of unlawful acts which endanger the lives of seafarers. According to the International Maritime Bureau,<sup>14</sup> the number of actual and attempted attacks on ships by pirates and robbers has varied between a relatively low 90 in 1994 to an all-time high of 469 in 2000. The ships were boarded by pirates (about two-thirds of the successful attacks), whilst a minority of them were either hijacked or fired upon. However, violence to the crew has invariably taken place, with many crew members being taken as hostages (six in 1993, 320 in 1995, 419 in 1997, 202 in 2000, 359 in 2003, and 148 in 2004). In 2004, for the first time, some 86 seafarers were reported kidnapped for ransom. A significant number of seafarers were injured (three in 1995, up to nearly 100 annually since 2000); many others were killed or reported missing (98 in 2000, 92 in 2003, and 60 in 2004). The most dangerous zones in this respect are South-East and South Asia, as well as western Africa and parts of Latin America.

135. The IMO is in the process of reviewing the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 (SUA), which may, in part, address some aspects of this problem. In addition the IMO and the United Nations General Assembly have adopted resolutions expressing concern about unlawful acts which threaten the safety of ships and the security of their passengers and crews.<sup>15</sup>

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<sup>12</sup> ILO: Governing Body doc. GB.292/STM/6/1, Appendix II.

<sup>13</sup> ILO: *Security in ports: ILO/IMO code of practice* (Geneva, 2004).

<sup>14</sup> International Maritime Bureau: *Piracy and armed robbery against ships – 2004 annual report*, (Barking, Essex, 2004), pp. 4-14.

<sup>15</sup> See IMO Res. A.584(14), MSC circulars 443, 475 and 476, and SUA Protocol 1988.

136. Piracy and robbery as well as terrorism at sea constitute, through deliberately inflicted violence, a hazard that can cause physical injury and death and invariably triggers stress that may lead to illness or disease in many cases. Piracy, robbery and terrorism at sea constitute an intolerable denial of the freedom and dignity of their victims and undermine protection of the life and health of seafarers.

137. The persistence of such threats to the lives of seafarers and the associated unsafe working conditions represent a serious decent work deficit, in addition to the many other hazards of seafaring.

138. For all these reasons, within the remit of its Constitution and in furtherance of its Decent Work Agenda, the ILO should strongly support:

- measures taken at international level with a view to preventing attacks on vessels and their crews by pirates and robbers, in international as well as in territorial waters; and
- the creation of an appropriate legal corpus enabling national and/or international legal authorities to take effective enforcement and punitive measures.

#### 4.4. Equal opportunities and treatment policies

139. Equality concerns are not solely confined to the issue of equality between women and men but also encompass other situations involving discrimination. The maritime sector has been traditionally characterized by the low participation of women in seagoing employment. Accordingly, and especially in the light of concerns relating to the recruitment and retention of new entrants (see section 4.5), the issue of recruitment of women seafarers and related equality issues are a central concern.

##### 4.4.1. Gender equality and women seafarers <sup>16</sup>

140. The ILO's mandate on gender equality is to promote equality between all women and men in the world of work. This mandate is confirmed by international labour Conventions of particular relevance to gender equality. <sup>17</sup>

141. Women currently account for 1 to 2 per cent of the world's 1.25 million seafarers. <sup>18</sup> Against the background of serious shortages of qualified seafarers, the recruitment of women could provide the answer to the labour crisis in the maritime industry. Although women are increasingly present as seafarers on the world's ships, they continue to face discrimination. Promoting gender equality in the shipping sector is an important concern for the ILO. The following outlines a number of issues which impact on the goal of increasing employment for women in the maritime sector as well as referring to potential areas for policy and activities by the social partners.

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<sup>16</sup> For further information, see ILO: *Women seafarers – Global employment policies and practices* (Geneva, 2003).

<sup>17</sup> Especially the four key equality Conventions: Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Equal Remuneration Convention, 1951 (No. 100), Workers with Family Responsibilities Convention, 1981 (No. 156) and Maternity Protection Convention, 2000 (No. 183). The mandate is also based on resolutions of the International Labour Conference of 1975, 1985, 1991 and the June 2004 resolution on gender equality, pay equity and maternity protection.

<sup>18</sup> ILO: *Women seafarers*, op. cit., p. 9.

## Recruitment

142. The distribution of women among the world's seafarers is scarce and clustered, with far higher proportions of women coming from industrialized States than from developing ones, and most women concentrated in the hotel and catering personnel of passenger ships as opposed to the navigational departments of the cruise and commercial sectors. In order to improve equality of opportunity and treatment in access to employment, companies could put in place equal opportunity policies prohibiting discrimination against female applicants, including measures to remove systemic discrimination requirements which can result in exclusion from all posts or certain ranks. For the purposes of recruitment on the basis of qualification, experience and merits, female applicants should not be subject to employment requirements and to application and assessment procedures that differ significantly from those that apply to male applicants. At the same time, equality does not necessarily equate with being given the same treatment, when the rules or practices that are applied were designed to reflect the experience and needs of only one group.

143. Company policies in respect of equal opportunity and treatment, in particular those aimed at eliminating sexual harassment, could be conveyed through pre-boarding training or on-board safety meetings. This would facilitate life on board for women seafarers by reducing hostile or discriminatory behaviour.

144. Furthermore, efforts should be made by the industry to disseminate the positive experiences of employers who have been proactive in recruiting women seafarers, with a view to reducing the prevalence of gender stereotypes within the industry.

## Training

145. For the purpose of guaranteeing equality of opportunity and treatment in access to training, maritime education and training (MET) institutions could put in place equal opportunities policies specifically relating to the recruitment of women seafarers and instructors. Their more active role would lead to a rise in the intake of female trainees. Within the institutions, women should be encouraged to participate in all programmes, including highly technical programmes. Gender issues, including training to prevent sexual harassment, should be incorporated into the core curricula of maritime colleges. Women with experience at sea could also be invited to share these experiences with students. Shipping companies could offer greater numbers of cadet or apprentice placements to women.

## Job prospects

146. Only 7 per cent of women seafarers are officers, in comparison with 42 per cent of male seafarers.<sup>19</sup> Equality of opportunity and treatment in access to promotion, organization and decision-making should be guaranteed. Workers' organizations might address these issues by developing policies relating to job opportunities, promotional prospects and discrimination, together with education proposals aimed at both new and existing members. Shipping companies could offer more jobs for women at sea.

## Remuneration

147. Companies should provide equal terms and conditions of remuneration, benefits, social security and welfare services supplied in connection with employment. Seafarer and shipowner organizations should discourage the differential pay of men and women.

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<sup>19</sup> *ibid.*, p. 15.

## Sexual harassment

148. Sexual harassment is a reality for many women seafarers.<sup>20</sup> In addition to the development of anti-harassment legislation in flag States that will apply on board ships, shipowners should play a leading role in stressing the unacceptability of certain behaviour by introducing policies against sexual harassment. Such policies should be developed across the industry in line with best practice. Information on company policies and advice and guidance about issues such as sexual harassment are often conveyed through information sheets or booklets. However, to be effective, a policy needs to be actively disseminated, with the company showing clear support for it through positive action. Policies should therefore be accompanied by special training for all seafarers. Pre-boarding or on-board company training, induction courses and safety meetings should include illustrations of unacceptable behaviour and details of disciplinary procedures.

149. Women are often reluctant to file a complaint for fear of social and personal implications, and cope with harassment on board by means such as security measures and isolation. Effective policies would also make staff feel confident enough to make a formal complaint because of the visible commitment of employers to eliminate sexual harassment.

150. Seafarers' organizations should consider the elimination of sexual harassment as a matter of priority and design their own policies on harassment and bullying.

## Sanitary materials and contraception

151. Shipowners need more effectively to address issues relating to menstruation, such as purchase and discreet disposal of sanitary materials by their female employees aboard cruise and cargo vessels. Provision could be made for the sale of feminine hygiene products on board through bonded stores, for supplying ships with a limited supply of sanitary products on board, and for equipping toilets with sanitary disposal bags or sanitary bins. Seafarers' organizations could take a proactive role in educating companies on the importance of this practical issue.

152. Access to contraceptives and condoms for male and female seafarers could prevent the spread of diseases, including HIV/AIDS, and unwanted pregnancies. Shipowners' and seafarers' organizations should encourage employers to put in place policies on reproductive and general health and help promote the case for improved confidential access to medical staff for women seafarers and for on-board availability of contraception for female as well as male seafarers.

## Maternity

153. Shipowner responses to seafarer pregnancy appear to range from disembarkation at the seafarer's own expense to permission to continue working on board or offers of alternative shore-side employment.<sup>21</sup> In many countries, maternity leave is now guaranteed by law; it should also apply to seafarers. Shipowners should develop clear policies on pregnancy and maternity benefits and provide information on these to women seafarers joining ships or working on board. Shipowners could find shore-based work for pregnant women seafarers or allow them to continue working on board, subject to any

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<sup>20</sup> *ibid.*, pp. 51-57, 61; National Union of Marine, Aviation and Shipping Transport Officers (NUMAST): "Report on the survey of women members and on the development of equal opportunities policies", in *Fairplay*, 1 Dec. 2000.

<sup>21</sup> ILO: *Women seafarers*, *op. cit.*, pp. 32-34, 60.

substantiated health-related concerns. Seafarers' and shipowners' organizations should seek to reach more agreements relating to maternity benefits.<sup>22</sup>

#### 4.5. Attracting and retaining workers in the maritime sector

154. The issues affecting working conditions on board ships have been set out in ILO publications such as *The global seafarer: Living and working conditions in a globalized industry* (2004), and in *Women seafarers: Global employment policies and practices* (2003). They have been repeatedly raised during the preparation of the proposed consolidated maritime labour Convention; earlier on, during the preparation and adoption of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185); in other ILO meetings; in joint ILO/IMO meetings; and in many other international, regional and national forums, as well as on a regular basis in industry publications and trade union journals. In recent years, added security risks, as well as measures put in place to increase security, such as requiring seafarers to hold visas for the purpose of joining or leaving ships or taking shore leave, have added to the well-known hardships of a seafaring life. Piracy continues to be a major problem. The physical hardships of working on board ships, long absences from home, isolation, and limited time in foreign ports, can also deter potential recruits and cause serving seafarers to give up the profession.

155. However, despite these challenges, there remain many positive and attractive aspects to a maritime career. These may include, at least for some seafarers, adventure, good pay, long leave periods, the possibility of holding positions of major responsibility at a relatively young age, quick promotion, and tough but rewarding challenges. Although the best maritime employers have always recognized the importance of good conditions and good treatment, the industry as a whole needs to enhance its reputation as a source of good jobs with respected and rewarding careers. The maritime sector knows it can no longer ignore that it is in competition with other sectors – other ways of life – for the best people.

156. It is within the mandate of the ILO to improve the living and working conditions of seafarers, particularly those suffering from conditions that are contrary to the objectives of decent work, but it is also important to promote employment and to help ensure that such professions as seafaring are viewed as attractive careers, in view of the essential role of shipping in world trade. Furthermore, without highly trained and motivated seafarers, the marine environment would be at risk. The adoption and follow-up of the proposed Convention, and a strong maritime programme, should enable the ILO to contribute towards making the maritime industry more attractive to prospective seafarers.

157. The rapid entry into force and implementation of the proposed new Convention, as well as of Convention No. 185, would send a strong message to the world – in particular to young people considering going to sea and to existing seafarers wondering whether to remain at sea – that the world's maritime community is determined to improve life at sea. This critical message should come across not simply to those who are already familiar

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<sup>22</sup> For example, the model agreement between the International Transport Workers' Federation (ITF) and the International Maritime Employers' Committee (IMEC) provides that the company should repatriate the pregnant seafarer as soon as possible but no later than the 26th week of pregnancy. Furthermore, measures should be adopted to protect women seafarers in relation to conditions of work entailing risks during pregnancy (see *ibid.*, p. 34).

with the sector, but also to politicians and citizens. The young man or woman who has not yet decided on a career must hear and believe that the shipping industry is an employer of first resort. Their friends and families should hear this too, as respect and admiration for those who take on the challenges of a seagoing life (an historic but waning attitude in some countries) is a necessary component in the social support structure that seafarers need. Those who are already working at sea, and their families and communities, must hear that a sincere, collective, global effort is being made to eliminate, or at least reduce, the negative aspects of seafaring that might have been causing them to look elsewhere for their income.

158. However, the industry cannot rest on its laurels. Solutions must be found to problems of abandonment, criminalization, piracy and other issues that are harmful to seafarers and therefore the whole maritime sector. The ILO is committed to working towards solutions to these issues.

159. Other steps include looking more closely at how to ensure that experience gained at sea finds its way into the maritime community ashore. Seafarers should be able to make a smooth and successful transition to work ashore in shipping companies, maritime authorities, and other maritime-related entities. For those who wish to go to sea, but may not wish to stay at sea all their working life, it is very important to know that their experience will allow for well-compensated and otherwise attractive shoreside work.

160. The ILO should continue to be a major actor in efforts to attract and retain seafarers in the industry. Recent developments at the regional or national level address these matters. For example, the EU Transport Council, in June 2003 under the Greek Presidency, adopted “Conclusions on improving the image of Community shipping and attracting young people to the seafaring profession”<sup>23</sup> and revisited these conclusions in December 2005. The conclusions not only discuss specific actions to be taken by European institutions, EU Member States, the social partners and shipowners, but also point strongly to the importance of ratification and enforcement of international labour standards to this effect. Such initiatives are to be pursued and encouraged elsewhere as well. The ILO should bring to bear its experience and structures for social dialogue in the maritime sector at all levels to support these initiatives.

#### 4.6. Seafarers’ education, training and professional development

161. The training of workers in general is an important component of the mandate of the ILO and a strong programme has been maintained by the Organization in this area. In the maritime sector, the International Labour Conference has adopted the Officers’ Competency Certificates Convention, 1936 (No. 53), the Certification of Able Seamen Convention, 1946 (No. 74), the Certification of Ships’ Cooks Convention, 1946 (No. 69) and the Vocational Training (Seafarers) Recommendation, 1946 (No. 77). The proposed consolidated maritime labour Convention will revise all these Conventions.

162. The issue of the education and training of workers is important to the industry in the context of the shortage of certain categories of seafarers, particularly officers, as

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<sup>23</sup> European Union: “Opinion of the European Economic and Social Committee on the promotion of sea transport and the recruitment and training of seafarers”, in *Official Journal of the European Union*, C 157, Vol. 48, No. 157, 2005, pp. 42-47.

pointed out in a survey conducted periodically by the shipping industry.<sup>24</sup> This survey has also pointed to the need to recruit higher-quality trainees; possibly every commercial ship should have a minimum of 1.5 trainees on average. The retention of such skilled seafarers after their training is also important, given the high cost of training and the fact that around one-third of trainees fail to complete their training.

163. In the past 30 years, owing to its technical nature, the international regulation of the training and certification of seafarers has gradually been taken over by the IMO. The adoption in 1978 of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), with subsequent amendments, has rendered several ILO instruments dealing with the issue redundant. The IMO/ILO Joint Committee on Training made a considerable contribution in the preparation and subsequent updating of the STCW Convention. This Convention provides for the IMO and ILO to work together on the training of seafarers.<sup>25</sup> The ILO and its Director-General have specific responsibilities in the amendment procedure of the STCW Convention<sup>26</sup> and in matters relating to technical cooperation.

164. In the consultations leading to the adoption of the proposed Convention, discussions with the IMO have led to a proposal regarding the transfer to the IMO of responsibility for training and certification relevant to able seafarers, to be addressed under the STCW regime. However, the relevant requirements for ships' cooks are not transferred and are addressed in the proposed Convention.

165. A general requirement regarding training for seafarers, of relevance to seafarers that may not be covered by the STCW Convention, is also found in the proposed Convention, as is a Regulation on career and skill development and opportunities for seafarers' employment. This means that some issues of training and ongoing career development for seafarers remain matters of concern for the ILO, in partnership, as noted above, with the IMO.

166. In recent times, attention has also been drawn by certain maritime education and training institutions to the growing shortage of people competent to undertake higher-level responsibilities on board and ashore; increasing difficulties in recruiting suitable people, particularly to serve as seagoing officers; and the failures of the system of training and certification adequately to equip trainees to serve in positions of responsibility. It was concluded that there was a need to strengthen and otherwise improve:

- the industry's commitment to training;
- the quality of much MET delivery;
- continuing competence and other aspects of professional development;
- "soft" attributes e.g. leadership, communication and motivation; and
- recruitment and retention of seagoing personnel.

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<sup>24</sup> Baltic and International Maritime Conference (BIMCO)/International Shipping Federation (ISF): *2000 manpower update* (London, 2001), summary report available at <http://www.marisec.org/resources/2000Manpowerupdate.htm>.

<sup>25</sup> See, in particular, International Maritime Organization: *STCW95*, STCW Code, resolution 2, para. 3.1.

<sup>26</sup> See International Maritime Organization: *STCW Convention*, Article XII, para. 1(a)(i) and 1(b)(i); Article XIII.

167. The application of the STCW Convention and the assessment of seafarers' competency were also discussed at these meetings. The Association of Maritime Education and Training Institutions in Asia Pacific (AMETIAP) has reported that it was undertaking a survey to enable those who understand these issues to advise relevant bodies of their concerns and how those concerns may be addressed.

168. Consideration might be given to putting the results of this survey before the Joint Maritime Commission and possibly also the IMO/ILO Joint Committee on Training.

#### 4.7. International registers

169. As noted in the introduction to this Report, the Office report to the Joint Maritime Commission in 2001<sup>27</sup> provided a summary of the history of the internationalization of shipping registration and its impact on the structure of the shipping industry worldwide.

170. In accordance with a request of the Joint Maritime Commission, a Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers was held in May 2002. This Meeting gave rise to considerable controversy on many aspects of international registers. The Meeting adopted the "Consensual statement of the Meeting of Experts", referred to in section 2.2. In this statement, the experts emphasized their concern for the need to improve living and working conditions for all seafarers regardless of nationality or domicile. They stressed the need for the strongest possible national and international measures to be taken against breaches of international labour standards, including violations of freedom of association and the right to organize and collective bargaining, which undermine decent living and working conditions for seafarers. In addressing the decent work deficits in the shipping industry, the statement recognized that conditions of employment, social protection, social security and social dialogue, including collective bargaining, were matters requiring particular attention.

171. The experts also recognized the importance of decent work in the maritime industry programme and invited the Governing Body to instruct the Office to secure further action, in consultation with the constituents. Consideration should be given to a possible mechanism by which a performance measurement for flag States in respect of ILO instruments might be introduced. In the context of enforcement, due consideration should be given to the relevant provisions of UNCLOS and of the ISM Code.

172. Many of these elements in the Consensual statement have now been addressed in the text of the proposed consolidated maritime labour Convention. The Office will continue to keep the conclusions of this Meeting in focus in activities promotion and implementation of the new Convention. Their application should encourage progress towards improved implementation of social and labour standards in the world fleet.

#### 4.8. Wage benchmarks and standards

173. Seafarers' wage levels are influenced by a number of factors, including the supply of and demand for seafarers, collective bargaining and regulation. The determination of wages has been examined several times in recent ILO publications. Although there are other wage-setting negotiations covering various categories of seafarers, the minimum wage recommended by the ILO for an able seafarer (AB) under the Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187) has been

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<sup>27</sup> ILO: *The impact on seafarers' living and working conditions of changes in the structure of the shipping industry*, op. cit.

regarded as important by the ILO constituents who negotiate within the Joint Maritime Commission and its Subcommittee on Wages of Seafarers. The figure set by this Recommendation is a basic minimum wage excluding all other payments such as overtime, holidays with pay, or social benefits. It is used as a benchmark in other wage negotiations around the world, both at the national and international levels. Several countries, including some of the most important labour-supplying countries, base their national wage figures on the ILO figure, which is regularly updated by the Governing Body upon a recommendation by the Joint Maritime Commission.

174. The application of Recommendation No. 187 is not mandatory unless a government chooses to make it so through its own legislation. It covers only the basic wage of an AB. This approach has also been retained in the proposed consolidated maritime labour Convention. The wage figure is nevertheless used by shipowners and trade unions as a reference in wage-fixing negotiations and in compiling more comprehensive wage scales. Being a Recommendation, its provisions are not binding and therefore not applied directly by authorities, for example, through port state control.

175. Shipowners and seafarers also negotiate on wage levels internationally outside the ILO. The International Bargaining Forum which negotiates seafarers' pay and conditions involves, on the one hand, a joint negotiating group (JNG) comprising representatives of the International Maritime Employers' Committee and the International Mariners' Management Association of Japan and, on the other, the International Transport Workers' Federation (ITF). However, these agreements apply only to the ships operated by the shipowners represented in these negotiations.

176. The ITF has sought to enforce, on other ships employing foreign seafarers, what it terms as "minimum acceptable standards" through ITF Standard Collective Agreements. These agreements set the wages and working conditions for all crew aboard vessels covered by a "blue certificate", which signifies the ITF's acceptance of the wages and working conditions on board. The level of wages, relevant to these agreements, is decided by the ITF but is indirectly tied to the level of the ILO minimum. The ITF estimates that approximately 90,000 seafarers are covered by such agreements.<sup>28</sup>

177. The Joint Maritime Commission's Subcommittee and Joint Working Group on Wages of Seafarers, at its last meeting in July 2003,<sup>29</sup> decided to recommend an increase of the ILO minimum wage for an AB to US\$500 per month as of 1 January 2005. The Subcommittee considered that it was essential that the basic pay or wages of able seafarers should be updated every two years. The Subcommittee is expected to meet following this session of the Conference and its recommendations would be submitted to the Governing Body in March 2006.

178. At its July 2003 meeting,<sup>30</sup> a Joint Working Group of the Joint Maritime Commission adopted a resolution concerning the interpretation of the ILO minimum wage for able seafarers. It gave guidance on how the minimum wage of able seafarers should be interpreted in order to arrive at a recommended minimum salary. The resolution gave an example of the calculation of leave pay, overtime and compensation for rest days and public holidays.

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<sup>28</sup> See: <http://www.itfglobal.org/flags-convenience/index.cfm> .

<sup>29</sup> ILO: Final report, SJMC/2003/6(Rev.), Subcommittee of the Joint Maritime Commission and Joint Working Group on Wages of Seafarers, Geneva, 5-8 July 2003, appended to Governing Body doc. GB.288/STM/5.

<sup>30</sup> *ibid.*

179. The role of the ILO in wage fixing for seafarers is significant, with considerable impact on the income of seafarers, but its influence could be increased. The ILO could become the main forum for global wage discussions and other related negotiations, with the Office acting as a facilitator in such discussions. The adoption of the proposed consolidated maritime labour Convention will provide an opportunity for the industry to intensify its dialogue on wages and thus reinforce the “level playing field” which is being sought through the current standard-setting exercise.

#### 4.9. Occupational safety and health

180. ILO codes of practice contain practical recommendations intended for all those with a responsibility for occupational safety and health in both the public and private sectors. Codes of practice are not legally binding instruments and are not intended to replace the provisions of national laws or regulations, or accepted standards. They are intended as practical guides for public authorities and services, employers and workers, specialized protection and prevention bodies, enterprises and safety and health committees. Each code is first prepared by the Office and finalized at a tripartite meeting composed of experts nominated by the Governing Body in their personal capacity. Codes of practice are submitted to the Governing Body for approval before publication.<sup>31</sup>

181. In 1994, the Governing Body of the ILO approved for publication a revised code of practice on accident prevention on board ship at sea and in port.<sup>32</sup> The objective of the code is to provide practical guidance on safety and health in shipboard work with a view: (a) to preventing accidents, diseases and other harmful effects on the health of seafarers arising from employment on board ship at sea and in port; (b) to ensuring that the responsibility for safety and health is understood and remains a priority for all concerned with maritime transport, including governments, shipowners and seafarers; and (c) to promoting consultation and cooperation among governments, as well as shipowners’ and seafarers’ organizations in the improvement of safety and health on board ship. It also provides guidance in the implementation of the provisions of the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), and the Prevention of Accidents (Seafarers) Recommendation, 1970 (No. 142), as well as other applicable ILO Conventions and Recommendations.

182. The Conference may wish to note that Recommendation No. 142 had, inter alia, provided that, in giving effect to Article 10 of Convention No. 134, “Members should have due regard to ... codes of practice published by the International Labour Office ...”. The proposed consolidated maritime labour Convention takes a similar approach, and provides that, “the provisions required under Standard A4.3 should take into account the ILO code of practice on accident prevention on board ship at sea and in port ... and subsequent versions ...”. It would therefore appear that this publication will have continued importance and may require periodic updating. Such work might be undertaken in cooperation with the IMO.

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<sup>31</sup> See <http://www.ilo.org/public/english/protection/safework/cops/english/index.htm> .

<sup>32</sup> ILO: *Accident prevention on board ship at sea and in port*, an ILO code of practice (Geneva, 1996).

## **5. The ILO's maritime programme – A partnership for the future**

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183. Sections 2, 3 and 4 of this Report outlined the Organization's standard-setting and related activities in the maritime sector, as well as highlighting some of the more pressing current and upcoming issues facing the sector.

184. As can be seen from the discussion of the various technical cooperation activities of the ILO, a number of core activities in the maritime sector can only be implemented with the support of technical cooperation.

185. This will be particularly true in the near future, when the implementation – and the success – of the proposed consolidated maritime labour Convention and of its compliance and enforcement system will depend largely on the capacity of the Office, in cooperation with relevant organizations, to produce and prepare training material for administrations or inspectors and other officials to hold regional and national seminars and provide technical cooperation to member States to ensure a rapid and efficient implementation of the Convention. Massive financial support from donors will be needed to give this new instrument the success it deserves, if it is to be fully effective.

186. Moreover, the theme of security on ships, where the ILO has also been particularly active, will continue to be of major importance during the coming years. In particular, a large-scale implementation of Convention No. 185 will depend on financial support from donors, which will enable the ILO to provide assistance to countries that may lack the capacity to implement the technology and related systems.

187. The Office will also continue to provide support to the supervisory functions provided for under the Constitution of the ILO, including the Committee of Experts on the Application of Conventions and Recommendations. In the longer term, it is expected that current developments in the ILO's maritime standards should lead to an improvement in the impact of international maritime labour standards. The future activities outlined certainly represent an increase in the level of activities of the Office for the maritime sector. Resources will need to be found to support this increase.

188. In addition, the ILO is increasingly involved in cooperative initiatives with other organizations with complementary mandates. Many of these initiatives are addressing problems such as responding to the need for improved security in the maritime industry, fair treatment of seafarers, and the development of databases and other approaches to help address substandard shipping. They call for concerted action on a number of fronts. All of these initiatives require both resources and guidance from the ILO's constituents. This section of the Report draws upon the matters discussed in sections 2, 3 and 4 and outlines a number of strategic activities that could be undertaken in the future.

## 5.1. Follow-up to the adoption of the proposed consolidated maritime labour Convention

189. The adoption of the proposed Convention will mark the beginning of a new era in the history of ILO maritime activities. The success of the Convention will depend on the degree of support it receives from the tripartite constituents of the ILO after its adoption by the Conference. The attainment of its main objective, to gain global acceptance through wide ratification, will depend on the motivation of tripartite constituents at the national level.

190. In the next two years, promoting the Convention and hastening its entry into force should be a priority for all those interested in the conditions of work of seafarers: seafarers' organizations, shipowners' organizations, non-governmental organizations and, of course, governments, which need to expedite the ratification procedures.

191. The follow-up to the adoption of the proposed Convention will require the cooperation of all ILO constituents. In that respect, the resolution of the Preparatory Technical Maritime Conference concerning technical cooperation to strengthen the capacities of the national administrations responsible for maritime labour inspection should be noted.<sup>1</sup> The resolution invited the Governing Body to request the Director-General to:

- implement an action plan on technical cooperation to assist with ratification of the Convention and assist administrations to develop capacity to implement the Convention;
- facilitate implementation of the Convention by drafting specific manuals and training materials on the Regulations, Standards and Guidelines in the Convention;
- mobilize and allocate the necessary resources for the Organization's technical cooperation programme to assist member States with implementation.

192. At its 291st Session, the Governing Body requested that this resolution be drawn to the attention of ILO member States. It outlines various measures that are proposed for action by the Office in the area of technical cooperation.<sup>2</sup>

193. The efforts required to provide technical cooperation to support promotion and national-level training and implementation are beyond the resources presently available in the budget. Accordingly, the Office will need to seek the support of member States, seafarers' and shipowners' organizations and other interested organizations in the implementation of the Convention, perhaps to an unprecedented extent.

194. The first post-Conference activity will be to promote the Convention through all available means. The Office, together with the social partners and senior government officials, should participate in maritime industry conferences and meetings to gather the support of the whole of the shipping industry in favour of prompt ratification and implementation by member States. Promotional material should also be produced by the Office, by member States, and by shipowners' and seafarers' organizations. This must include a prospectus on the contents and objectives of the Convention and audiovisual materials such as a promotional video to follow the highly successful film "The Vital Link".

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<sup>1</sup> See ILO: Governing Body doc. GB.291/16/2, paras. 7 and 8.

<sup>2</sup> See ILO: Governing Body doc. GB.291/PV, p. 39.

195. The content and operation of the Convention itself will need to be explained widely. A series of workshops should be held in interested countries, particularly in those wishing to ratify the Convention promptly. Such workshops would help local officials to familiarize themselves with the Convention but would also discuss any difficult issues and find appropriate solutions with a view to ratification. As suggested by the resolution of the Preparatory Technical Maritime Conference referred to previously, further training will be needed in many countries after ratification to help them build the capacity to fulfil their international responsibilities, especially their flag state responsibilities. In order to assist trainers, the appropriate training aids, using modern audiovisual techniques, should be prepared and widely distributed. In certain regions, promotional meetings at the regional level might be required in the first instance. Certain Members might consider hosting meetings for the benefit of their region.

196. Work related to the follow-up to the Convention has already started. The Office has been cooperating with the regional port state control organizations, especially with the secretariat of the Paris Memorandum of Understanding (MOU), to produce the first draft of a manual providing guidance for the inspection of ships in flag state and foreign ports. The importance of developing guidance for port state control inspectors has been raised not only at ILO meetings but also within the port state control arrangements themselves. Following the participation by the Chairperson of the Paris MOU at the Tripartite Intersessional Meeting on the Follow-up to the Preparatory Technical Maritime Conference (Geneva, 21-27 April 2005), the Paris MOU's Port State Control Committee, at its 28th Meeting in Helsinki, Finland (May 2005) established a working group, under the leadership of France, that will provide input to the ILO on the development of guidance for port state control inspections under the new Convention. In addition to Paris MOU members, the Tokyo MOU and the United States Coast Guard have agreed to participate in the working group.

197. The draft inspection guidance will be submitted in due course to an ILO tripartite meeting of experts. The Office is seeking financial assistance to hold this meeting as soon as possible, preferably before the end of 2006. This document, which is essential to facilitate the global harmonization of the inspection of ships, will be published by the ILO. This guidance will be extremely useful to train flag state inspectors and authorized officers carrying out port state inspections with respect to their roles, as the Convention is implemented globally.

198. Currently, as discussed earlier, the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) is already included in the inspection under the regional port state control MOUs. It is expected therefore that the new Convention will replace Convention No. 147 in the MOUs soon after its entry into force. Since many more countries are expected to ratify and implement the new Convention, a large-scale effort will be necessary to recruit and train maritime labour inspectors to carry out such inspections, or to supervise "recognized organizations" which might be delegated such responsibility under the Convention. High-quality training materials, using modern training techniques, will therefore need to be produced, thus allowing Members and regional port state control MOUs to launch effective training programmes.

199. The Office should also be prepared to assist Members with ratification procedures and implementation of the Convention. Resources will be needed to allow the Office to increase its capability to provide maritime expertise within its technical cooperation programme. Some countries will need assistance with ratification procedures, in reviewing their legislation, and for the initial reports to the Committee of Experts. One useful tool could be the development of model maritime labour legislation based on the

requirements of the Convention, which could be used by member States that have not previously ratified or implemented many or any of the existing ILO maritime labour Conventions. Although the Convention consolidates existing obligations, it was agreed throughout by the High-level Tripartite Working Group that, in some cases, there was a need to update the existing provisions and in some instances to develop new provisions (for example, in the field of occupational safety and health) to reflect contemporary conditions. This would require a review and, possibly, some amendment of national legislation, even by Members that have implemented a large number of the existing maritime labour Conventions.

200. The Office will need to implement the compliance supervision system established by the proposed Convention. An important component would be the development of a database to support the ILO supervisory process and the complaint procedures under the Convention and to allow for cooperation and participation in the global databases currently under development in other organizations in this sector.<sup>3</sup> This may require some additional support to the Office, particularly in its development phase.

201. It is expected, and essential, for both the Shipowners' and Seafarers' groups to work closely with the International Labour Office to promote the proposed Convention once adopted. Activities could include:

- working with the ILO to develop guidance on implementation, including guidelines on inspection and training materials;
- development of materials (pamphlets, DVD/video, courses for maritime training institutions) aimed at informing seafarers of their rights under the Convention;
- speaking about the Convention at industry events;
- advising the ILO representative at regional port state control meetings;
- assisting their members to lobby for the ratification and implementation of the Convention at the regional and national levels.

202. In addition, the Shipowners' and Seafarers' groups will undoubtedly also play an important role in keeping the Convention up to date.

203. The Joint Maritime Commission should continue to be the permanent bipartite body which provides advice to the Governing Body on maritime questions. It will continue to address, either directly or through subcommittees, specific issues such as the updating of the minimum wage of able seafarers and the welfare of seafarers.

204. Proposals will be made to the Governing Body for the establishment of the Tripartite Maritime Committee. This Committee should become an important source of advice for the Governing Body on the working of the proposed Convention and on updating and developing the instrument.

205. Clearly, a concerted effort, involving not only the International Labour Office but also member States, shipowners' and seafarers' representative organizations, regional port state control organizations, intergovernmental organizations and certain non-governmental organizations will be essential to early ratification and implementation of the proposed Convention.

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<sup>3</sup> For example, in addition to the existing databases in this sector, the IMO is developing a Global Shipping Information System (GSIS), which will be generally accessible.

## 5.2. Technical cooperation and promotion of ratification of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)

206. The Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) will not be revised by the proposed consolidated maritime labour Convention. Implementation of Convention No. 185 is urgently needed, both to ensure security and to avoid any negative impact on international trade and on those involved (governments, maritime industry employers, and seafarers). There are currently about 1.2 million seafarers in the world, 80 per cent of them from developing countries and transition economies.<sup>4</sup> As indicated in section 2.3 of this Report, many countries have been applying stringent documentation requirements to seafarers who may need to transit to join a ship or wish to take shore leave – requirements which even threaten the jobs of many seafarers.

207. The seafarers' identity document (SID) will facilitate the movement of these seafarers to join their ships, to return home and to go ashore in ports. However, there are a number of implementation challenges, both in terms of technology and costs, which might influence the decision of member States relating to the ratification of the Convention. These challenges result primarily from the fact that each country will be responsible for implementing its own identity management system, within the Convention's requirements.

208. In keeping with the resolution concerning technical cooperation referred to previously, priority is to be given to the use of resources allocated in the ILO's technical cooperation programme to assist countries with respect to the technology, expertise and processes required for this Convention. The technical cooperation programme being prepared by the ILO will cover standard information to guide countries in implementing the Convention. This will include developing conceptual designs, defining technical requirements and specifications, preparing implementation plans, identifying equipment and software, making cost estimates, developing financing options, assisting the procurement process, overseeing implementation and initial operations. It is expected that considerable cost savings could be achieved through the establishment in certain parts of the world of a regional system shared by several countries, even if responsibility remained with the national authorities in accordance with the requirements of the Convention. Financial assistance for this programme is needed from a number of potential sources in member States, international and regional financial organizations and other organizations.

209. In a world where the continued tightening of security measures in the international transport and movement of people and goods is an inescapable fact, the consequent necessity of developing a reliable and interoperable system of identification for seafarers, as provided for in the Convention, is a matter of urgency. The global implementation of the Convention depends on wide ratification, which will be possible only if developing countries have sufficient resources for such an operation.

## 5.3. Cooperation with other organizations

210. The ILO's cooperation with the IMO, WHO, United Nations and other organizations, as well as non-governmental organizations and associations interested in maritime labour issues, should be intensified. With the IMO and WHO, there are a

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<sup>4</sup> Estimate based on BIMCO/ISF Manpower Survey 2001.

number of common concerns where joint action is necessary, and these have been outlined. Links with regional organizations must be reinforced, whether it is with regional economic entities such as the European Union, which has a strong interest in this issue and can influence the application of maritime labour standards, or the port state control MOUs, which can influence the enforcement of the proposed Convention once adopted. Many NGOs, such as the International Maritime Health Association and International Committee on Seafarers' Welfare, with their specific interests, have proved helpful in promoting maritime labour standards and assisting with their implementation.

#### 5.4. Ongoing promotion of the ILO Decent Work Agenda and related programmes

211. Aside from the specific matters outlined above, the Office will need to continue its ongoing work to promote decent work, international social dialogue and the core international labour Conventions. The importance of improving the situation of women seafarers was highlighted in section 4, as well as the importance of ensuring modern approaches to occupational safety and health on board ships. These are matters of general concern that need specific attention in the maritime context. The difficult issue of developing an approach to securing social benefits for globalized workers – the seafarers being a major example – is another important and complex matter that will require attention.

212. With regard to improving the situation of women seafarers, it should be noted that gender equality is a Millennium Development Goal and a key element of the primary goal of the ILO to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity.<sup>5</sup> As suggested above, in the maritime context, this means that shipowners should have equal opportunity policies specifically relating to the recruitment and employment of women, and gender-related policies addressing issues relating to such matters as sexual harassment, sanitary materials, and maternity. Shipowners should introduce or extend induction training for all seafarers covering their policy relating to non-discrimination, equal opportunities and gender-related issues. This would illustrate their commitment to the promotion of gender equality and improve employment and working conditions, thereby retaining women seafarers at sea and attracting new female entrants to the shipping industry.

213. Government activities should not only ensure that generic rules such as equal opportunity and non-discrimination policies are observed in the shipping sector, but also proactively target women seafarers. Trade unions should put in place effective infrastructures for dealing with gender issues in detail, elaborate materials for trade union organization and representation of women seafarers, and contact women trainees before they join vessels. The maritime education and training (MET) institutions should offer courses on equal opportunities and gender-related issues, thus raising awareness and emphasizing the suitability of seafaring as a career for women. All stakeholders need to further integrate women into mainstream maritime activities and promote women's employment at sea.

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<sup>5</sup> The Millennium Development Goals, United Nations, 2005.

## 5.5. Conclusion

214. Much needs to be done to improve the working conditions of many of the world's seafarers and to ensure full protection of their rights. Much has been done, as is clear from the numerous decisions taken and instruments adopted since the very beginning of the ILO. The ILO's Conventions and Recommendations, covering a multitude of questions relating to work in the maritime sector, have been applied through action taken by the many parties involved in the maritime industry: seafarers and their unions, shipowners and their organizations, governments, acting individually and collectively, intergovernmental organizations, including the regional port state control MOUs, and non-governmental organizations.

215. This Conference is the occasion when various actors come together to adopt a single more effective and enforceable Convention of an unprecedented character, while fully responding to the needs of tripartism and fitting into the ILO's constitutional structure and supervisory procedures. The Convention should offer a single framework for future action in the maritime labour sector, enabling the concerns of this sector to take their rightful place alongside the other major concerns for safety at sea and protection against pollution.

216. Once the proposed Convention is adopted, the ILO will need to continue to strengthen the quality of its service to the maritime industry. Major efforts will be required to promote the application of the Convention, to assist member States with technical cooperation and to establish the follow-up called for by the Convention. This Conference should be able, based on the proposals made in this Report, to make the appropriate recommendations to the Governing Body and to the Office.