STCMLC/2018/4

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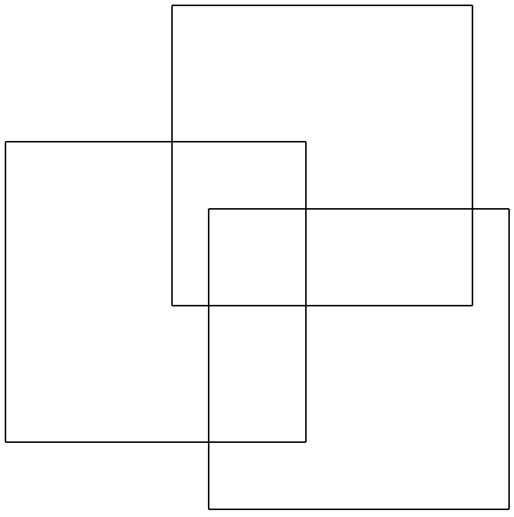
Geneva

Final report

Third meeting of the Special Tripartite Committee of the Maritime Labour Convention, 2006, as amended (MLC, 2006)
(23–27 April 2018)



Geneva, 2018

International
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INTERNATIONAL LABOUR ORGANIZATION

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Appendices

I. Introduction

1. The Special Tripartite Committee (STC) was established by the 318th Session (June 2013) of the Governing Body of the International Labour Organization (ILO), in accordance with Article XIII of the Maritime Labour Convention, 2006, as amended (MLC, 2006), which provides that: "The Governing Body of the International Labour Office shall keep the working of this Convention under continuous review through a committee established by it with special competence in the area of maritime labour standards." In addition, under Article XV, the Committee has a central role with respect to the more rapid process for the amendment of the Code of the MLC, 2006, (the Standards and the Guidelines), containing the more detailed technical provisions. Article XV provides that, upon verification, proposed amendments, along with a summary of related observations or suggestions, shall be transmitted to the STC for consideration at a meeting. At its 326th Session in March 2016, the Governing Body convened the third meeting of the STC, which was held from 23 to 27 April 2018 at the headquarters of the ILO in Geneva. This report has been prepared by the International Labour Office.

II. Composition of the Special Tripartite Committee

2. In accordance with paragraph 2 of Article XIII of the MLC, 2006, STC is composed of "two representatives nominated by the Government of each Member which has ratified this Convention, and the representatives of Shipowners and Seafarers appointed by the Governing Body after consultation with the Joint Maritime Commission". In addition, as provided in paragraph 3 of Article XIII, "Government representatives of Members which have not yet ratified this Convention may participate in the Committee" but have no right to vote on any matter dealt with in accordance with the Convention. The meeting was attended by 142 Government, 31 Shipowner and 65 Seafarer representatives. Representatives of a number of intergovernmental organizations and non-governmental international organizations, as well as interested parties, also attended the meeting. A list of participants is attached.

3. The Officers of the STC, who were appointed for a three-year term, are as follows:

Chairperson:	Ms Julie Carlton (Government member, United Kingdom)
Vice-Chairpersons:	Mr Hans Leo Cacdac (Government member, Philippines)
	Mr David Heindel (Seafarer member, United States)
	Mr Arthur Bowring (Shipowner member, Hong Kong Special Administrative Region, China)

4. The Government group elected the following representative for the third meeting of the STC:

Chairperson:	Mr Martin Marini (Government member, Singapore)

5. The Committee appointed a Drafting Committee for the meeting composed of the following members:

Governments:	Mr Martin Marini (Government member, Singapore) and Mr Thibault Rochard (Government member, France)
Shipowners:	Mr Tim Springett and Ms Virginie Costel
Seafarers:	Mr Charles Boyle and Mr Patrice Caron

III. Opening statements

6. The Chairperson opened the meeting and welcomed the participants. She recalled the mandate of the STC and reviewed its tasks for its third meeting. The agenda of the meeting is reproduced in Appendix I.

7. The Secretary-General (Director, International Labour Standards Department) welcomed the participants and recalled the developments since the last meeting of the STC in 2016, particularly in relation to the ratification of the MLC, 2006, which highlighted the growing reach of the Convention and further consolidated its role as the fourth pillar of the international maritime regime. She also reviewed the status of the amendments to the MLC, 2006, adopted in 2014 and 2016. Turning to the issue of the protection of seafarers' wages when the seafarer was held captive on or off the ship as a result of acts of piracy or armed robbery against ships, she noted the two important proposals that were before the Committee: one, submitted by the Seafarers' group, related to an amendment to the Code of the Convention; another, submitted by the Shipowners' group, proposed the adoption of guidelines outside the MLC, 2006. She expressed confidence that the collective experience and the long-standing and fruitful social dialogue that characterized the maritime sector would result in the adoption of the best solution to deal with the issue. She also introduced Ms Lia Athanassiou, member of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), and emphasized the complementary roles that the STC and the CEACR played in ensuring the effective, efficient and, to the extent deemed expedient, uniform implementation of the Convention. It was therefore crucial to ensure synergy between the two committees. Another fundamental aspect of the system for the enforcement of the Convention was the work carried out by port State control authorities. In this respect, she welcomed the enhanced cooperation of the Office with various memoranda of understanding (MOUs). Finally, she recalled that the STC had also been mandated by the Governing Body to review 68 maritime-related international labour standards in the context of the functioning of the Standards Review Mechanism (SRM). In so doing, the Committee would be making a significant contribution to the implementation of the Standards Initiative adopted by the Director-General in the framework of the ILO's centenary with a view to ensuring that the ILO had a clear, robust and up-to-date body of standards for the maritime sector.

8. The Director of the Sectoral Policies Department also welcomed the participants and drew attention to certain other developments related to the meeting. With reference to the Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development, she recalled that the ILO had a particular interest in SDG 8 "Decent work and economic growth", as well as in several other goals, including SDG 14 to conserve and sustainably use the oceans, seas and marine resources for sustainable development. The ILO was making specific commitments to achieve SDG 14, including the efforts made to promote the ratification and implementation of the MLC, 2006, and the Work in Fishing Convention, 2007 (No. 188). She noted in particular that the ILO had embarked on a rigorous campaign to promote the ratification and effective implementation of Convention No. 188, which had currently only received ten ratifications. Many more ratifications of the Convention were

required to support the promotion of decent work in the fishing sector, and she called for support to step up ratifications of the Convention. She added that the Sectoral Polices Department was working closely with the International Labour Standards Department to promote and implement the MLC, 2006. This cooperation included the management of the International Maritime Organization (IMO)–ILO database on abandoned seafarers; representation of the ILO in meetings of regional port State control agreements; representation of the ILO on UN-Oceans (a coordinating body of United Nations agencies concerned with oceans); and the holding of meetings relevant to shipping. During the 2018–19 biennium, the Sectoral Policies Department would hold two meetings on the maritime sector: the Subcommittee on Wages of Seafarers of the Joint Maritime Commission to update the minimum monthly basic pay or wage figure for able seafarers, in June 2018; and the Sectoral Meeting on the Recruitment and Retention of Seafarers and the Promotion of Opportunities for Women Seafarers, in February 2019.

9. The Shipowner Vice-Chairperson recalled that, under the provisions of the MLC, 2006, the STC had three tasks. The first, in accordance with Article XIII of the Convention, was to keep the working of the Convention under continuous review. In that respect, as recalled in the past by the Seafarers' group, the implementation of the Convention should be seen as a journey, rather than a destination, which the Seafarers' group used to signify the need for the continuous improvement of the applicable minimum standards. However, and to use the phrase in a different context, it should also be recalled that during the negotiations leading to the adoption of the Convention, it had been well understood that the Convention would never be applied consistently by the various member States from the outset. It was clear that member States would have different needs and practices, which would be explained in the Declaration of Maritime Labour Compliance (DMLC) and subsequently through the article 22 reports to the ILO supervisory bodies. Consistency of application and interpretation would eventually be achieved over time. The current high rate of ratification, combined with the no more favourable treatment provision of Article V, now meant that the vast majority of ocean-going ships were now compliant. But it was necessary to bear in mind that the laws and regulations in the different countries could be based on different interpretations of the provisions of the Convention. It was not the fault of the ship or its crew if those interpretations or determinations differed from those adopted by the port State, and such differences, unless hazardous to the safety and health of seafarers, should not therefore be used to detain ships, but should be brought before the STC or, in serious cases, reported to the Office in accordance with Regulation 5.2. He added that gratitude was due to the CEACR for its excellent work and analysis. However, it needed to be acknowledged that responses to the article 22 report forms constituted an administrative burden which, it was hoped, would become easier over time. The report forms were of great importance and governments should be encouraged to discuss the issues that arose from them in their group meetings.

10. The second task of the STC was to consider proposals for the amendment of the Convention in accordance with Article XV. He expressed sympathy with the view of the Seafarers that the amendment process should not be complex, and that the purpose of Article XV was to offer a fast track amendment process. But it should also be borne in mind that each proposal for amendment needed to be balanced against the additional administrative burdens to be borne by governments and shipowners. Although it was necessary to consider proposals for amendment that would improve the minimum standards of the Convention, there was no absolute requirement to submit proposals for amendment. It was not necessary to propose amendments to address specific or topical issues that were already well covered by the general obligations, or which resurrected arguments that had not previously met with tripartite approval. The amendments considered and agreed to by the STC should only address issues not already covered, those on which the STC considered that improvements were needed and where the administrative burden on governments and shipowners was not excessive. A multitude of amendments to the MLC, 2006, could act as a disincentive for ratification, and could undermine the ambition to achieve the same level of ratification as

the other three main IMO pillar Conventions. In conclusion, he emphasized that the ILO was a unique Organization and the MLC, 2006, was a unique ILO instrument. All those involved should be proud of everything that had been achieved since the beginning of the process that led to the "Geneva Accord" and the unanimous adoption of the Convention.

11. The Seafarer Vice-Chairperson welcomed the rise in the number of ratifications of the MLC, 2016, which now covered over 91 per cent of the world fleet in terms of tonnage, and looked forward to further ratifications, particularly by major port States. However, he expressed growing concern at the number of seafarers who were being abandoned, a subject that would be discussed by the STC. It was a matter of concern that the impact of the 2014 amendments to the Convention might have been adversely affected by the requirement for countries to sign a formal declaration of acceptance, which had not yet been done by a number of significant countries. The Seafarers' and Shipowners' groups would be tabling a joint resolution on that subject. The Seafarers' group was looking forward to the discussion on the implementation of the Convention and the comments of the CEACR, with particular reference to the issues identified in relation to seafarers' rights, consultation, the definition of seafarer, the definition of ship, minimum age, recruitment and placement, the seafarers' employment agreement, hours of work and of rest, annual leave, repatriation, manning levels, accommodation, safety and health, social security, the DMLC and the control of recognized organizations. Recalling the agreement in 2001 by the High-Level Tripartite Working Group on Maritime Labour Standards that the MLC should be inflexible with respect to seafarers' rights and that the principal consideration should be the achievement and maintenance of a level playing field, he welcomed the focus on Article III for those countries which had not yet ratified the fundamental Conventions and the identification of flag States which were in breach of Article III in terms of freedom of association. However, it was a matter of concern that some countries might be offering greater levels of flexibility as a marketing tool, to the detriment of seafarers. The Seafarers' group also wished to draw attention to an issue prevalent in the cruise sector, in which a number of companies required pre-employment testing for pregnancy and cervical cancer, in breach of Article III of the Convention. Flag and labour-supplying States should be urged to take measures to eliminate such practices. With reference to the proposed amendments to the Convention, it was to be hoped that there would be general understanding of the need to ensure that in practice seafarers continued to be paid in the event of captivity as a result of piracy or armed robbery. Failure to pay seafarers in such circumstances caused great hardship to them and their families, and could make it more difficult to recruit and retain qualified seafarers.

12. The Chairperson of the Government group welcomed the very helpful background papers prepared for the meeting. When examining the proposals before the STC, the members of the Government group were in agreement concerning the need to ensure that the wages and other entitlements of seafarers continued to be paid in the event that they were held in captivity. However, they had also noted the diversity of the proposals made by the Seafarers' and Shipowners' groups. The views expressed on the proposals differed within the Government group. Certain Government representatives did not consider that there was a demonstrated need for the adoption of amendments to the Convention in relation to the issue under consideration. Some had also noted the challenges relating to the implementation of further amendments in both legislative and administrative terms, with many countries still struggling to adopt the necessary measures to give effect to the 2014 and 2016 amendments, which required a long and complex legislative process. However, the view had also been expressed that while guidelines outside the MLC, 2006, could be useful, there were questions about their legal value. The Government members of the STC hoped that the social partners would be able to reach a compromise solution, and would not stand in the way of such an outcome. There was support within the group for the continued effect of seafarers' employment agreements in the event of captivity and for the continued payment of their wages. However, the proposal concerning specific financial security for that purpose gave rise to problems. It might be the case that if agreement could be reached on the proposed new paragraph 7 to Standard A2.1 concerning seafarers' employment agreements that might

be sufficient to ensure the continued payment of seafarers' wages in the event of captivity. The Government group had also discussed the question of electronic certificates within the framework of the MLC, 2006. In that regard, there was a need for clarity on the extent to which certain electronic certificates would be acceptable to the various port State control bodies. The question also arose of whether seafarers' employment agreements could be issued in electronic form, and whether the signature of the shipowner and the seafarer could be applied electronically.

13. A representative of the Government of Bulgaria, speaking on behalf of the Member States of the European Union (EU) represented in the Committee, said that the entry into force of the MLC, 2006, was an important milestone in promoting decent living and working conditions for seafarers and fairer competition for shipowners worldwide. However, the MLC, 2006, was not a static instrument and the STC made provision for discussing the impact of the Convention and addressing emerging issues on a regular basis. The EU had supported the MLC, 2006, from the outset and its efforts were geared towards the broadest possible ratification of the Convention with a view to achieving a level playing field in the maritime industry. All non-landlocked EU Member States had ratified the Convention and were implementing its provisions through national laws and regulations. Following consultations and social dialogue, an agreement on the implementation of the MLC, 2006, had been reached by the social partners in the maritime sector, which had been implemented through specific EU legislation. The enforcement of the Convention was also secured through legislation on flag and port State control. In conclusion, he highlighted the importance of ensuring that the rights of seafarers held captive were protected and that they continued to benefit from their wages and entitlements.

14. An observer representing the International Christian Maritime Association (ICMA) recalled that the 29 Christian seafarers' welfare organizations comprising the ICMA provided vital welfare services for seafarers, including helping them recover from the effects of piracy. For thousands of years the scourge of piracy had threatened commercial shipping, with devastating consequences for seafarers. While the inhumane hostage-taking tactics of Somali pirates had diminished in recent years, seafarers were still captured and held hostage by pirates in other parts of the world, with reports of 100 seafarers being taken hostage and 14 being kidnapped from their vessels in the first three months of 2018. While most shipowners continued to pay seafarers their wages and entitlements while they were held captive by pirates, unfortunately some shipowners did not do so. When seafarers did not receive their wages and entitlements during captivity, the financial and personal costs to them and their families was extremely high, and the industry's reputation was greatly blemished. The ICMA therefore believed that all efforts must be made to amend the MLC, 2006, so as to require shipowners to continue paying seafarers their contractual wages and entitlements while they were held captive by pirates. He added that, while the ICMA appreciated the intent of the proposal by the Shipowner representatives concerning support for post-traumatic stress disorder (PTSD) for seafarers, it considered that PTSD should not be explicitly referred to in the MLC, 2006. PTSD was a medical condition for which specific minimum requirements had to be met before it could be diagnosed by a medical professional. Such a diagnosis was not normally made until at least six months following the traumatic event. It was normal for persons who experienced a traumatic event to have reactions, such as anxiety, sadness, stress and nightmares. If they interfered with a person's adaptive coping, it was important to provide appropriate mental wellness care as soon as possible after their release from captivity. A reference to PTSD in the Standards or Guidelines could therefore have the effect of limiting the care provided for seafarers immediately following their release and it would be better for the MLC, 2006, to be amended to draw attention to the normal psychological effects of piracy on seafarers and the need to provide them with timely care.

15. An observer representing the International Seafarers Welfare and Assistance Network (ISWAN) said that, while there had not been successful attacks by pirates off Somalia since 2012, with the exception of the hijacking of the ARIS 13 in March 2017, Somali pirates still

had intent and capability. Moreover, piracy off the coast of West Africa was a major concern, and particularly the increase in the number of attacks in the Gulf of Guinea in 2018, where seafarers were being held for longer periods of time. He noted that three Indian seafarers from the MT Timi, which flew the flag of a country that had ratified the MLC, 2006, had been held hostage for 75 days and their wages had not been paid by the shipowner. It was crucial for seafarers to be protected and their families supported, especially when they were held hostage for long periods. He gave thanks to the International Chamber of Shipping for promoting the ISWAN *Good Practice Guide for Shipping Companies and Manning Agents: Humanitarian support of seafarers and their families in cases of armed robbery and piracy attack*, which was available on the ILO website. Finally, he invited all the participants to attend the International Seafarers Welfare Awards which would be awarded later in the day in the ILO.

16. An observer representing the International Maritime Health Association (IMHA) expressed concern at the diverging interpretations by various shipping companies and flag States of the provisions of the MLC, 2006, respecting the medical examination of seafarers. She called for certain tests to be discontinued and for a working group of the STC to draw up a list of recommended tests for the medical examination of seafarers.

IV. Report of the Working Group of the Special Tripartite Committee

17. The Chairperson presented a summary of the report of the Working Group of the STC, which had worked by correspondence from August 2016 to January 2017 and had met in the ILO in Geneva from 3 to 5 April 2017. The Working Group had been requested by the STC to recommend improvements to the process of preparing proposals for amendments to the Code of the MLC, 2006, and had prepared a draft template and a resolution on that subject. With a view to providing the necessary relevant information on proposals for amendments, the template sought information on the background to the proposal, its purpose, benefits and implications. The use of the template would be a recommended practice. It was agreed that amendments could be submitted to the draft resolution, which would be discussed on the last day of the meeting.

18. With reference to the protection of seafarers' wages when the seafarer was held captive on or off the ship as a result of acts of piracy or armed robbery against ships, the Working Group had retained three proposals, in relation to which it had noted that they reflected the various types of proposals discussed and were without prejudice to the positions of any government or group. They should not be treated as replacing or obstructing the need for proposals to be submitted to the Director-General in accordance with Article XV, paragraph 2, of the MLC, 2006. The proposals consisted of: (a) amendments to Standard A2.1 of the MLC, 2006, and the accompanying Guideline; (b) amendments to Standard A2.2 of the MLC, 2006, and the accompanying Guideline; and (c) elements to be incorporated into Office guidelines outside the MLC, 2006. Following the meeting of the Working Group, two proposals related to this issue had been received by the Office: (i) a proposal from the Seafarer representatives for amendment to the Code of the MLC, 2006, regarding the protection of wages of seafarers held captive on or off the ship as a result of acts of piracy or armed robbery against ships; and (ii) a proposal from the Shipowner representatives to adopt guidelines outside the MLC, 2006, on the same issue.

19. The Shipowner Vice-Chairperson, while recognizing the importance of ensuring the protection of seafarers' wages when a seafarer was held captive on or off the ship as a result of acts of piracy or armed robbery against ships and supporting its examination by the Committee, recalled that the number of cases of piracy in which seafarers had not received their wages was extremely small, and that all of the cases reported took place prior to the

entry into force of the 2014 amendments to the MLC, 2006. Furthermore, many of the cases referred to related to vessels that fell outside the scope of application of the MLC, 2006, namely fishing vessels, dhows and junks, or vessels registered with flag States that had not ratified the MLC, 2006, or did not comply with its requirements. Moreover, he considered that the MLC, 2006, covered situations in which seafarers' employment agreements could not be terminated or in which wages ceased to be paid when a seafarer was held captive on or off the ship as a result of acts of piracy or armed robbery against ships. The Shipowners' group therefore considered that an amendment to the Code of the MLC, 2006, would not assist those affected, be appropriate or be the most effective or proportionate response. The MLC, 2006, had only recently entered into force (including some amendments already adopted) and needed more time to be fully implemented. The most appropriate, effective and proportionate response would therefore be to develop Office guidelines outside the Convention on the protection of seafarers' wages when a seafarer was held captive. The guidance developed should be broad in scope and cover all personnel on board seagoing vessels, and not just those within the remit of the MLC, 2006. Such guidance would ensure that the current practice of shipowners continuing to pay seafarers' wages and to provide all other entitlements in accordance with seafarers' employment agreements was clear and unquestioned. Any amendment to the Code of the MLC, 2006, on this issue could have the unfortunate and unintended consequence of negatively affecting current practice or leading to confusion about the existing requirements of the MLC, 2006, related to the payment of wages and seafarers' employment agreements.

20. The Seafarer Vice-Chairperson emphasized that piracy was on the rise and expressed the strong belief that if the opportunity of amending the MLC, 2006, on this subject was not seized now, years would be lost. Although many shipowners continued to pay the wages and other entitlements of captive seafarers, others did not because they were not required to do so. Shipowners must be under the requirement to pay the wages and other entitlements of seafarers who were held captive, and the current system was not sufficient or sustainable in that respect. Whether the wages of one or 100 seafarers were not paid when they were held captive by pirates, the MLC, 2006, was not serving its purpose and the STC had the duty to remedy the situation.

21. The Chairperson of the Government group noted that the two proposals submitted by the Seafarer and the Shipowner groups were diametrically opposed to each other. He however hoped that the meeting would be able to find a compromise solution. With regard to the improvement of the procedure for the submission of amendments to the MLC, 2006, it was to be hoped that any improvements adopted would ensure that proposed amendments were subject to rigorous scrutiny before they came up for examination by the STC.

22. A representative of the Government of Norway, recalling the disagreement on the terms of reference of the Working Group of the STC that had met in April 2017, raised the question of how the outcome of the Working Group related to the two new proposals submitted, respectively by the Seafarer and Shipowner groups, to the present meeting and the procedure that would be adopted in that regard.

23. A representative of the Government of Bahamas, noting the major differences in the proposals put forward by the Seafarer and Shipowner groups, recalled that the subject had been addressed at length the previous year by the Working Group of the STC, and indicated that he could support the outcome of the Working Group on the core issue under examination. The question therefore arose of how the STC would now proceed on the issue.

24. The Chairperson indicated that the Working Group had been requested to explore the issues and identify possible ways forward. The task of the present meeting of the STC was to examine the proposals put forward by the Seafarer and Shipowner groups.

25. A representative of the Government of the Republic of Korea recalled the *Interim guidelines on measures relating to the welfare of seafarers and their families affected by piracy off the coast of Somalia*, adopted by the Maritime Safety Committee of the IMO (MSC 93/16/1), the preliminary draft of which had been prepared by the delegation of the Republic of Korea. He supported the proposals set out in the report of the Working Group of the STC, which offered a very balanced solution for the payment of the wages and entitlements of seafarers and prohibited their dismissal during captivity.

V. Exchange of information related to the implementation of the MLC, 2006

Work of the CEACR on the MLC, 2006

26. On behalf of the CEACR, and with the authorization of its Chairperson, Justice Koroma, Professor Lia Athanassiou presented the work of the CEACR on the supervision of the MLC, 2006. With regard to the progress achieved, she emphasized that both the level of ratification (86 countries had ratified the Convention, and another four ratifications were expected shortly) and the world gross tonnage covered by the MLC, 2006, (approximately 91 per cent) were near to those of the three other pillars of the international maritime regulatory regime (the International Convention for the Safety of Life at Sea (SOLAS), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and the International Convention for the Prevention of Pollution from Ships (MARPOL)). So far, the CEACR had reviewed 55 first reports on the effect given to the Convention and had been able to acknowledge impressive efforts for its implementation in law and practice. The application of the Convention had also been facilitated through the informal opinions of the Office which, while non-binding, bore witness to the extremely valuable dialogue between member States and the Office. Cooperation with MOUs on port State control was also to be welcomed.

27. She noted that the 2014 amendments to the Convention, which had entered into force on 18 January 2017, had been accepted by 69 member States, while declarations of acceptance were awaited from 17 members and one had expressed formal disagreement (Netherlands – Curaçao). In that regard, the CEACR wished to draw attention to an issue, referred to as a "lacuna" or "gap", that had arisen concerning the manner in which Members that had ratified the Convention during the "tacit acceptance period", that is between the approval of the amendments by the Conference and their entry into force, could accept the amendments. The Convention was silent on that point. On that issue, the Office had advised the Members concerned that they could accept the amendments by way of a formal declaration to the Director-General. In its general observation on the MLC, 2006, published in 2017, the CEACR had invited the STC to consider this legal issue in view of future amendments. It had also encouraged governments to clarify their position regarding the acceptance of amendments to the Code. The second set of amendments to the Convention, adopted in 2016, were due to enter into force on 8 January 2019. The period for expressing disagreement would come to an end on 8 July 2018. So far, only Finland had expressed disagreement, although for reasons not related to the substance of the amendments, but to the legislative process for their implementation.

28. She referred to the challenge of the heavy workload for governments, the Office and the CEACR due to the comprehensive nature of the MLC, 2006, which consolidated 37 Conventions and 29 Recommendations. The main difficulties noted by the CEACR in its analysis of the reports on the application of the MLC, 2006, included: incomplete information (which in some instances was not available in the ILO's working languages); the lack of legal references for the information provided by member States; and

discrepancies due to the lack of coordination between the ministries of labour and the maritime authorities. Six countries had not sent their reports for two consecutive years. In order to address the challenges, a new improved report form for the MLC, 2006, had been approved by the Governing Body in March 2017, which was intended to be more user-friendly. Subsequently, she elaborated indicatively on a number of major substantive issues raised by the CEACR in reviewing the implementation of the Convention. Such issues included the definition of seafarers, as the protection of all seafarers covered by the Convention was not always guaranteed. For example, in some instances, cadets were excluded from the definition of seafarers. The CEACR had reaffirmed that obtaining on-board training for the purpose of becoming a seafarer by definition implies working on board and, as a result, no question of doubt can arise concerning the fact that cadets are to be regarded as seafarers for the purpose of the MLC, 2006. With regard to "non-maritime personnel", the CEACR had recalled that the nature of the contract was irrelevant to the definition of seafarer. In some cases, the CEACR had also noted the lack of a clear prohibition of work by seafarers under the age of 16 or of hazardous work by seafarers under the age of 18. In some instances, national legislation provided for exceptions to the prohibition of hazardous work that were not permitted by the Convention. In other cases, the list of types of hazardous work prohibited for seafarers under 18 years of age had not been adopted, or the necessary consultations had not been held.

29. With regard to seafarers' employment agreements (SEAs), the CEACR had noted recurrent issues regarding: the requirement for the signature of the seafarer and the shipowner (or a representative); the right for seafarers to seek advice before signing the agreement; the matters to be listed in the SEA; the minimum period of notice for termination and the possibility to terminate the SEA with shorter notice or no notice for compassionate reasons. On the subject of hours of work and hours of rest, the CEACR had recalled that they needed to be regulated by national legislation in a precise manner, with the choice of either a system of maximum hours of work or of minimum hours of rest. Some member States allowed for exceptions to the provisions on working time by means other than collective bargaining agreements, which was not in conformity with the Convention. Moreover, some national legislations did not recognize normal working hours for seafarers based on an eight-hour day with one day of rest a week and rest on public holidays. With reference to repatriation, the CEACR had observed that some countries had established a broad definition of the cases in which seafarers were not entitled to repatriation. The CEACR had highlighted the obligation of shipowners to pay for repatriation in the first instance, even where the seafarer was found to be in serious default of employment obligations. Moreover, some member States were not in compliance with the maximum period of service on board. Finally, with regard to the DMLC, the CEACR had recalled the importance of making reference in Part I to the content of the relevant national provisions implementing the MLC, 2006, and, in Part II, to the specific measures of compliance taken by the shipowner.

30. The Shipowner Vice-Chairperson welcomed Professor Athanassiou's presentation on the work of the CEACR, but noted that the term "maximum period of service on board" remained unclear. He asked whether it was to be understood as referring to the dates in the SEA, or to some other aspect of what could be meant by a maximum period of service on board the ship.

31. Professor Athanassiou referred to the clarifications provided on that issue by the CEACR's direct requests, where it is stated that "maximum period of service on board" is of the meaning that the effective service on board, as a general principle, should not be more than 11 months.

32. A representative of the Government of the Republic of the Marshall Islands expressed concern regarding the expertise of the CEACR on maritime matters and its ability to maintain independence, impartiality and objectivity in carrying out its duties. The administrative burden that the CEACR had placed on authorities was also highly

problematic. The Marshall Islands was a small developing island nation with a population of approximately 75,000 inhabitants. While in 2014, the Government had fulfilled its constitutional obligations by submitting a lengthy report on the implementation of the MLC, 2006, since then it had received two direct requests from the CEACR in 2014 and 2018, which had included a number of questions, some of which were repeated, while others were not directly related to the country's implementation of the MLC, 2006. For example, while his Government had already provided clarifications with respect to a number of questions, including those related to legislation providing for freedom of association and the right to bargain collectively of seafarers and their employers, as well as the minimum age of seafarers, the CEACR had addressed additional requests on those points, which could only reflect a lack of understanding of how the country's maritime laws and regulations worked together. He added that fundamental rights were already embedded in the national legislation and that the ratification of the ILO's fundamental Conventions would not therefore bring additional benefits to its citizens or to seafarers on board vessels that flew its flag, but would only create an additional burden for the competent authorities. He asked the Office to inform the CEACR that his country's responses to its latest direct requests would not be submitted until it could be assured of the CEACR's competence to review maritime matters in a practical and unbiased manner.

33. The Shipowner Vice-Chairperson expressed disagreement with the reference of the CEACR to a "maximum period on service on board". Although the Convention set out the entitlement to annual leave with pay, there was no obligation to take leave annually. Moreover, a maximum period of 11 months service would probably be detrimental to the training of cadets, for example, who often needed sea service of 12 months before taking their certificates. While the provisions of the Convention for repatriation referred to a maximum duration of service periods on board of 12 months, following which a seafarer is entitled to repatriation, there was no provision in Regulation 2.4 (Entitlement to leave) for a "maximum period of service on board".

34. A representative of the Government of Norway indicated that, with regard to the workload, the first report form for the MLC, 2006, was complicated and required extensive work. There had been an attempt to simplify it, but the new version of the report form was still very complex. Some of the questions raised appeared to indicate a lack of knowledge of the maritime industry, and he asked what measures were being taken to address that issue, which would lead to more effective reporting.

35. A representative of the Government of the Philippines, referring to the recruitment and placement of seafarers, said that a number of countries had not adopted policies to encourage employment opportunities for seafarers, as required by the Convention. He therefore welcomed the Tripartite Sectoral Meeting on the Recruitment and Retention of Seafarers and the Promotion of Opportunities for Women Seafarers, to be held in 2019.

36. The Secretary-General, with regard to the reporting burden, indicated that the Office and the CEACR were fully aware of the time required to report on the application of the MLC, 2006. The text of the Convention was innovative and lessons had been learned after each session of the CEACR. She expressed surprise at the comments relating to expertise on maritime matters, and affirmed that, following rotations of personnel, the team responsible for assisting the CEACR on maritime matters was well prepared, although it was not easy to allocate the necessary resources to cover all the various international labour standards.

37. The Seafarer Vice-Chairperson expressed disagreement with the Shipowner Vice-Chairperson with regard to the interpretation of the maximum period of service on board and agreed with the view of the CEACR that Standard A2.4, paragraph 3, of the Convention needed to be understood in a restrictive manner. Indeed, a reading of this Standard as a broad authorization to forgo annual leave would defeat the purpose of Regulation 2.4, which was to ensure that seafarers benefited from adequate leave.

38. The Shipowner Vice-Chairperson clarified that he was not referring to foregoing the entitlement to annual leave. However, seafarers might wish to remain on board for a period of 12 months or more to build up sea service and have that right under the Convention provisions.

39. A representative of the Government of Norway indicated that the term "maximum period of service on board" had not been discussed during the negotiations leading to the adoption of the Convention, and the interpretation of its meaning should therefore be avoided. The implementation of the provisions on annual leave was a matter for the member State itself, in dialogue with the ILO. A representative of the Government of Greece added that, as there was no explicit provision in the Convention on the maximum period of service on board, any interpretation should not be to the detriment of seafarers.

40. The Shipowner Vice-Chairperson raised concerns regarding the continuing challenges of securing transit and shore leave for seafarers. Shipowners fully recognized the security concerns which had led to the speedy adoption of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), following the horrific attacks on the World Trade Centre. However, the difficulties that seafarers continued to experience in relation to shore leave and the challenges that they faced in securing visas (including Schengen visas) made seafarer transit particularly difficult. For example, crew members had experienced difficulties in gaining access to shore leave in ports and territorial waters in northern Brazil. Similarly, both in the United States and elsewhere, some private terminals were reluctant to allow seafarers to disembark for shore leave. While it was encouraging that more countries had ratified Convention No. 185, there still appeared to be problems in its application in practice. In this regard, governments were encouraged to make every effort to fulfil the principles of facilitated transit and shore leave, as enshrined in the MLC, 2006. Another matter of concern was the difficulty faced by port chaplains and visitors to obtain access to port areas in order to reach vessels where seafarers found it difficult to go ashore. It was frustrating to hear that some ports had been reluctant to offer passage to such persons, who could provide a lifeline to seafarers on board ships.

41. The Seafarer Vice-Chairperson fully supported the comments made by the Shipowner Vice-Chairperson on the issue of shore leave. With regard to the direct requests of the CEACR in the last reporting cycle, he expressed concern about the effective implementation of the MLC, 2006, by certain member States. For example, the last direct request addressed to the Marshall Islands had identified a number of issues, including those related to the definition of ships and seafarers and to substantial equivalence. It was important to emphasize that no specific provision of the Maritime Act of the Marshall Islands addressed protection against acts of anti-union discrimination and that the Act provided for compulsory arbitration as a prerequisite for engaging in industrial action, which could impede the exercise of the right to take industrial action. Nor did the Maritime Act prohibit discrimination as to the terms and conditions of employment of seafarers on the basis of political opinion, national extraction or social origin. The direct request addressed to Palau in 2017 raised similar issues. He recalled that the fundamental Conventions were listed in the Preamble to the MLC, 2006, and that ratifying States were required, under Article III, to satisfy themselves that the provisions of their national legislation respected those fundamental rights in the context of the MLC, 2006. Under Standard A5.2.1, paragraph 6, violations of seafarers' rights constituted a serious breach permitting port State inspectors to prohibit a ship from leaving port until the necessary remedial action had been taken. That was reinforced by Guideline B5.2.1, which suggested that policies relating to ship detention should consider serious breaches to include the violation of fundamental rights and principles or seafarers' employment and social rights under Article III. It was important to recall that all ILO member States were under the obligation to respect and promote fundamental principles and rights at work, whether or not they had ratified the relevant Conventions. Those principles and rights applied to all workers everywhere, including seafarers. As emphasized many

times, the MLC, 2006, should be inflexible with respect to seafarers' rights and the principal consideration should be the achievement and maintenance of a level playing field.

42. A representative of the Government of India wished to raise two issues, the first regarding the abandonment of seafarers and the second on piracy. He expressed concern for the safety and security of seafarers in cases in which shipowners failed to discharge their obligations, unilaterally severed ties with seafarers and abandoned the ship. Bankruptcy or liquidation of the company were the main reasons reported by shipowners in such situations. Although the 2014 amendments to the MLC, 2006, established an effective financial security system for shipowners' liability, those provisions did not adequately cover stranded seafarers who were ready for repatriation after the termination of the SEA and invoked the financial security, but who were unable to leave the ship due to the failure of the shipowner to replace them. The Working Group of the STC had suggested certain amendments to the Code of the MLC, 2006, for discussion by the STC. However, the specific issue of financial security in relation to the seafarers detained beyond the contractual period had not yet been discussed. That issue could be addressed through the inclusion of an additional provision in the Standard respecting financial security to provide for Protection and Indemnity (P&I) insurance for the replacement of seafarers. With regard to the issue of piracy, he indicated that between 2010 and 2012 a total of 35 Indian seafarers had been held in captivity by pirates for long periods. Certain issues had emerged while dealing with the rescue, relief and rehabilitation of those seafarers. For example, the Indian administration had often found it difficult to obtain information from shipowners, recruitment agencies or flag States pertaining to the seafarers, their well-being and the efforts made for their release. Moreover, neither the seafarers nor their families had received wages or any other form of compensation during the period of captivity, or even following their release. India had raised that issue in the IMO during the 104th Session of the Legal Committee, and the STC should also take note of these issues. In relation to the problem of monetary compensation for seafarers detained beyond the period covered by the employment agreement, a clause could be included in SEAs to the effect that shipowners were legally bound to discharge their obligations towards seafarers during captivity through the payment of wages, compensation and other forms of relief and rehabilitation.

43. An observer representing the International Christian Maritime Association (ICMA) recalled that one ICMA member conducted annual surveys of the shore leave of seafarers in United States ports. The 2017 survey revealed that 9.5 per cent of seafarers had been denied shore leave in United States ports during the survey week, of whom 73 per cent had been denied shore leave because they did not possess a valid visa. Of those seafarers, 78 per cent were serving on vessels flying the flag of countries in which the MLC, 2006, was in force. He recalled that Standard A1.4, paragraph 5(b), of the Convention required shipowners to pay the cost of visas. There could be several reasons why seafarers did not have visas, including the policy of one member State, which interpreted the requirement as only applying to the visas required to join a vessel. Many seafarers reported that their shipowner would not pay for the visa. No seafarers reported that they had been denied a visa by the United States.

44. A representative of the Government of Latvia indicated that the implementation of Standard A1.4, paragraph 5(c)(vi), of the MLC, 2006, which set out the obligation for recruitment and placement services to establish a system of protection to compensate seafarers for the monetary loss incurred as a result of the failure of the recruitment and placement service or of the relevant shipowner to meet their obligations under the SEA, was an important issue for her Government, which had raised the issue in previous meetings of the STC. Taking into account the comments received from the Office and the entry into force of the 2014 amendments, Latvia intended to implement this Standard by requiring recruitment and placement services to ensure that any shipowner with which a contract was concluded had appropriate insurance coverage or another security scheme in place. It was considered that such a requirement would qualify as an "equivalent appropriate measure" under Standard A1.4, paragraph 5, of the Convention, and amendments were being prepared

to the national legislation on the certification of recruitment and placement services to include that requirement.

45. The Secretary-General thanked the STC on behalf of Professor Athanassiou, who had had to leave the meeting, for the opportunity to present the trends and challenges for the CEACR in relation to the MLC, 2006. She recalled that Professor Athanassiou, who was a Professor of maritime law with over 30 years of experience in the sector, had participated in the STC as a member of the CEACR and that, in that capacity, she had not been in a position to enter into discussions on specific issues or to reply to questions relating to the content of the comments of the CEACR. The Secretary-General had listened carefully to the views expressed and the comments made during the discussion and would convey them to the CEACR at its next session in November 2018. It was important to recall that any comments made regarding a specific country or issue during discussions in the presence of a member of the CEACR did not replace the official channels of communication with the CEACR, which were: (i) reports under article 22 of the ILO Constitution; and (ii) the observations that could be submitted by shipowners' and seafarers' organizations under article 23 of the ILO Constitution. She also recalled that the strict process of the nomination and appointment of the members of the CEACR and their excellent profiles, as they were all renowned professors, lawyers and supreme court judges from different countries, constituted a guarantee of the competence, objectivity, impartiality and independence of the CEACR, and that their work was a cornerstone of the ILO supervisory system.

46. The Seafarer Vice-Chairperson emphasized that his group appreciated the collegiate composition of the CEACR. The fact that its members came from various regions with different legal, economic and social systems helped to ensure its balanced, independent and impartial work, thereby reinforcing the authority of its comments. He expressed full confidence in the CEACR and appreciation of the work of the International Labour Standards Department and the Sectoral Policies Department on maritime issues.

Results of the Paris Memorandum of Understanding (MoU) Concentrated Inspection Campaign

47. An observer representing the Paris MoU on Port State Control informed the Committee of the results of the 2016 Concentrated Inspection Campaign (CIC) on the MLC, 2006. The first CIC had taken place from 1 September to 30 November 2016 and had covered all the Paris MoU region. CIC inspections had been carried out in addition to the other inspection types provided for in the MLC, 2006, and in IMO Conventions and the results of the campaign did not include countries which had not ratified the Convention at the time of the campaign. The inspectors had also verified compliance with the new requirements of the Convention. The results of the CIC, which were available on the Paris MoU website, showed good general performance rates and the proper implementation of the MLC, 2006. Of the 3,674 inspections carried out during the CIC period, only 42, or 1.1 per cent, had resulted in detentions. No detentions related to Recognized Organizations (ROs) had been recorded. The most recurrent deficiencies included SEAs, working condition deficits and issues related to complaint procedures and wages. The results of the campaign showed that port State control officers in the Paris MoU should continue paying attention to the enforcement of the Convention, and that the industry should focus its efforts on combating the main deficiencies highlighted by the campaign. Based on the observations by port State control officers, difficulties arose when references to requirements were contained in collective bargaining agreements, and it was therefore recommended that all the information required under the MLC, 2006, should be included in SEAs.

48. The Shipowner Vice-Chairperson expressed appreciation of the information provided on the activities of the Paris MoU. Port State control authorities played an important role in ensuring that the provisions of the MLC, 2006, were reflected in the operation and

management of ships calling at their ports. As Regulation 5.2 of the Convention recalled, port State inspections were essential to ensuring the implementation and enforcement of its requirements on foreign ships. It was through such implementation and enforcement that the required level playing field was maintained. However, he expressed concern at the principle of concentrated inspection campaigns undertaken in respect to the MLC, 2006. Port State inspections in respect of IMO and ILO instruments could be undertaken if the respective port State had ratified the relevant instruments. If the instruments had not been ratified by the port State, that State would not be able to inspect and enforce the provisions of those instruments. It was also understood that port State inspection procedures had been developed to inspect and enforce compliance with IMO instruments, which differed from ILO instruments in both their nature and application. A State that had ratified the MLC, 2006, had undertaken to adopt the provisions of the Convention into its laws and regulations. The MLC, 2006, required an active spirit of tripartism to ensure its proper and adequate implementation and enforcement. He recalled that the wording of Regulation 5.2 had been the result of careful and detailed negotiations. Pursuant to Regulation 5.2.1, paragraph 2, inspections in ports should, except in the circumstances specified in the Code, be limited to a review of the Maritime Labour Certificate and the DMLC, as these documents were prima facie evidence of compliance with the requirements of the Convention (including seafarers' rights). Standard A5.2.1, paragraph 1, of the MLC, 2006, set forth four specific grounds for carrying out a more detailed inspection. However, there were no provisions in the Regulation that permitted a more detailed inspection unless one of those five grounds had been met. The concentrated inspection campaign sought to go beyond the provisions of the Convention, to conduct a more detailed inspection when none of the five grounds had been met. He called for the information on general guidance developed for port State control officers with regard to the MLC, 2006, to be made public and offered the assistance of the social partners and the Office to assist the MoU to review those procedures. The training provided for port State control inspectors at the ILO Turin Centre was to be recommended. Finally, recalling that Standard A5.2.1, paragraph 6, required the notification of the flag State in the case of detention, he asked whether the Paris MoU inspectors had complied with that requirement.

49. An Observer representing the Paris MoU on Port State Control indicated that standard port State procedure called for the notification of flag States. She confirmed that, where possible, in the case of detention flag States were notified directly by fax/email or through embassies and consular authorities. Nonetheless, she acknowledged that some States were very difficult to reach. During all CIC inspections, flag States had been made aware of the inspection procedure.

50. The Seafarer Vice-Chairperson thanked the observer representing the Paris MoU for the thorough presentation and for the CIC work carried out in cooperation with the International Transport Workers' Federation (ITF) and port State control inspectors. A strict interpretation of Article III of the MLC, 2006, was of vital importance. He appreciated the efforts that had been made by the Office, yet remained concerned with regard to the "lacuna" and lack of support for the 2014 amendments to the MLC, 2006. Only a handful of countries had taken the necessary steps to implement the 2014 amendments. Of particular concern was the fact that some countries were using the non-adoption of the amendments as a marketing tool based on greater levels of regulatory flexibility. He observed that the targeting and type of inspections of the CIC were in accordance with the normal Paris MoU procedures. The CIC had been performed in a complementary manner to other inspections, as ships from non-ratifying States should not receive any more favourable treatment than ships from States that had ratified the MLC, 2006. Noting the number of deficiencies observed during the campaign, port State control officers in the Paris MoU had agreed to continue stepping up their efforts for the enforcement of the Convention. He encouraged other port State inspection regimes to carry out similar campaigns to supplement existing enforcement mechanisms.

Discussion of issues relating to electronic certificates

51. The Shipowner Vice-Chairperson said that his group was very much in favour of electronic certificates, but was concerned at the issues relating to the protection of the personal data of seafarers and the need to ensure conformity with the EU General Data Protection Regulation. Lawyers were working on those matters to establish the necessary protection for shipowners, recruitment and placement agencies and others concerned.

52. The Seafarer Vice-Chairperson agreed with the points raised by the Shipowner Vice-Chairperson. While in principle supporting electronic certificates, it was important to ensure compliance with the European regulation, which would soon enter into force. Electronic certificates related to the Maritime Labour Certificate or the DMLC did not give rise to particular issues, and could facilitate the maintenance and withdrawal of documents and expedite inspections by port State control officers. However, if electronic certificates related to other documents, such as crew lists or information on crew members, they could give rise to concerns. In that respect, he recalled the importance of ensuring that electronic certificates complied with the documents required by the Convention on Facilitation of International Maritime Traffic (FAL Convention) and the IMO FAL Committee *Guidelines for the use of electronic certificates*.

53. The Chairperson of the Government group indicated that there was some support in the group for the use of electronic documents in relation to the Maritime Labour Certificate and the DMLC, Parts I and II. However, one issue was that the text of the MLC, 2006, did not refer to electronic certificates. As some governments were already issuing such certificates and there was a strong push by the IMO to digitalize all the documents carried on a ship, there was some concern at the legal effect of those certificates in the context of the MLC, 2006. Moreover, some governments had expressed concern as to whether the various port State control authorities would accept electronic certificates, such as the DMLC, Parts I and II. Finally, noting that some provisions of the Code of the MLC, 2006, provided for documents to be displayed on board ship, there was uncertainty about whether it was possible to display such documents electronically. He hoped that the STC would address those concerns.

54. A representative of the Government of Denmark added that Denmark had started issuing electronic certificates in June 2016. Before doing so, the IMO had been contacted and information had been sent to port State control officers and to the European Maritime Safety Agency (EMSA). Before the issuing of electronic certificates, Danish authorities had concerns in relation to the port State control acceptance. However, port State control authorities had taken a forward looking and positive approach towards the new certificates and there had been no detentions related to electronic certificates in relation to ships flying the Danish flag.

Abandonment of seafarers

55. The Seafarer Vice-Chairperson, recalling the importance of the IMO–ILO joint database on abandonment of seafarers, emphasized that 85 per cent of all the cases in the database had been reported by the ITF. The ITF had carried out a study of the cases reported since the entry into force of the 2014 amendments, during which period it had assisted 688 abandoned seafarers on 55 vessels. One third of the cases had commenced before the entry into force of the 2014 amendments. He added that 40 per cent of the cases were related to vessels flying the Panamanian flag and that, although they only involved 22 vessels, they concerned 274 abandoned seafarers. The most problematic area was the waters around the United Arab Emirates (UAE). In this regard, the ITF had been cooperating actively with the UAE Federal Transport Authority, which had announced new regulations requiring all vessels visiting UAE ports to have insurance for repatriation. In terms of nationality, Indian seafarers

appeared to represent a large share of abandoned seafarers, mostly because of the incidence of cases in the Middle East, which emphasized the challenge of exercising oversight over recruitment and placement services in India. The study showed that general cargo ships were the most at risk of abandonment, although there was also a recent trend for an increasing number of cases in the offshore sector. The most striking fact was the length of time that seafarers spent on abandoned vessels or waiting to be paid following repatriation. The effectiveness of the 2014 amendments therefore needed to be evaluated. Of the 55 cases of vessels with abandoned seafarers reported by the ITF during the period, 41 were flying the flags of States that had ratified the Convention and had accepted the 2014 amendments, five were flying the flags of States that had ratified the Convention but had not yet accepted the 2014 amendments, and nine were flying the flags of States which had not ratified the Convention. Therefore, in the majority of cases, the ships should have benefited from the financial security required under Standard A2.5.2. However, of the 41 cases of vessels flying the flags of States which had accepted the 2014 amendments, only 22 had valid insurance certificates. Of the remaining 19 cases, the majority had no insurance. That situation raised the issue of implementation by flag States, particularly in parts of the world where the Convention had not been ratified. The ITF therefore urged flag States to ensure compliance by ships flying their flag. The ITF acknowledged the good cooperation with the P&I International Group to promote good practice and ensure proper insurance coverage. With reference to long-standing cases, mostly resulting from ongoing legal procedures that prevented the ship from being sold on behalf of the crew, or the failure to replace seafarers, the ITF urged States to prioritize the rights of seafarers and to identify alternatives to their continued retention on board. In conclusion, it was important to acknowledge both the positive results and the issues that had arisen one year after the entry into force of the 2014 amendments. There was a need to increase controls of compliance with the requirement for insurance coverage. When dealing with cases of abandonment, it was essential for the protection of seafarers and the well-being of their families to come first.

56. An observer representing the IMO emphasized that the situation of abandonment was inhumane and that a solution was needed urgently. During the 105th Session of the IMO Legal Committee, held in April 2018, a number of papers on the subject had been discussed, including a report on the IMO–ILO joint database and the ITF study of the cases reported over the past year. The IMO expressed strong commitment to safeguarding the rights of seafarers in cases of abandonment and noted that the provision of accurate information in the database was not only the responsibility of flag States, but also of port States and other parties involved. It was of the utmost importance to keep the database updated with a view to solving urgent cases of abandonment. It was also important to include information listing the competent organizations to be contacted in cases of abandonment, as well as on the insurance status of the respective ships and a list of relevant P&I Clubs to be contacted.

57. The Shipowner Vice-Chairperson thanked the Seafarer Vice-Chairperson for the presentation and indicated that the International Chamber of Shipping (ICS), on behalf of the Shipowners' group, actively engaged with the ITF, ILO and IMO to try to resolve the cases reported in the IMO–ILO database. He strongly agreed with the need to give priority to the extremely difficult situation faced by seafarers and their families when dealing with cases of abandonment. The early reporting of cases of abandonment was key for their timely solution. Therefore, he urged all parties who became aware of an abandonment situation to immediately report this to the ILO or IMO so that the necessary follow-up could take place earlier in the process. It was to be welcomed that, since the publication of the paper submitted by the seafarers, 20 of the 55 cases had been resolved. He hoped that the 11 disputed cases, for which the ITF believed that further contractual obligations remained to be settled in conformity with the MLC, 2006, and the other pending cases, would be resolved in a timely manner. The long-standing "Bramco 1" case was still a matter of concern. Even though most of the crew had been repatriated following an unacceptably long period, he believed that the situation might constitute forced labour and requested the ILO Director-General to further

investigate the matter with the authorities concerned. He also invited the ILO and IMO legal teams to consider possible conflicts between the requirements relating to personnel on board under port State and flag State regulations and the labour requirements of the MLC, 2006, in order to find a possible solution in the future. As the "Bramco 1" remained a very difficult case, the various types of support provided by welfare institutions and the Wrist Ship Supply (a Ship Chandlers organization) were to be particularly welcomed.

58. A representative of the Government of China referred to the measures adopted to resolve the "Bramco 1" case, including the support provided for seafarers to obtain legal assistance and participate in the respective court case. He noted that the vessel had been under repair and the owners had stopped providing supplies for seafarers or paying their wages. During that period, local associations had assisted with the provision of electricity, water and other supplies. Eight seafarers had been repatriated and the legal action had been completed in the local court. Three seafarers had previously left the vessel and had received repatriation fees and wages. He urged the respective parties to give effect to the decisions of the local court.

59. A representative of the Government of Panama welcomed the presentation on the IMO–ILO database. While it was hardly surprising that the majority of cases of abandonment occurred on ships flying the Panamanian flag, as Panama had the largest international ship registry, she noted that, of the cases mentioned, only one concerned repatriation from Panama. The Panama Maritime Authority had a unit dedicated to the problem and was working with the ITF with a view to resolving all cases of the abandonment of seafarers. It was important to emphasize that Panama was in full compliance with its obligations under the MLC, 2006, and was making constant efforts to ensure that all ships complied with the respective requirements. It was gratifying to note the thanks expressed by crew members for the measures taken by the Panamanian authorities.

60. A representative of the Government of the Philippines indicated that the importance of the 2014 amendments could not be overemphasized. The everyday lives of seafarers and their families were severely affected in the event of abandonment. It was hoped that the adoption of the 2014 amendments would be effective in addressing concerns relating to the repatriation, wages and concerns of abandoned seafarers and their families. His Government was determined to maintain and strengthen its commitment to the implementation of the 2014 amendments in partnership with all the stakeholders concerned.

61. An observer representing the IMO welcomed the efforts that were being made by the various countries, including the response provided in relation to the concerns raised with regard to the "Bramco 1". The latest information available, dating from February 2018, indicated that two seafarers had been repatriated, although without the payment of their wages, but that the master remained on the vessel. He invited the Government of China to respond to the information on the case contained in the IMO–ILO database. The case was now in its fifth year, which was too long. Although there had been a court ruling, that did not appear to have resulted in a solution.

62. A representative of the Government of China indicated that documents had been prepared on the case for submission to the IMO Legal Committee.

63. A spokesperson for the Shipowners' group requested that a copy of the presentation of the International Group of P&I Clubs on the implementation of the 2014 amendments to the MLC, 2006, be appended to this report for information purposes. The presentation is reproduced in Appendix II.

VI. Consideration of requests for consultation under Article VII of the MLC, 2006

64. The Chairperson observed that no requests for consultation under Article VII of the MLC, 2006, had been received.

VII. Proposals for amendments to the Code of the MLC, 2006

65. The meeting had before it proposals made by the group of Seafarer representatives for amendments to Regulation 2.1 – Seafarers' employment agreements, Regulation 2.2 – Wages, Regulation 2.5 – Repatriation, Appendix A5-I and Appendix A5-III. The proposed amendments are set out in section B.2 of the background paper (STCMLC/2018/1).

66. The Seafarer Vice-Chairperson, introducing the proposals for amendments to the Code, indicated that they were intended to provide security for seafarers' wages and other entitlements when they were held captive on or off the ship as a result of acts of piracy or armed robbery against ships. At the time that the proposals for amendment had been submitted, it had appeared that there had been a reduction in the number of incidents of piracy and armed robbery against ships. However, over recent months it seemed that the problem was again increasing. According to figures compiled by the International Chamber of Commerce–International Maritime Bureau (ICC–IMB), there had been an upsurge in piracy during the first three months of 2018, with 61 attacks against ships and vessels being boarded in 41 cases. At least 29 cases had involved firearms and four cases in West Africa had resulted in hijackings. The ICC–IMB also emphasized that the problem of piracy off the coast of Africa remained a threat, with reports of vessels being pursued by skiffs and being fired upon. In particular, 100 seafarers had been held hostage in the first quarter of 2018, with 14 of them being removed from their vessels. It should also be noted that a new version of the global counter-piracy guidance prepared by industry groups was being developed, in a clear indication that it was still viewed as a major problem. While many shipowners continued to pay seafarers while they were being held captive, there was currently no legal mechanism to protect the wages and other entitlements of seafarers when they were held hostage as a result of piracy, resulting in great harm to seafarers and their families. That situation could not be allowed to continue. The proposed amendments to the Code addressed the problem by: providing a definition of piracy and armed robbery against ships; preventing the cancellation or expiry of seafarers' employment agreements during periods of captivity; protecting the wages and other entitlements provided for in those agreements; and requiring a system of financial security to ensure that such protection was effective.

67. The Shipowner Vice-Chairperson considered that the protection sought by the Seafarers' group through their proposals for amendments was already implicit in the Convention. He requested information concerning cases in which seafarers held in captivity had not been paid their wages and other entitlements, as he was unaware of such cases over the past few years. If the proposals to amend the Code were adopted, the issues that would then arise would include the additional administrative burden to be borne by shipowners and the manner in which the amendments would address ships not covered by the MLC, 2006.

68. The Chairperson of the Government group recalled that in previous meetings it had been asserted by the Shipowners' group that the wages and other entitlements of seafarers held in captivity would continue to be paid. However, it was not clear where in the Convention there was clear and unequivocal text reaffirming that right. One issue that might require attention concerned the situation when the seafarer's employment agreement expired during the period of captivity. He added that, even if the proposals for amendment to Standards A2.1 and A2.2 were to be accepted, there were doubts in the Government group that an additional

system of financial security was necessary. Moreover, while supportive of the principle behind the proposals for the amendment of the Code, the detailed text proposed gave rise to many issues. The question therefore arose as to whether the Seafarers' group would be prepared to examine any alternative proposals that might emerge during the course of the discussions to cover their well-founded concerns.

69. During the meeting, the members of the STC tabled 37 subamendments to the proposals made by the Seafarers' group for amendments to the Code of the MLC, 2006, numbered from D.6 to D.43.

70. The Shipowner Vice-Chairperson indicated that the fact that the Shipowners' group had submitted subamendments to the proposals for amendment of the Code made by the group of Seafarer representatives was without prejudice to its own proposal for the adoption of guidelines outside the MLC, 2006. The proposed guidelines would not therefore disappear due to the examination of subamendments to the proposals made by the Seafarers' group. He also said that he wished to raise a procedural issue concerning amendment D.23, which he considered to constitute a separate amendment to the Code, and which should therefore have been submitted in accordance with the requirements of Article XV, paragraph 2, of the Convention. Amendment D.23 sought to insert a new paragraph 10 in Standard A.2.5.2 stating that "Notwithstanding paragraph 9(a) above, where the abandoned seafarer is held captive on or off the ship arising from acts of piracy or armed robbery at sea, the seafarer will continue to be paid wages within this period, notwithstanding any expiry of their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, provided the maximum period does not exceed 12 months from the date on which the seafarer is deemed to have been abandoned in accordance with paragraph 2 above or until the death of the seafarer while in captivity (whichever comes first)."

71. The Seafarer Vice-Chairperson considered that amendment D.23 was an alternative to the proposals made by the Seafarers' group concerning the financial security aspects of the continued payment of seafarers' wages during periods of captivity. The issues that it covered were very similar to those addressed by the proposals for amendment made by the Seafarers' group.

Proposal for amendments to the Code relating to Regulation 2.1 of the MLC, 2006

72. The following discussion refers to the proposal for amendments to the Code relating to Regulation 2.1 of the MLC, 2006, submitted by the group of Seafarer representatives, and to the related subamendments submitted during the meeting. The proposal submitted by the group of Seafarer representatives, set out in section B2.1 of the background paper, sought to insert a new paragraph 1 in Standard A2.1 – Seafarers' employment agreements:

> 1. For the purpose of Standard A2.2.1, Standard A2.2.2, Guideline B2.5.4 and the present Standard, the term:
>
> (a) "piracy" shall have the same meaning as in the United Nations Convention on the Law of the Sea, 1982 (UNCLOS);
>
> (b) "armed robbery against ships" means any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea, or any act of inciting or of intentionally facilitating an act described above; this term shall include the kidnapping of seafarers for ransom who are then held on or off a ship.

2. Renumber existing paragraphs from “1 to 6” to “2 to 7” and insert a new paragraph 8:

8. Each Member shall adopt laws or regulations establishing that a seafarer’s employment agreement shall not expire or be terminated while a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

Amendment D.27

73. The Shipowner Vice-Chairperson, following advice from the Legal Adviser concerning the harmonization of the wording used in the Convention, withdrew amendment D.27, which sought to add the word “and” at the end of subparagraph (a) of proposed new paragraph 1.

Amendments D.28, D.35 and D.43

74. Amendments D.28, D.35 and D.43 submitted, respectively, by the Shipowner representatives, the Government members of Norway and Singapore, and the Government members of Germany, Belgium, Bulgaria, Denmark, Spain, France, Greece, Latvia, Malta, Portugal and United Kingdom, all sought, in subparagraph (b) of proposed new paragraph 1 of Standard A2.1, to delete the words “; this term shall include the kidnapping of seafarers for ransom who are then held on or off a ship”.

75. The Shipowner Vice-Chairperson, introducing amendment D.28, explained that the words to be deleted were not contained in the definition of armed robbery against ships contained in IMO resolution A.1025(26), which was otherwise reproduced faithfully in the proposed new paragraph. It was extremely important in maritime affairs for definitions to be harmonized between the various instruments. It might also be possible to include the full text of the specific portion of the IMO resolution, or to refer to it by way of a footnote.

76. The Chairperson of the Government group agreed that the definitions used should be in line with those set out in the IMO resolution.

77. The Legal Adviser noted that the wording that the amendment sought to delete was not part of the IMO resolution, but that the Committee could decide to include that wording in the proposed new paragraph. However, he considered that it would not be advisable in the text of the Convention, as amended, to refer to the IMO resolution by its number, which might change as further resolutions were adopted.

78. The Seafarer Vice-Chairperson considered that, while respecting the need for consistency, the wording as originally proposed reflected the discussions in the Working Group and ensured that the term “armed robbery against ships” included the practice of kidnapping. The Convention was an instrument of higher status than a mere resolution and played a vital role in protecting the rights of seafarers.

79. A representative of the Government of Norway explained that consistency of language was important to avoid creating unnecessary confusion in the event of the occurrence of illegal acts, particularly with regard to their investigation. It was necessary for the relevant international organizations to work together. The ILO was already being innovatory through the inclusion of the concept of “armed robbery against ships” in a mandatory instrument.

80. The Legal Adviser recalled the opinion that he had given to the Working Group of the STC in 2017 that “kidnapping was generally understood to mean abducting a person and holding him/her as a hostage without his/her consent, by force or fraud, often for ransom. In accordance with Article 101 of UNCLOS, piracy consisted of any illegal act of violence or detention, committed for private ends by the crew of a ship and directed, on the high seas, against persons on board another ship either on the high seas or in a place outside the

jurisdiction of any State. It would therefore appear evident that, based on that definition, kidnapping qualified as an "illegal act of violence or detention", within the meaning of the relevant provision of UNCLOS, on condition that all the remaining constitutive elements of piracy were also present, and in particular that: the act of kidnapping was "committed for private ends", in contrast with political ends; it was committed "by the crew of another ship", therefore excluding mutiny or acts by terrorists on board the same ship; and it was committed "on the high seas or in a place outside the jurisdiction of any State", which excluded acts committed in the territorial waters of a State. The expression "kidnapping of seafarers" seemed to be widely used in relevant publications, such as International Maritime Bureau (IMB) publications on piracy. Dedicated so-called "kidnap and ransom" marine insurance policies had also been developed to respond to the need to cover ransom demands not explicitly addressed by P&I Clubs, as the modus operandi of pirates had changed from raiding and looting ships to boarding and taking the crew hostage for ransom. In conclusion, present day acts of piracy did involve the kidnapping of seafarers, but not all acts of the kidnapping of seafarers would automatically qualify as piracy. He added that the definitions of "piracy" in UNCLOS and of "armed robbery against ships" under IMO Resolution A.1025(26) were practically identical, and only differed in their spatial scope of application. Piracy covered illegal acts of violence or detention committed for private ends and directed against persons on board a ship on the high seas or in a place outside the jurisdiction of a State, whereas armed robbery referred to illegal acts of violence or detention also committed for private ends, but only when the ship was in the territorial waters of a State. Consequently, the abduction of a seafarer would qualify as an act of piracy if it occurred on the high seas or in a place outside the jurisdiction of a State, and as an act of armed robbery against ships if it occurred within the territorial waters of a coastal State.

81. The observer representing the IMO expressed agreement with the opinion provided by the Legal Adviser, adding that IMO supported the continued payment of wages in the event of seafarers being held in captivity as a result of acts of piracy or armed robbery against ships.

82. The Seafarer Vice-Chairperson indicated that, in light of the above legal opinion and its acceptance by the IMO, he could withdraw his opposition to the proposed amendments.

83. Amendments D.28, D.35 and D.43 were adopted.

Amendment D.29

84. Amendment D.29, submitted by the Shipowner representatives, sought to move proposed new paragraph 1 to the end of Standard A2.1.

85. The Shipowner Vice-Chairperson, introducing the amendment, recalled that Standard A2.1 covered seafarers' employment agreements and it did not seem appropriate for the first paragraph of the Standard to refer directly to piracy and armed robbery against ships.

86. The Chairperson of the Government group and the Seafarer Vice-Chairperson agreed with the amendment.

87. Amendment D.29 was adopted.

Amendments D.26, D.24, D.25 and D.36

88. Amendment D.26, submitted by the Shipowner representatives, sought in proposed new paragraph 8 to replace the words "adopt laws or regulations establishing" by "require". Amendment D.24, submitted by the Shipowner representatives, sought in proposed new paragraph 8 to replace the words "shall not expire or be terminated" by "is treated as continuing to have effect". Amendment D.25, submitted by the Shipowner representatives,

sought at the end of new paragraph 8 to add the words ", regardless of whether the date fixed for its expiry has passed or either party has given notice to terminate it".

89. Amendment D.36, submitted by the Government members of Greece and Norway, sought in proposed new paragraph 8 to replace the phrase "adopt laws or regulations establishing" by the words "ensure that there are appropriate provisions in its laws or regulations or in applicable collective bargaining agreements, prescribing".

90. The Shipowner Vice-Chairperson, introducing amendments D.26, D.24 and D.25 as a package, said that the use of the term "require" meant that means could be used other than laws or regulations, thereby allowing greater flexibility of implementation. The other two amendments were designed to ensure that seafarers' employment agreements would be deemed to continue to have effect during the period of captivity irrespective of their normal date of expiry.

91. A representative of the Government of Greece, introducing amendment D.36, explained that its purpose was to provide added value through the inclusion of reference to collective bargaining agreements. However, she would be willing to withdraw the amendment if consensus emerged on the use of the term "require", which was also broader than the current text.

92. The Seafarer Vice-Chairperson expressed a preference for the language of the original proposal by the Seafarer representatives, and particularly the requirement to adopt laws or regulations. It was important to note that seafarers' employment agreements could be suspended or terminated during the period of captivity for reasons unrelated to piracy or armed robbery. It was therefore necessary to set out in laws or regulations the requirement that the agreements could not expire or be terminated during such periods, which was the only means of ensuring that seafarers who experienced such situations had the necessary means of redress.

93. The Chairperson of the Government group indicated that no strong views had been expressed within the group concerning the four proposed amendments, which could be referred to the Drafting Committee to find the most appropriate wording. One question concerned the need to ensure that the proposed text was not in conflict with any of the provisions of Article IV of the Convention.

94. The Shipowner Vice-Chairperson acknowledged that the amendment proposed in D.36 would also be acceptable, although he considered that the term "shall require" offered the guarantee that seafarers would be able to challenge any suspension or termination of the employment agreement during the period of captivity. The methods of implementation and enforcement of the Convention were already specified in Article V.

95. A representative of the Government of Germany raised the question of what precisely was covered by the prohibition of the termination or expiry of the employment agreement during the period of captivity. For example, would it also cover dismissal for economic reasons? Would it also be possible for the shipowner to give notice of termination during the period of captivity, which would then take effect upon the release of the seafarer?

96. The Legal Adviser indicated that the meaning of the proposed amendments was that the seafarers' employment agreement could not be terminated during the period of captivity for any reason whatsoever.

97. Amendments D.26, D.24, D.25 and D.36 were adopted and referred to the Drafting Committee.

Proposal for amendments to the Code relating to Regulation 2.2 of the MLC, 2006

98. The following discussion refers to the proposal for amendment to the Code relating to Regulation 2.2 of the MLC, 2006, submitted by the group of Seafarer representatives, and to the related subamendments submitted during the meeting. The proposal submitted by the group of Seafarer representatives, set out in section B2.1.B of the background paper, sought to:

(a) Replace the words "Standard A2.2 – Wages" by "Standard A.2.2.1 – Wages".

(b) Insert two new paragraphs:

7. Where a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, the seafarer's wages and entitlements under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, shall continue to be paid, including the remittance of any allotments as provided in paragraph 4 of this Standard, during the entire period of captivity and until the seafarer is released and duly repatriated in accordance with Standard A2.5.1, or until the death of the seafarer while in captivity.

8. Each Member shall require ships that fly its flag to provide financial security to ensure that the wages and entitlements of seafarers held captive on or off the ship as a result of acts of piracy or armed robbery against ships continue to be paid.

(c) Insert a new Standard A2.2.2 – Financial security with the following paragraphs:

1. In implementation of paragraph 8 of Standard A2.2.1, this Standard establishes the requirement to provide an effective financial security system to ensure payment of seafarers, and/or their nominated representative, held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

2. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.

3. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any seafarer held captive on or off the ship as a result of acts of piracy or armed robbery, and/or their nominated representative, against a ship flying the flag of the Member.

4. Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

5. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A2-II. It shall be in English or accompanied by an English translation.

6. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 above.

7. Having regard to Regulations 2.1 and 2.2, assistance provided by the financial security system shall be sufficient to cover wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, including the remittance of any allotments as provided in paragraph 4 of Standard A2.2.1, during the entire period of captivity and until the seafarer is

released and duly repatriated in accordance with Standard A2.5.1, or until the death of the seafarer while in captivity.

8. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

9. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.

10. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are victims of piracy or armed robbery against ships. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

Amendments D.6 and D.37

99. Amendment D.6, submitted by the Shipowner representatives, sought to delete proposed new paragraph 7 in Standard A2.2.

100. The Shipowner Vice-Chairperson, introducing amendment D.6, noted that, under the amendments agreed that related to Standard A2.1, it had already been established that the seafarer's employment agreement would not expire or be terminated. There was no need to repeat the obligation in different words. Proposed new paragraph 7 added unnecessary detail to the general principle, and the danger of including more detail was that important issues might unintentionally be left out.

101. Amendment D.37, submitted by the Government members of Greece and Norway, sought to add, at the end of proposed new paragraph 7, the words ", as provided by the applicable national laws or regulations".

102. A representative of the Government of Greece, introducing amendment D.37, said that its purpose was to take into account the issues raised during the discussions at the Working Group concerning the legislation applicable in relation to the determination of the death of a seafarer held in captivity as, depending on the case and the specific legal provisions, the law of the flag State, of the country of which the seafarer was a national or of the country in which the death occurred could apply.

103. The Seafarer Vice-Chairperson opposed amendment D.6. The purpose behind the proposed new paragraph was to make it very clear that the wages and other entitlements of a seafarer held in captivity should continue to be paid, whether they were established under the seafarers' employment agreement, the relevant collective bargaining agreement or the applicable national laws. It was important for seafarer's rights to be recognized in detail, as otherwise experience showed that difficulties could arise in practice. The proposed new paragraph was a compromise text designed to take into account the long discussion on the issue during the Working Group. His group was willing to accept amendment D.37, which was merely intended to clarify the legislation that was applicable to the determination of the time of death.

104. The Chairperson of the Government group did not support the deletion of the proposed new paragraph. However, his group supported amendment D.37, which improved the drafting of the new paragraph and covered an issue that had not been fully resolved by the Working Group.

105. A representative of the Government of the United Kingdom considered that the proposed new paragraph was necessary. It might otherwise be possible, for example, for the seafarers'

employment agreement to contain a clause specifying that wages would not be paid during periods of captivity. A representative of the Government of Norway added that it was necessary to specify that there should be national laws and regulations concerning the determination of the time of death. However, the national laws and regulations that were applicable would depend on the circumstances of each case. Representatives of the Governments of Greece and the Republic of Korea also supported the retention of a new paragraph 7.

106. A representative of the Government of the Bahamas, with reference to amendment D.37, said that the text should be referred to the Drafting Committee, as it was not clear from the current wording precisely what the proposed new phrase referred to.

107. The Shipowner Vice-Chairperson withdrew amendment D.6.

108. Amendment D.37 was adopted and referred to the Drafting Committee.

Amendments D.7, D.42 and D.34

109. Amendments D.7, submitted by the Shipowner representatives, D.42, submitted by the Government members of Belgium, Bulgaria, Denmark, France, Germany, Greece, Latvia, Malta, Portugal, Spain and United Kingdom, and D.34, submitted by the Government members of Norway and Singapore, all sought to delete proposed new paragraph 8 in Standard A2.2.

110. The Shipowner Vice-Chairperson, introducing amendment D.7, said that the proposed new paragraph was unnecessary, not appropriate and disproportionate in the context of the amendments that were under discussion. The inclusion of a financial security obligation would not be supported by the Shipowners' group.

111. The Chairperson of the Government group emphasized that there was no need for the additional financial security requirements set out in the proposed new paragraph. The mandatory financial security for repatriation that was already required by the Convention might also apply in the case of seafarers held in captivity. There was therefore already protection for the wages of seafarers held in captivity, and no further provisions were required. A representative of the Government of Bulgaria added that the addition of new paragraph 7 to Standard A2.2, ensuring that seafarers' employment agreements continued to have effect during captivity and that their wages would continue to be paid, combined with the financial security that already existed for repatriation and health benefits, meant that seafarers already enjoyed substantial security.

112. The Seafarer Vice-Chairperson, while noting the position of the Shipowners' group, emphasized that the question still needed to be resolved of who would pay seafarers who were held in captivity if the shipowner failed to meet its obligations. It was not clear that the financial security provisions of Standard A2.5.2, which were intended to cover cases of abandonment, would be applicable in the event of the captivity of seafarers as a result of piracy or armed robbery against ships. The proposed new paragraph was important in order to protect seafarers and their families in cases in which shipowners failed to ensure that their wages continued to be paid for a variety of reasons, including shipowner insolvency.

113. A representative of the Government of the Republic of Korea, referring to the statements in paragraphs 385 to 388 of the report of the first meeting of the STC, said that it was his understanding that Standard A2.5 also covered cases in which seafarers were abandoned after their release by pirates. He noted that this understanding had generally been confirmed during the First Meeting of the STC by the representative of the International Group of P&I Clubs. It was also his understanding that the protection covered the long-term disability or

death of seafarers in those circumstances. He requested confirmation from the Legal Adviser.

114. The Legal Adviser indicated that the financial security provisions set out in Standard A2.5.2 covered cases of abandonment, that is when shipowners unilaterally severed their ties with seafarers. In accordance with paragraph 2(c) of Standard A2.5.2, a minimum period of two months of abandonment was required to trigger the financial security arrangements and, under the terms of paragraph 9, the payment of outstanding wages and other entitlements due to the seafarer was limited to a period of four months. Under those specific conditions, therefore, the financial security provisions for cases of abandonment could cover unpaid wages when seafarers were kept captive as a result of acts of piracy or armed robbery against ships.

115. The Seafarer Vice-Chairperson concluded that, without further financial security arrangements, seafarers who were abandoned when they were held in captivity would not be paid for the first two months and would then receive their wages for a maximum of four months. However, they could be held for longer than that. Moreover, the question also remained as to whether they would be entitled to repatriation following the period of captivity.

116. A representative of the Government of Norway, noting that the seafarers' employment agreement would continue to remain in effect in the event of captivity, that the agreement could not be terminated and that wages would continue to be paid, and that all the seafarers' rights under the MLC, 2006, would still be effective, asked the Seafarers what benefits could be expected from the proposed new paragraph. If the main concern was the insolvency of the shipowner, cases of insolvency were covered by the provisions respecting abandonment. However, the bankruptcy of shipowners brought into play different regulations which were beyond the scope of the MLC, 2006. A representative of the Government of Panama agreed that sufficient protection for the rights of seafarers was provided by Standards A2.1 and A2.2 and that the requirement of a further financial security for cases of piracy and armed robbery against ships was not appropriate.

117. The Shipowner Vice-Chairperson, in response to a request for clarification, considered that the proposed new paragraph was disproportionate because it would apply to all commercial shipping regardless of the area in which they are operating including, for example, cross-channel ferries, for which the risk of piracy was minimal. The issue under discussion was not related to the insolvency of shipowners. The continued payment of wages during captivity assumed the continuation of the employment relationship. However, it was noteworthy that no examples had yet been provided of seafarers who had not been paid during periods of captivity following the adoption of the 2014 and 2016 amendments to the MLC, 2006.

118. The Seafarer Vice-Chairperson recalled that the crew of the MV Iceberg 1 had been abandoned while being held captive. Statistics showed that cases of piracy were increasing in numbers, particularly off the coast of West Africa and in the Indian Ocean. Moreover, ITF action had identified many millions of dollars in unpaid wages of seafarers. The contingency needed to be covered.

119. The Shipowner Vice-Chairperson responded that the case of the MV Iceberg 1 dated back to 2010, which was before the MLC, 2006, had been widely ratified. Now that the Convention was widely applicable, the failure to pay seafarers' wages could lead to the arrest of the ship by the port or flag State.

120. A representative of the Government of Norway warned of the need to bear in mind the distinctions between abandonment and captivity. The MLC, 2006, was designed to cover cases of the failure to pay seafarers' wages, and could be enforced through inspection, court

action and liens on ships, in relation to which seafarers' wages enjoyed the highest priority. The provisions on the abandonment of seafarers, introduced through the 2014 amendments, were now in effect and were starting to work.

121. A representative of the Government of the United Kingdom expressed the view that, if cases of captivity due to piracy or armed robbery against ships were not covered by the financial security arrangements respecting abandonment, it might be necessary to establish a separate system. He added that seafarers' claims were not always given the highest priority in actions respecting liens and that if the ship was held by pirates there might well be nothing to sell to satisfy the claims made.

122. The Chairperson of the Government group, noting the polarized positions, drew attention to amendment D.23, which was intended as an alternative proposal that could be taken up if it no longer appeared possible to reach agreement on the other proposals. A representative of the Government of Barbados added that amendment D.23 proposed a longer cap of 12 months. He considered that it would be very difficult to envisage unlimited financial security.

123. The Seafarer Vice-Chairperson, recalling the advice provided by the Legal Adviser that the provisions on financial security in the event of the abandonment of seafarers would, under certain conditions and within certain limits, also cover the case of seafarers who were abandoned when held captive as a result of piracy or armed robbery against ships, and in view of the discussion, indicated that he would be willing to withdraw the proposals made by the Seafarers' group respecting financial security in favour of consideration of amendment D.23.

124. It was so agreed. Amendments D.7, D.42 and D.34 were withdrawn on that basis.

Amendment D.23

125. Amendment D.23, submitted by the Government members of the Marshall Islands, Liberia and the United Kingdom, sought to add the following new paragraph 10 in Standard A2.5.2: "Notwithstanding paragraph 9(a) above, where the abandoned seafarer is held captive on or off the ship arising from acts of piracy or armed robbery at sea, the seafarer will continue to be paid wages within this period, notwithstanding any expiry of their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, provided the maximum period does not exceed 12 months from the date on which the seafarer is deemed to have been abandoned in accordance with paragraph 2 above or until the death of the seafarer while in captivity (whichever comes first)."

126. A representative of the Government of the United Kingdom, introducing amendment D.23, indicated that it was intended as a standalone proposal offering a different approach to the issue if agreement could not be reached on any of the other proposals relating to financial security. Although the proposal would involve costs, they would be minimized by the 12-month cap. It would be appropriate to examine the proposal in the context of the provisions on abandonment, which did not really cover captivity as a result of piracy or armed robbery against ships.

127. The Shipowner Vice-Chairperson raised procedural problems concerning amendment D.23, which he considered to constitute a new proposal for an amendment to the Code. As such, it should have been submitted in accordance with the procedures set out in Article XV, paragraph 2, of the Convention, and communicated to constituents in accordance with paragraph 3 of that Article. Although it covered issues that could be related to those under discussion, that argument could be applied to amendments to all of the provisions of the Convention, which were all related in some way. It was not a subamendment of the proposals

that had been put forward in accordance with the correct procedure. Moreover, the proposed wording also gave rise to serious concerns for shipowners.

128. The Seafarer Vice-Chairperson considered that the amendment offered a means of providing seafarers with the protection that they were seeking without adding another system of financial security. He agreed that the drafting would require some attention, but would be willing to withdraw the other proposals made by the Seafarers' group on financial security if amendment D.23 could be discussed.

129. The Chairperson of the Government group, noting that the amendment was intended as a fall-back position, said that the time limit had been included as a compromise. However, certain members of the Government group did not support the amendment for substantive reasons, and others had raised procedural issues.

130. A representative of the Government of Norway agreed with the procedural issues raised by the Shipowners' group. On the substance, amendment D.23 reduced the issue of financial security to a question of the abandonment of seafarers. Although he would welcome a compromise solution, he feared that it might be rather difficult to achieve.

131. The Legal Adviser, with regard to the receivability of amendment D.23, recalled that, when processing the amendments, it had been decided that it was not for the Office to determine the receivability of the amendment, which should ultimately be a matter for the Committee to consider itself. The ambivalence had been due to the fact that, although the proposed amendment was not linked to any of the provisions put forward by the Seafarers' group, it was directly and clearly related to the subject under discussion. In accordance with the Standing Orders of the STC and Article XV of the Convention, it was clear that the Committee enjoyed a certain degree of discretion and flexibility in the manner it wished to organize the consideration of amendments. It was indicative, for instance, that under the terms of Article XV, paragraph 4, of the Convention, it was only provided that the proposed amendment be transmitted to the Committee "for consideration at a meeting". As the Committee was meeting, it could therefore decide to examine the proposal if it considered that it offered a way forward, or it could decide that the proposal went too far and should not therefore be considered.

132. A representative of the Government of Spain warned of confusion if a proper distinction was not maintained between the issues of the abandonment and captivity of seafarers. The proposed period of 12 months could also be very problematic. The death of a seafarer held in captivity could occur at any time during the period of captivity and it might be very difficult to establish the time of death with any certainty. It might be possible to include certain aspects of the proposal in a guideline. A representative of the Government of China considered that, particularly in view of the size of the maritime industry in his country, it was necessary to follow the appropriate procedures in order to be able to contact the respective organizations of shipowners and seafarers. Moreover, some of the content of the proposed amendment appeared to go beyond the scope of the proposals put forward by the Seafarers' group. He was not therefore prepared to discuss the amendment. A representative of the Government of Panama agreed that the proposal had not been correctly submitted for consultation with the social partners. Moreover, part of the proposal was already covered by Standard A2.5.2. A representative of the Government of Singapore agreed that more time was needed to consult the social partners on the substance of the amendment. A representative of the Government of Denmark noted that the proposed amendment was a mix of various different topics. What was at issue was the question of the continued payment of wages, rather than financial security. Moreover, the time cap was arbitrary. On procedural grounds, it was also very difficult to accept the proposed amendment. Representatives of the Governments of Belgium, Bulgaria and the Netherlands agreed with the representative of the Government of Denmark.

133. A representative of the Government of the Philippines was of the view that the proposal should not be seen in a vacuum and could be considered as a subamendment, in the context of finding a situation of abandonment as akin to a situation where seafarers held in captivity by pirates or armed robbers were not paid wages for two months. Standard A2.5.2, paragraph 2(c) lent itself to situations where abandonment covered a situation of captivity. A representative of the Government of Portugal considered that it was important to include wording in Standard A2.5.2 on the issue of piracy and armed robbery.

134. The Shipowner Vice-Chairperson indicated that shipowners were also concerned by the additional administrative burden that would be involved in further financial security arrangements. Cost was not only a matter of the price of the insurance, but also of its administration.

135. The Seafarer Vice-Chairperson, while appreciating the support expressed, noted that there was not a sufficient level of acceptance of amendment D.23. The Seafarers' group would have to accept that the normal abandonment provisions applied in the event of seafarers being held in captivity as a result of piracy or armed robbery against ships.

136. Amendment D.23 was withdrawn.

137. In light of the discussion of amendment D.23 and the withdrawal of the proposals made by the Seafarers' group relating to financial security arrangements, amendments D.9 to D.18, and D.5, D.8, D.20, D.39, D.31, D.19, D.40, D.30, D.22, D.41 and D.32 were not examined and were withdrawn.

Proposal for amendments to the Code relating to Regulation 2.5 of the MLC, 2006

138. The following discussion refers to the proposal for amendment to the Code relating to Regulation 2.5 of the MLC, 2006, submitted by the group of Seafarer representatives, and to the related subamendment submitted during the meeting. The proposal submitted by the group of Seafarer representatives, set out in section B2.1 of the background paper, sought to insert a new Guideline B2.5.4 – Piracy and armed robbery against ships with the following text:

> 1. The entitlement to repatriation may not lapse while the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

Amendment D.4

139. Amendment D.4, submitted by the Shipowner representatives, sought to delete proposed new Guideline B2.5.4.

140. The Shipowner Vice-Chairperson, introducing the amendment, said that it had already been agreed that the seafarers' employment agreement would continue to be in force, which meant that the seafarers would also continue to be covered by their entitlement to repatriation.

141. The Seafarer Vice-Chairperson recalled that some jurisdictions imposed a time limit for seafarers to claim repatriation. Guideline B2.5.1, paragraph 8, covered that situation by providing that entitlement to repatriation could lapse if the seafarers concerned did not claim it within a reasonable period of time. However, if seafarers were held captive they would not be in a position to make such a claim, and the current provisions of the Convention did not therefore cover situations of captivity in that respect.

142. The Chairperson of the Government group said that his group had no strong views on the proposed amendment and hoped that the social partners would be able to reach agreement.

143. The Shipowner Vice-Chairperson considered that, as it had already been agreed that the seafarers' employment agreement, which contained an entitlement to repatriation, could not expire or be terminated during a seafarer's captivity, there was no danger of paragraph 8 being applied in those circumstances. Paragraph 8 was intended to cover other situations, such as seafarers taking extended leave in a country before claiming repatriation.

144. The Seafarer Vice-Chairperson said that it would be helpful if the Legal Adviser could confirm that the time limit referred to in paragraph 8 would not be applicable in the case of captivity due to piracy or armed robbery against ships.

145. The Legal Adviser noted that, under the terms of Guideline B2.5.1, paragraph 8, time limits could be imposed on the exercise of the entitlement to repatriation that was due under normal circumstances. The amendment proposed by the group of Seafarer representatives sought to add a new Guideline B2.5.4 to ensure that, notwithstanding the provisions of Guideline B2.5.1, paragraph 8, the entitlement to repatriation could not lapse while the seafarer was held captive on or off the ship as a result of acts of piracy or armed robbery against ships. In response to a further question from the Shipowner Vice-Chairperson as to whether there was a gap in coverage which created a need for an amendment, the Legal Adviser indicated that such an amendment could offer added value. It could be included in a new guideline, or by adding wording to Guideline B2.5.1, paragraph 8.

146. The Shipowner Vice-Chairperson, in light of the opinion of the Legal Adviser, accepted the amendment put forward by the group of Seafarer representatives and proposed that it be examined by the Drafting Committee to find the most appropriate location for the wording. He withdrew amendment D.4.

Drafting Committee

147. The outstanding issues relating to the wording of Regulations A2.1, A2.2 and A2.5 were referred to the Drafting Committee.

148. The text proposed by the Drafting Committee, with further minor drafting amendments, was adopted.

149. The Shipowner Vice-Chairperson wished to note that, despite the decision by the Officers of the Committee that the membership of the Drafting Committee would consist of two Government, two Shipowner and two Seafarer members, there had been attempts by various persons to attend the meeting of the Drafting Committee as observers or advisers. It was important for the smooth working of the Drafting Committee for attendance to be limited to a small number of members, in accordance with the decision of the Officers. Following further discussion, the Officers had decided that if the Drafting Committee were to reconvene, attendance would be limited to two members for each group plus two observers from each group, who would not be involved in the drafting, but would be able to gain experience of the work involved.

150. The Chairperson noted the decision of the Officers to revise its previous decision so that the composition of the Drafting Committee to include two members and two observers from each group, if reconvened.

Vote by the Special Tripartite Committee on the three proposals to amend the Code relating to Regulations 2.1, 2.2 and 2.5 of the MLC, 2006

151. A representative of the Office of the Legal Adviser indicated that the voting on the three proposals for amendments to the Code relating to Regulations 2.1, 2.2 and 2.5 of the MLC, 2006, as amended by the STC, would be governed by the provisions of Article XV, paragraph 4, of the MLC, 2006, which contained three requirements, namely: "(a) at least half the governments of Members that have ratified this Convention are represented in the meeting at which the proposal is considered; (b) a majority of at least two-thirds of the Committee members vote in favour of the amendment; and (c) this majority comprises the votes in favour of at least half the Government voting power, half the Shipowner voting power and half the Seafarer voting power of the Committee members registered at the meeting when the proposal is put to the vote." The votes had to be weighted as provided for in Article XIII, paragraph 4, of the Convention. He added that only titular representatives or any advisers replacing titular representatives were allowed to vote and, with respect to the Government members, that only those representatives of member States that had ratified the MLC, 2006, and had not lost their right to vote in accordance with article 12 of the Standing Orders of the STC were allowed to vote. In that regard, he noted that two governments had currently lost their right to vote.

152. A record vote was taken on the proposals to amend the Code relating to Regulations 2.1, 2.2 and 2.5 of the MLC, 2006 which are reproduced in Appendix III. Of the 86 member States that had ratified the MLC, 2006, 45 were represented at the meeting and the required quorum was thus obtained.

153. The votes were weighted according to the necessary procedures, which resulted in 1,580 votes in favour of the adoption of the amendments. There were no votes against the adoption of the amendments. There were 40 abstentions. The required two-thirds majority of 1,053 votes was attained. Seventy-six of the 82 Government members had voted in favour of the amendments, as well as all five Shipowner representatives and all five Seafarer representatives. The votes in favour for each of the three groups represented at least half of their eligible votes, as required. The proposed amendments to the Code relating to Regulations 2.1, 2.2 and 2.5 of the MLC, 2006, were therefore adopted.

154. A representative of the Government of Chile indicated that, as the new Government was currently taking office, it had not been possible to obtain instructions concerning the vote, and that the Chilean delegation had therefore abstained.

155. A representative of the Government of Japan considered it very important to address issues relating to the situation of seafarers affected by piracy and armed robbery against ships. Moreover, the final content of the amendments to the Code, resulting from productive discussions in the Committee, was decent. However, the delegation of Japan had not had sufficient time to consider the national legislation and had therefore abstained.

156. The Shipowner Vice-Chairperson indicated that, in view of the adoption by the Committee of the amendments to Regulations 2.1, 2.2 and 2.5 of the MLC, 2006, the Shipowners' group withdrew its proposal for guidelines outside the MLC, 2006.

VIII. Review of maritime-related international labour standards

157. At its 326th Session in March 2016, the Governing Body, upon the recommendation of the Standards Review Mechanism Tripartite Working Group (SRM TWG), decided to refer the

maritime labour instruments to the STC for its expert review and to report to the Governing Body. [1]

158. The Secretary-General explained the context of the decision by the Governing Body to refer 68 maritime labour instruments for review by the STC. She recalled that, with a view to preparing for the ILO centenary in 2019, the Director-General had launched seven centenary initiatives, including the Standards Initiative, which had the aims of enhancing the relevance of international labour standards through a standards review mechanism and consolidating tripartite consensus on an authoritative supervisory system. In that context, the Governing Body had established an SRM TWG, the objective of which was to ensure that the ILO had a clear, robust and up-to-date body of international labour standards that responded to changes in the world of work for the purpose of the protection of workers and taking into account the needs of sustainable enterprises. In relation to the SRM, she indicated that it was the fifth occasion on which such a comprehensive review had been carried out of the body of ILO standards including, most recently, by the so-called "Cartier" Working Party, which had reviewed the instruments adopted up to 1985. The current review process had therefore started where the last review had ended and concerned the instruments adopted between 1985 and 2000, as those adopted since 2000 were automatically deemed to be up to date. It was also completing the "unfinished business" of previous reviews, and therefore covered a number of older instruments which had been classified as outdated, but left pending since it only had been possible to abrogate Conventions since the entry into force, in 2015, of the 1997 instrument of amendment of the ILO Constitution. Two principles followed throughout the current review process were that: firstly, it should not lead to gaps in protection and, where such gaps were identified, they should be brought to the attention of the Governing Body for appropriate follow up; and, secondly, that the review should lead to tangible results, in the form of the identification of practical time-bound follow-up action for each recommendation. When adopting its programme of work, the SRM TWG had recommended that 68 maritime instruments be referred to the STC. That was particularly appropriate, as 66 of the 68 instruments referred for review had been consolidated by the MLC, 2006. As a result, all the relevant Conventions had been closed for ratification. It was clear, in that respect, that the maritime sector of the ILO was looking to the future through the lens of the MLC, 2006. Indeed, the ILO as a whole was looking very carefully at the lessons to be learned from the consolidation of maritime labour instruments as a source of inspiration. The Committee was therefore called upon to classify the instruments submitted for review as being up-to-date instruments, instruments requiring further action to ensure their continued and future relevance, or outdated instruments, and to identify any gaps in protection as well as practical and time-bound follow-up action. In consultation with the Officers, it had been decided to organize the review in two stages, with the present meeting of the STC examining a first group of 34 instruments, and the second group of 34 instruments being referred to its next meeting.

159. The Legal Adviser recalled that the abrogation of obsolete international labour Conventions had only become possible in the ILO following the entry into force in October 2015 of the 1997 constitutional amendment (new paragraph 9 of article 19 of the ILO Constitution). Conventions which appeared to have lost their purpose and no longer made a useful contribution to attaining the objectives of the Organization could be abrogated or withdrawn, upon the proposal of the Governing Body, by a two-thirds majority of the International Labour Conference. There was no procedural difference between "abrogation" and "withdrawal". Abrogation was possible for Conventions that were still in force, while withdrawal was applicable to Conventions that had not entered into force or which were no longer in force as a result of denunciations, and to Recommendations. Abrogation and withdrawal had the same result in that they eliminated definitively all the legal effects arising out of the instruments between the Organization and its Members. Members no longer had

[1] GB.326/LILS/3/2.

any reporting obligations for those instruments, the ILO supervisory bodies did not review their application and representations (under article 24 of the ILO Constitution) and complaints (under article 26) could no longer be made in respect of those instruments. The instruments were no longer reproduced in collections of standards, nor were they referred to in new instruments. The Conference had so far abrogated four Conventions and withdrawn seven Conventions and 36 Recommendations. In 2018, it would consider the abrogation of a further six Conventions and the withdrawal of three Recommendations.

160. A representative of the Government of the United States raised the question of the situation of Members which had ratified the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), particularly in relation to their port State inspection responsibilities, in the event that a Convention among those listed in the Appendix to Convention No. 147 was abrogated.

161. The Legal Adviser indicated that the Member would have no responsibility in relation to the ILO for such a Convention, which meant that it would be under no reporting obligations and there would be no supervision by ILO bodies. However, that did not prevent the Member from continuing to apply, if it so wished, domestic legislation that had been adopted to give effect to the Convention, or from applying it at the bilateral or regional levels. Abrogation was a sovereign decision of the International Labour Conference, and an abrogated instrument would not survive merely through being listed in an appendix to another instrument.

162. A representative of the Government of Denmark raised an issue relating to Greenland. When ratifying the MLC, 2006, Denmark had made a territorial reservation regarding Greenland. The MLC, 2006 was not therefore applicable for Greenland. It had not yet been possible to establish the obligations for Greenland in relation to the Conventions which had been ratified by Denmark and had now been absorbed into the MLC, 2006. The matter would be further investigated and might require consultations with the authorities of Greenland, which might take some time. Denmark therefore needed to express a formal reservation concerning the decisions of the STC in that respect.

163. The Committee proceeded to review 34 instruments, based on ten technical notes prepared by the Office covering thematic groups of instruments. The recommendations of the STC in respect of the instruments reviewed are summarized in a table contained in Appendix IV.

Review of three instruments on minimum age (seafarers)

164. The review concerned the Minimum Age (Sea) Convention, 1920 (No. 7), the Minimum Age (Sea) Convention (Revised), 1936 (No. 58), and the Protection of Young Seafarers Recommendation, 1976 (No. 153). [2] The Secretary-General indicated that only one member State remained bound by Convention No. 7, which had been denounced following ratifications of the Minimum Age Convention, 1973 (No. 138), and the MLC, 2006. The Convention had been classified as outdated by the Cartier Working Party. Convention No. 58 had been revised by the MLC, 2006, and only six member States of the original 51 which had ratified it remained bound by the Convention. With the exception of Mauritania, the other five member States that were still bound by the Convention had set a minimum age of 16 years or higher for maritime labour, in accordance with the MLC, 2006. Recommendation No. 153 had been revised by the MLC, 2006, which broadly covered its provisions within the Guidelines.

[2] See Technical Note 1.

165. The Chairperson of the Government group expressed agreement with the action proposed in Technical Note 1. However, he considered that member States should be encouraged to set a minimum age of 16, in accordance with Standard A1.1, paragraph 1, of the MLC, 2006. It was not practicable for ships to sail in international waters with persons under 16 years of age working on board, which would in any case leave them liable to port State inspection and detention.

166. A spokesperson for the Seafarers' group raised the question of the status of a Convention which had been denounced by a Member, for example following the ratification of the MLC, 2006, when that instrument had been declared applicable to one or more non-metropolitan territories (NMTs), but the Member had not specified whether the denunciation applied to the NMT.

167. The Legal Adviser agreed that the situation described occurred in practice. For example, according to the NORMLEX database, only one member State remained bound by Convention No. 7, which in technical terms meant that the Convention had fallen beneath the threshold of ratifications required for it to remain in force. However, the Convention had also been declared applicable to certain NMTs by two other member States, which legally speaking remained bound by the Convention only in respect of those NMTs (even if the "automatic" denunciation of the Convention following the ratification of the MLC, 2006 had removed any trace from ILO records of the continued application of the Convention to the NMTs in question). Such a situation made no difference in terms of the process to be followed for the eventual abrogation or withdrawal of the Convention, as abrogation and withdrawal were subject to exactly the same procedural rules under article 45bis(2) of the Standing Orders of the Conference, but might need to be taken into account when recommending the action to be taken in respect of the instrument. In such cases, the Committee might wish to encourage member States which had already ratified the MLC, 2006, but for which a Convention was still applicable to NMTs, to extend the application of the MLC, 2006, to those NMTs. He suggested that the STC might wish to insert an additional recommendation to this effect in all relevant technical notes.

168. The Shipowner Vice-Chairperson, with the support of the Seafarer Vice-Chairperson, expressed agreement with the inclusion of that recommendation in respect of all the Technical Notes under discussion.

169. A representative of the Government of the United Kingdom could accept that proposal. However, he noted that specific issues might arise in relation to the application of the MLC, 2006 to certain NMTs. For example, the NMTs might only exercise responsibility in respect of certain types of ships, such as domestic vessels, or they might exercise no or limited port State inspection functions. For those and other reasons, it might not always be possible to extend the application of the MLC, 2006 in its entirety to NMTs, but only of those standards which would be relevant.

170. A representative of the Government of France indicated that he agreed with the Legal Adviser and pointed out that it was even more important to examine the relevance of the provisions of the MLC, 2006 in relation to NMTs given that an eventual extension would lead to the automatic denunciation of most of the currently applicable Conventions.

171. The Shipowner Vice-Chairperson said that it was his understanding that the MLC, 2006 had to be ratified as a whole and that there could be no cherry-picking of the provisions that would be applied.

172. A representative of the United Kingdom indicated that the intention was not to cherry-pick parts of the MLC, 2006, for its application to NMTs. The issue was to ensure that the provisions of the Convention were implemented by the legislation of the NMTs, or that equivalent standards were applied in their legislation.

173. The Legal Adviser said that it was the decision of the member State, in accordance with its constitutional law and practice, whether or not it wished to ratify the MLC, 2006, and whether or when it wished to extend its application to NMTs. However, ratifying the MLC, 2006 and deciding to apply only "relevant standards" to NMTs would not be compatible with the requirements of article 35 of the ILO Constitution. This was, of course, different from the question of flexibility in the implementation of the Convention, for instance through the use of substantial equivalence or other similar clauses, which were specifically provided for in the Convention.

174. The Committee agreed to recommend:

(1) to classify Convention No. 7 as "outdated" and propose its withdrawal;

(2) to classify Convention No. 58 as "outdated" and:

(a) to encourage States still bound by this Convention to ratify the MLC, 2006. This would involve the automatic denunciation of Convention No. 58;

(b) to encourage States which have already ratified the MLC, 2006, but remain bound by Convention No. 58 in respect of non-metropolitan territories, to extend the application of the MLC, 2006, to those territories;

(c) to encourage States still bound by Convention No. 58 that have ratified Convention No. 138 but have set a minimum age of 14 years: (i) to set a minimum age of at least 16 years, in accordance with Standard A1.1, paragraph 1, of the MLC, 2006; or (ii) for those that have set the minimum age for maritime labour at 18 years, to send a declaration to the Office stating that Article 3 of Convention No. 138 is applicable to maritime labour. Both these situations would also involve the automatic denunciation of Convention No. 58; and

(d) to review the situation of this Convention at the next meeting of the STC in order to decide on its possible abrogation or withdrawal;

(3) to classify Recommendation No. 153 as "outdated" and propose its withdrawal.

Review of two instruments relating to medical examination (seafarers)

175. The review concerned the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16), and the Medical Examination (Seafarers) Convention, 1946 (No. 73). [3] The Secretary-General informed the Committee that, although both Conventions had been revised by the MLC, 2006, they remained relevant because several States that had not ratified the MLC, 2006, remained bound by them. Moreover, Convention No. 73 was included in the system of Convention No. 147 and, in that context, remained applicable to nine member States. However, the STCW contained relevant provisions, compliance with which was considered as implementing the MLC, 2006. Of the 27 member States that remained bound by Convention No. 16, only five were not parties to the STCW (Costa Rica, the former Yugoslav Republic of Macedonia, Kyrgyzstan, Somalia and Tajikistan). Of the 12 member States that remained bound by Convention No. 73, only three were not parties to the STCW (the former Yugoslav Republic of Macedonia, Kyrgyzstan and Tajikistan).

[3] See Technical Note 2.

176. The Chairperson of the Government group proposed the early abrogation of both Conventions. The only question raised by the action proposed in Technical Note 2 concerned those countries that remained bound by Conventions Nos 16 and/or 73 and which had not yet acceded to the STCW, which would be left in limbo.

177. A representative of the Government of the Republic of Korea, while supporting the early abrogation of the two Conventions, believed that it would be wise to take action to address the problems of the countries that were still bound by them.

178. The Shipowner Vice-Chairperson understood that the abrogation or withdrawal of an instrument did not mean that the national legislation giving effect to the instrument needed to be changed.

179. The Seafarer Vice-Chairperson said that the early abrogation of the Conventions could raise certain problems, for example in relation to the instruments listed in the Appendix to Convention No. 147.

180. A representative of the Government of the United States said that any issues that might arise in relation to Convention No. 147 in that respect were covered by instruments outside the ILO, and particularly the STCW. However, it would be necessary to ensure that abrogation did not create any gaps.

181. Concerning some of the countries still bound by Conventions Nos 16 and/or 76, the Secretary-General drew the attention of the Committee to the fact that, in relation to Kyrgyzstan, in 2013, the CEACR noted the Government's intention to denounce the set of Conventions relating to maritime navigation and fishing. In relation to the former Yugoslav Republic of Macedonia, the CEACR noted that the Government had indicated that this country has no maritime fleet or vessel registered under its flag, nor any legislation relating to the matters under the ILO maritime Conventions. Lastly, as regards Tajikistan, the CEACR noted that, in 2011, the Government had indicated that the country has no maritime fleet, and although the Convention has been ratified, it is not applied in law or in practice.

182. The Committee agreed to recommend:

(1) to classify Convention No. 16 as "outdated" and propose its abrogation;

(2) to classify Convention No. 73 as "outdated" and propose its abrogation;

(3) to encourage States which have already ratified the MLC, 2006, but remain bound by Conventions Nos 16 and 73 in respect of non-metropolitan territories, to extend the application of the MLC, 2006, to those territories;

(4) to request the Office to launch an initiative to promote ratification on a priority basis of the MLC, 2006, among those countries still bound by these Conventions.

Review of two instruments relating to training and qualifications (seafarers)

183. The review concerned the Officers' Competency Certificates Convention, 1936 (No. 53), and the Certification of Able Seamen Convention, 1946 (No. 74). [4] The Secretary-General indicated that both of the Conventions had been revised by the MLC, 2006, and appeared to be outdated in relation to current internationally accepted regulations adopted under the

[4] See Technical Note 3.

auspices of the IMO (and particularly the STCW), to which the MLC, 2006 referred. A limited number of member States which had not ratified the MLC, 2006 remained bound by the Conventions, and Convention No. 53 was included in the system of Convention No. 147, in which respect it remained relevant for nine member States. However, during the drafting of the MLC, 2006, the ILO had accepted the transfer to the IMO the responsibility for provisions relating to the training and certification of able seafarers, with the exception of ships' cooks. With the exception of the former Yugoslav Republic of Macedonia, all of the member States that remained bound by the two Conventions had already ratified the STCW.

184. The Chairperson of the Government group indicated that the situation was facilitated by the fact that those member States that remained bound by the two Conventions were also parties to the STCW.

185. The Seafarer Vice-Chairperson considered that action should be taken to encourage those States that remained bound by the two Conventions to ratify the MLC, 2006.

186. The Committee agreed to recommend:

(1) to classify Convention No. 53 as "outdated" and propose its abrogation;

(2) to classify Convention No. 74 as "outdated" and propose its abrogation;

(3) to encourage States which have already ratified the MLC, 2006, but remain bound by Conventions Nos 53 and 74 in respect of non-metropolitan territories, to extend the application of the MLC, 2006, to those territories;

(4) to request the Office to launch an initiative to promote ratification on a priority basis of the MLC, 2006, among those countries still bound by these Conventions.

Review of four instruments relating to recruitment and placement (seafarers)

187. The review concerned the Placing of Seamen Convention, 1920 (No. 9), the Recruitment and Placing of Seafarers Convention, 1996 (No. 179), the Seafarers' Engagement (Foreign Vessels) Recommendation, 1958 (No. 107), and the Recruitment and Placement of Seafarers Recommendation, 1996 (No. 186). [5] The Secretary-General indicated that Convention No. 9 had already been classified as outdated by the Cartier Working Party and, alongside Recommendation No. 107, appeared to be completely outdated in relation to its approach to maritime employment, as it supported the prohibition on the placement of seafarers for pecuniary gain. No member State remained bound by Convention No. 179.

188. The Chairperson of the Government group agreed with the proposals in the Technical Note. However, the Office should be requested to examine the situation of member States that were still bound by Convention No. 9 and provide them with assistance for the ratification of the MLC, 2006. A representative of the Government of the Philippines added that the comments of the CEACR showed that two of the countries bound by Convention No. 9 operated fee-charging employment services that were unacceptable under the MLC, 2006. They should be urged to ratify and give effect to the MLC, 2006. A representative of the Government of Norway said that any country that had not ratified the MLC, 2006 should be provided with assistance, and that a general provision could be included to that effect. A

[5] See Technical Note 4.

representative of the Government of Greece considered that a specific call for technical assistance was particularly relevant in relation to the facilitation of access to employment.

189. The Committee agreed to recommend:

(1) to classify Convention No. 9 as "outdated" and propose its abrogation. In this regard, this STC urges member States which remain bound by Convention No. 9 to ratify the MLC, 2006. It further requests the Office to provide technical assistance to that effect to those member States;

(2) to encourage member States which have already ratified the MLC, 2006, but remain bound by Convention No. 9 in respect of non-metropolitan territories, to extend the application of the MLC, 2006, to those territories;

(3) to classify Recommendation No. 107 as "outdated" and propose its withdrawal;

(4) to classify Convention No. 179 and Recommendation No. 186 as "outdated" and propose their withdrawal.

Review of one instrument relating to seafarers' employment agreements

190. The review concerned the Seamen's Articles of Agreement Convention, 1926 (No. 22). [6] The Secretary-General indicated that Convention No. 22 had been revised and incorporated into the MLC, 2006. Convention No. 22 used language that might be considered archaic in certain respects and had a much narrower scope of application than the MLC, 2006. However, it retained a certain value as several member States which had not ratified the MLC, 2006 remained bound by it and it was applicable in a number of NMTs. Convention No. 22 was incorporated into the system of Convention No. 147 and remained relevant in that context for nine member States.

191. The Chairperson of the Government group agreed with the proposals in the Technical Note. However, he requested the Office to examine the situation of governments which were covered by the instruments listed in the Appendix to Convention No. 147.

192. The Secretary-General noted that Convention No. 147 was one of the instruments that would be reviewed at the next meeting of the Committee.

193. The Committee agreed to recommend:

(1) to classify Convention No. 22 as "outdated" and:

(a) to encourage States still bound by this Convention to ratify MLC, 2006. This would involve the "automatic" denunciation of Convention No. 22;

(b) to encourage States which have already ratified the MLC, 2006, but remain bound by Convention No. 22 in respect of non-metropolitan territories, to extend the application of the MLC, 2006, to those territories;

(c) to review the situation of this Convention at the next meeting of the STC in order to decide on its possible withdrawal or abrogation.

[6] See Technical Note 5.

Review of eight instruments relating to seafarers' wages, hours of work and hours of rest, and manning of ships

194. The review concerned the Hours of Work and Manning (Sea) Convention, 1936 (No. 57), the Hours of Work and Manning (Sea) Recommendation, 1936 (No. 49), the Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76), the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93), the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), the Wages, Hours of Work and Manning (Sea) Recommendation, 1958 (No. 109), the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), and the Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187). [7] The Secretary-General noted that Conventions Nos 57, 76, 93, 109 and 180 were not in force and had been revised by the MLC, 2006. Recommendation No. 109 had been replaced by Recommendation No. 187.

195. The Chairperson of the Government group agreed that the instruments should be classified as outdated and their withdrawal proposed. However, he wondered whether it was useful to recommend that the Governing Body take note of the juridical replacement of Recommendation No. 109 by Recommendation No. 187.

196. The Shipowner Vice-Chairperson said that Recommendation No. 109 could also be recommended for withdrawal.

197. The Seafarer Vice-Chairperson proposed, for the sake of consistency, to retain the recommendation to the Government Body to note the juridical replacement of Recommendation No. 109.

198. The Committee agreed to recommend:

(1) to classify Conventions Nos 57, 76, 93, 109 and 180 and Recommendations Nos 49, and 187 as "outdated instruments" and propose their withdrawal.

(2) to recommend that the Governing Body take note of the juridical replacement of Recommendation No. 109 by Recommendation No. 187.

Review of four instruments relating to entitlement to leave (seafarers)

199. The review concerned the Holidays with Pay (Sea) Convention, 1936 (No. 54), the Paid Vacations (Seafarers) Convention, 1946 (No. 72), the Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91), and the Seafarers' Annual Leave with Pay Convention, 1976 (No. 146). [8] The Secretary-General noted that all four instruments had been revised by the MLC, 2006. Conventions Nos 54 and 72 had never entered into force. Nine member States were still bound by Convention No. 91, although the protection that it afforded with regard to the duration of leave no longer corresponded to the requirements of the most recent instruments. Only four member States remained bound by Convention No. 146, all of which were in conformity with the MLC, 2006, on the issue of the duration of annual leave. Convention No. 146 was listed in the Annex to the Merchant Shipping (Improvement of Standards) Recommendation, 1976 (No. 155). The application of

[7] See Technical Note 6.

[8] See Technical Note 7.

Convention No. 146 to member States that had ratified it might have been extended to the fishing sector.

200. The Chairperson of the Government group expressed agreement with most of the proposals contained in the Technical Note. However, there were strong reservations among the Government members to any explicit reference by the present Committee to matters relating to fishers, or of any suggestion that the competence of the STC extended to fishing. Those reservations included any call by the STC for States which had extended the protection afforded by Convention No. 146 to the fishing sector to ratify the Work in Fishing Convention, 2007 (No. 188), although there was broad support, with certain exceptions, for drawing the attention of the Governing Body to a gap in the protection of fishers in relation to their annual leave.

201. A representative of the Government of Norway, as a country that had ratified Convention No. 188, had no difficulties with the call to ratify that Convention. However, in light of the low number of ratifications of Convention No. 188, he did not consider that it was yet the appropriate time to draw the attention of the Governing Body to gaps in the protection of fishers in relation to that Convention. A representative of the Government of the Republic of Korea, which had not ratified Convention No. 188, although ratification was under consideration, agreed that it was not the appropriate time to identify gaps in the coverage of that Convention.

202. The Shipowner Vice-Chairperson emphasized that the Committee had no authority to comment on any instruments that did not fall under the provisions of the MLC, 2006, and no authority to examine issues relating to Convention No. 188. It might be possible to suggest that the issue could be referred back to the SRM TWG.

203. The Secretary-General recalled that it was part of the general mandate of the SRM to bring to the attention of the Governing Body any gaps in protection that were identified. Convention No. 146 was one of the instruments that had been referred to the STC for review, and the recommendations of the STC would be communicated directly to the Governing Body. She added that two member States had extended the scope of application of Convention No. 146 to fishers, and submitted reports in that regard under article 22 of the ILO Constitution.

204. The Shipowner Vice-Chairperson proposed that, in its recommendations, the Committee could recognize that Convention No. 146 provided that States may extend its application to persons excluded from the definition of seafarers in the Convention, or certain categories thereof, and draw the attention of the SRM TWG to any issues that might arise from that.

205. A spokesperson for the Seafarers' group considered that the Office should encourage the member States concerned to remove the problem of the gap in coverage relating to fishers by promoting the ratification of Convention No. 188, which would eventually allow the abrogation of Convention No. 146. That statement was supported by several Government members of the Committee.

206. The Committee agreed to adopt the recommendation proposed by the Shipowner Vice-Chairperson. The Committee agreed to recommend:

(1) to classify Conventions Nos 54 and 72 as "outdated" and propose their withdrawal;

(2) to classify Convention No. 91 as "outdated" and propose its abrogation, and to encourage States still bound by this Convention to ratify the MLC, 2006;

(3) to classify Convention No. 146 as "outdated" and review its situation at the next meeting of the STC in order to decide on its possible withdrawal or abrogation, and, in this regard, to:

(a) encourage the States still bound by this Convention to ratify the MLC, 2006. This would involve the automatic denunciation of Convention No. 146;

(b) encourage States which have already ratified the MLC, 2006, but remain bound by Convention No. 146 in respect of non-metropolitan territories, to extend the application of the MLC, 2006, to those territories; and

(c) recognize that Convention No. 146 provides that States may extend its application to persons excluded from the definition of seafarers in the Convention, or certain categories thereof, and draw the attention of the SRM TWG to any issues this may raise.

Review of four instruments relating to the repatriation of seafarers

207. The review concerned the Repatriation of Seamen Convention, 1926 (No. 23), the Repatriation of Seafarers Convention (Revised), 1987 (No. 166), the Repatriation (Ship Masters and Apprentices) Recommendation, 1926 (No. 27), and the Repatriation of Seafarers Recommendation, 1987 (No. 174). [9] The Secretary-General indicated that 16 member States remained bound by Convention No. 23, which had been revised by the MLC, 2006, but was part of the system of Convention No. 147 and, in that respect, remained relevant for seven member States. However, Convention No. 23 appeared to be completely outdated in terms of the protection afforded to seafarers with regard to repatriation. Only five member States remained bound by Convention No. 166, which had been revised by the MLC, 2006, and mainly reflected the level of protection afforded by the MLC, 2006, with the exception of the financial security mechanism in the event of abandonment introduced by the 2014 amendments. The protection afforded by Convention No. 166 could be extended to include commercial maritime fishing. Recommendation No. 27 had been revised by the 1987 instruments, and Recommendation No. 174 had been incorporated into the MLC, 2006.

208. The Chairperson of the Government group expressed broad support for the proposed recommendations in the Technical Note. However, considering that Convention No. 23 was listed in the Appendix to Convention No. 147, the status of which would be reviewed by the STC at its next meeting, it would be logical to review the status of Convention No. 23 at the same time.

209. The Shipowner Vice-Chairperson considered that, with reference to the extension of Convention No. 166 to commercial maritime fishing, the Committee should recognize that "Convention No. 166 provides that States may extend its application to commercial maritime fishing, and that this provision needed to be drawn to the attention of the SRM TWG to any issues this may raise".

210. The Secretary-General, in response to a request for clarification from a representative of the Government of the Russian Federation, clarified that, although the Russian Federation had ratified Convention No. 166, that Convention had been automatically denounced when it ratified the MLC, 2006.

[9] See Technical Note 8.

211. The Seafarer Vice-Chairperson called on the Office to encourage States which remained bound or had previously been bound by Conventions Nos 146 and 166, and which had extended the protection of those Conventions to the fishing sector, to ratify Convention No. 188. That statement was supported by representatives of the Governments of the Bahamas, Netherlands, Norway, Philippines, Portugal, Singapore and United Kingdom.

212. The Committee agreed to recommend:

(1) to classify Convention No. 23 as "outdated" and to review its situation at the next STC in order to decide on its possible withdrawal or abrogation and, in this regard:

(a) to encourage States that are still bound by Convention No. 23 to ratify the MLC, 2006. This would involve the automatic denunciation of Convention No. 23;

(b) to encourage States which have already ratified the MLC, 2006, but remain bound by Convention No. 23 in respect of non-metropolitan territories, to extend the application of the MLC, 2006, to those territories;

(2) to classify Recommendation No. 27 and Recommendation No. 174 as "outdated" and to propose their withdrawal;

(3) to classify Convention No. 166 as "outdated" and, in this regard, to note that:

(a) States that are still bound by Convention No. 166 should be encouraged to ratify the MLC, 2006;

(b) Convention No. 166 provides that States may extend its application to commercial maritime fishing, and to draw the attention of the SRM TWG to any issues this may raise; and

(c) the status of this Convention should be reviewed during the next meeting of the STC, in order to decide upon its possible withdrawal or abrogation.

Review of one instrument relating to seafarer compensation for the ship's loss or foundering

213. The review concerned the Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8). [10] The Secretary-General indicated that 14 member States remained bound by Convention No. 8, which had been consolidated in the MLC, 2006. Although the protection afforded to seafarers by the Convention still appeared to be relevant, its scope was rather limited when provided in isolation from the other elements of protection consolidated in the MLC, 2006.

214. A spokesperson for the Seafarers' group drew attention to the fact that Convention No. 8 was broader in scope than the MLC, 2006, as it did not exclude, as the MLC, 2006 did, ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks.

215. The Committee agreed to recommend:

(1) to classify Convention No. 8 as "outdated" and propose its abrogation;

[10] See Technical Note 9.

(2) to encourage States which have already ratified the MLC, 2006, but remain bound by Convention No. 8 in respect of non-metropolitan territories, to extend the application of the MLC, 2006, to those territories.

Review of five instruments relating to career and skill development and opportunities for seafarers' employment

216. The review concerned the Continuity of Employment (Seafarers) Convention, 1976 (No. 145), the Vocational Training (Seafarers) Recommendation, 1946 (No. 77), the Vocational Training (Seafarers) Recommendation, 1970 (No. 137), the Employment of Seafarers (Technical Developments) Recommendation, 1970 (No. 139), and the Continuity of Employment (Seafarers) Recommendation, 1976 (No. 154). [11] The Secretary-General noted that only five member States remained bound by Convention No. 145, which had been revised by the MLC, 2006. The protection provided by Convention No. 145 and Recommendation No. 154 no longer corresponded with the requirements of the MLC, 2006. Recommendation No. 77 had been replaced by Recommendation No. 137, which had been revised by the MLC, 2006. Account had been taken of Recommendation No. 139 in the process of the consolidation of maritime instruments which had led to the adoption of the MLC, 2006.

217. The Committee agreed to recommend:

(1) to classify Convention No. 145 and Recommendation No. 154 as "outdated" and propose their abrogation and withdrawal, respectively and, in this regard:

(a) to encourage the ratification of the MLC, 2006 by the five States still bound by Convention No. 145. This would involve the automatic denunciation of Convention No. 145;

(b) to encourage States which have already ratified the MLC, 2006, but remain bound by Convention No. 145 in respect of non-metropolitan territories, to extend the application of the MLC, 2006, to those territories;

(2) to recommend that the Governing Body take note of the juridical replacement of Recommendation No. 77 by Recommendation No. 137;

(3) to classify Recommendation No. 137 as "outdated" and propose its withdrawal;

(4) to classify Recommendation No. 139 as "outdated" and propose its withdrawal.

IX. Consideration of draft resolutions

218. The Committee considered seven draft resolutions submitted in accordance with the time limits set by the Officers.

[11] See Technical Note 10.

(a) Draft resolution concerning the application of Article XV of the MLC, 2006, to those Members which ratify the Convention after the approval of amendments to the Code but before their entry into force

219. The draft resolution, submitted by the Seafarers' and Shipowners' groups, urged Members which had ratified, or intended to ratify, the MLC, 2006 after the approval of the 2014 and 2016 amendments by the International Labour Conference, but before the respective dates of their entry into force, to promptly indicate to the Director-General whether they accepted those amendments. It also resolved that, should similar instances arise in the future, the Director-General should invite the Members concerned to formally express their disagreement within a period not exceeding six months should they not wish to be bound by the amendments, failing which they should be deemed to have accepted them.

220. The Shipowner Vice-Chairperson, introducing the draft resolution, recalled that the CEACR had drawn the attention of the STC to a "lacuna" or "gap" that had been identified in Article XV of the MLC, 2006 relating to member States which ratified the Convention following the approval by the Conference of amendments to the Convention, but before their entry into force. The gap concerned the procedure applicable to such member States in relation to the acceptance of such amendments. He noted that several member States which had ratified the Convention between the approval of the 2014 amendments by the Conference in June 2014 and their entry into force in January 2017 had not yet clarified their position vis-à-vis the acceptance of those amendments. He therefore considered that a pragmatic approach was needed, particularly as the same problem would arise with regard to the 2016 amendments.

221. The Chairperson of the Government Group indicated that, while there was support for the draft resolution among governments, a number of questions had been raised. It was considered inappropriate to list the countries which had ratified the Convention between the approval of the 2014 and the 2016 amendments and their entry into force, but which had not yet communicated their position in relation to the acceptance of those amendments. Other significant concerns arose because the draft resolution appeared to change the procedure agreed by the STC and extend the tacit acceptance procedure in the amendment process of the MLC, 2006. With regard to the period specified in the draft resolution for the expression of formal disagreement with the amendments, several Government representatives considered a period of six months to be too short, taking into account the complexity of the process of adopting the necessary domestic legislation, including the related consultations. A representative of the Government of Finland indicated that every time the Convention was amended, his Government had to give notice to the Director-General that it would be bound by the amendments only after a subsequent express notification of acceptance, as it was necessary for the amendments to be accepted by Parliament, which normally took longer than six months. The 2016 amendments were currently still before Parliament awaiting acceptance. A representative of the Government of Portugal recalled that the MLC, 2006 had been ratified by Portugal after the adoption of the 2014 amendments which, in accordance with the national Constitution, were subject to a lengthy approval process which involved approval by Parliament and ratification by the President. That procedure was currently being followed and the Office would be notified of Portugal's acceptance in due time. Nevertheless, all ships flying the Portuguese flag that felt under the scope of the Convention, had already to carry on board documentary evidence of financial security as required by the amendments and as stated in Circular No. 42 of 2017 issued by the competent national authority. A representative of the Government of China indicated that the situation in his country was similar to that of Portugal and that the national legislative process had already commenced for the implementation of the 2014 amendments. A representative of

the Government of the Islamic Republic of Iran indicated that in the legal system in his country the declaration of acceptance or non-acceptance was made by Parliament.

222. In view of the above issues, various proposals were made to extend the period for the expression of formal disagreement to 12 months or longer, or for the adoption of a more flexible approach with regard to its duration. The Chairperson of the Government group suggested that the period of six months should be amended to 12 months or longer to bring it into conformity with the period set out in Article XIV of the MLC, 2006, and to alleviate the burden on domestic, legislative, administrative and consultative processes. Similar solutions were proposed by representatives of the Governments of the Republic of Korea, Philippines, Portugal, United Kingdom and United States. Representatives of the Governments of Greece, United Kingdom and United States requested clarifications with regard to the date from which the period would be counted.

223. The Legal Adviser, with respect to the proposed duration of the period for the expression of disagreement with the amendments, referred to the example of Finland and clarified that a Member could well notify the ILO that it was not in a position to accept the amendments for the time being. When the Member was ready to accept the amendments, it could "opt back in" through a further notification. In relation to the starting date from which the six months or any longer period was to be counted, he said that it would be the date of notification by the Office to each of the concerned Members, and not a generally applicable date covering all Members.

224. The Seafarer Vice-Chairperson agreed that countries could indicate in their notification that they were not yet ready to accept the amendments. He agreed to the possible extension of the period to 12 months. The Shipowner Vice-Chairperson indicated that the length of the period could be revised to nine months, although six months appeared more appropriate.

225. Several Government representatives, including the Chairperson of the Government group and representatives of the Governments of Norway and Portugal, expressed significant concern in relation to the legal basis for the procedure of the tacit acceptance of amendments proposed in the draft resolution. A representative of the Government of the Islamic Republic of Iran questioned the legal basis of the notification to member States that would be sent out by the Director-General.

226. The Legal Adviser clarified that Article XV of the MLC, 2006 already provided for a tacit amendment procedure, which was one of its major innovations as compared to other ILO instruments. He noted that, in relation to the 2014 amendments, a two-year period had been available to over 50 member States to formally express their disagreement with the amendments, failing which they entered into force for them. Around 20 member States had ratified the MLC, 2006, between June 2014 and January 2017, when the 2014 amendments had entered into force thus falling within the "lacuna" identified in Article XV. Some 16 of those countries had not yet stated their position in relation to the 2014 amendments, and another six, which were in a similar position in respect of the 2016 amendments, has not yet indicated their position in that regard. With reference to the comments concerning the legal basis for the tacit amendment procedure proposed for those member States covered by the "lacuna", he said that a unanimous decision in the form of a resolution eventually adopted by the STC, which was the supreme body dealing with maritime issues under the MLC, 2006 as the Conference of the parties to that Convention, would practically instruct the Office to apply by analogy the tacit amendment process set out in Article XV to the Members concerned. The STC was governed by Article XIII of the Convention, established by the Governing Body and mandated to keep the working of the Convention under continuous review. The STC's mandate allowed it a certain level of flexibility in that regard. It could be presumed that the Director-General would invite the member States concerned to formally express their agreement of disagreement based on the terms of the STC resolution. While it was clear that the most appropriate legal method to resolve the "lacuna" would be the formal

amendment of Article XV of the Convention, that would involve a very lengthy and costly process of convening a maritime session of the International Labour Conference, and would require the ratification of any resulting amendment by 30 Members representing 33 per cent of the world tonnage. In relation to the legal effect of the tacit acceptance procedure, the draft resolution proposed a period for Members to formally express their disagreement with the amendments, failing which the amendments would be deemed to have been accepted. That procedure, imported from the IMO, was already set out in the MLC, 2006 (Article XIV, paragraph 9), and constituted a practical solution, within the spirit of the Convention, to ensure a level playing field.

227. The Chairperson specified that the procedure proposed in the draft resolution would not affect member States that had already ratified the MLC, 2006. The Shipowner Vice-Chairperson clarified that the proposed tacit acceptance procedure would not apply to previous amendments, but only to future ones. He added that the letter from the Director-General would be sent to the member States concerned following the registration of their instrument of ratification of the Convention.

228. A representative of the Government of Greece considered that the legal basis for the proposed procedure was weak and suggested that the same time limits should be established as those set out in Article XV, paragraphs 8(a) and (b), 9 and 10, of the Convention. A representative of the Government of Portugal considered that it was inappropriate to give legal effect to a non-legally binding instrument and warned that it might have the effect of obliging certain member States to change their position and indicate disagreement with amendments on which they had previously expressed agreement. A representative of the Government of Republic of Korea agreed that amending the Articles of the Convention would involve a heavy and costly process, and that the solution proposed by the social partners was therefore pragmatic, without constituting a legally binding instrument, hence the use of the wording "should be deemed to have accepted them", instead of "shall". A representative of the Government of the United States acknowledged that the process of amending the Convention would be too lengthy and that the social partners were trying to offer a pragmatic solution. The solution adopted should remain as near as possible to the text of the Convention, and the date from which the 12-month period started would need to be clarified.

229. The Legal Adviser, noting the concerns expressed that the proposed approach lacked a solid legal basis, indicated that he had understood the intention of the drafters of the resolution to be to propose a pragmatic solution that sought to replicate what was provided in paragraph 9 of Article XIV, namely that Members would be bound by amendments unless they declared within a specific period of time their formal disagreement. This was certainly a flexible approach that the STC, in line with its mandate to keep the working of the Convention under continuous review, might wish to adopt. In addition, the approach seemed to be in accordance with the overarching principles that had inspired the MLC, 2006, that is the establishment of a level playing field for the industry, the facilitation of an accelerated amendments process, and the adoption of a text that was firm in principles but flexible in implementation. Moreover, the proposed solution would appear to be in accordance with the principle underlying Article 11 of the Vienna Convention on the Law of Treaties which provided that "[t]he consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed". Accordingly, if unanimously agreed by the STC, the resolution could provide a basis for the Members concerned to express consent by remaining silent, which would be deemed as acceptance of the amendments. Finally, he recalled that the STC had been specifically requested by the CEACR to consider the issue of the "lacuna". In view of the discussion, the draft resolution could be amended to provide that "… the Director-General should invite the Members concerned which may not wish to be bound by the amendments to formally express their disagreement within the prescribed period for the communication of any formal disagreement of ratifying Members under paragraph 6 of

Article XV or within 12 months from the date of ratification, whichever is the later date, failing which they should be deemed to have accepted them, it being understood that the provisions of paragraphs 8, 11 and 13 of Article XV should also apply by analogy in these cases". The proposed wording aimed at "synchronizing" as much as possible the timelines for tacit amendment applicable to those Members which had ratified the Convention before the approval of amendments by the Conference with those applicable to Members covered by the "lacuna".

230. The Chairperson of the Government group indicated that, while the amended version of the draft resolution appeared more acceptable, there was not unanimous support for it. When amendments to the Code of the MLC, 2006 were adopted, governments needed time to make the necessary administrative arrangements and set in motion the legislative process. However, the Office should be encouraged to provide assistance to newly ratifying member States to give effect to the amendments that had been adopted.

231. The Shipowner Vice-Chairperson expressed disappointment at the lack of support for a resolution to address the "lacuna". The purpose of the draft resolution was to fill a gap and put into place a procedure that would fix a period for the Members affected by that gap to formally express their disagreement with the amendments, which would give them more time to complete their legislative process before accepting the amendments.

232. A representative of the Government of the Republic of Korea indicated that this problem had not been foreseen when the Convention was adopted. Any proposed solution should be based on the time period set out in Article XV. A representative of the Government of Norway indicated that, while his country would not be covered by the draft resolution, the issue under examination did not warrant the lengthy and complex process of the amendment of the Convention. He expressed support for the amended version of the resolution. A representative of the Government of Bulgaria, speaking on behalf of the Member States of the EU represented in the STC, indicated that there was disagreement concerning the draft resolution.

233. A representative of the Government of Greece indicated that the aim was to achieve broader protection of seafarers and it was therefore important to ensure that the text of the draft resolution was in line with the Convention. She expressed support for the draft resolution, as amended. A representative of the Government of the Philippines added that seafarers should not be affected by the gap that had been identified. A representative of the Government of the United States indicated that, as one of the countries that could be affected by the "lacuna", the amended text of the draft resolution represented a good balance.

234. A representative of the Government of Portugal reiterated the concern about the legal certainty of the proposed solution. A representative of the Government of Brazil, another country which could be affected by the draft resolution, shared the concerns regarding legal certainty.

235. A representative of the Government of the United Kingdom, while agreeing with the representatives of the Governments of Greece, Norway, Philippines and United States, requested the Office to reiterate its legal position in relation to the draft resolution.

236. The Legal Adviser clarified that he had understood that the logic behind the draft resolution jointly submitted by the Shipowners and Seafarers groups was based on a gap that had been identified well after the entry into force of the Convention. Since the procedure for the amendment of the Articles of the Convention was lengthy and costly, and the problem would diminish in scope with time, a practical solution was needed. It was in this context that it was felt that a unanimous decision by the STC, acting as the Conference of the parties which met periodically to keep the Convention under continuous review, could provide sufficient guidance to the Office on this issue. In accordance with the proposed solution, member

States which ratified the Convention and were covered by the gap would have a period to react which was aligned as much as possible with the two-year period provided for under Article XV, paragraph 6, of the Convention. Although a resolution did not carry the legal weight of a formal amendment to the text of the Convention, it would give the Office a sound basis for the procedure to be followed.

237. The Shipowner and Seafarer Vice-Chairpersons, noting the lack of unanimous support, agreed to withdraw the resolution.

(b) Resolution concerning action to be taken in relation to seafarer abandonment

238. The draft resolution was submitted by the Seafarer and Shipowner groups.

239. The Chairperson of the Government group indicated that there was broad support from his group for the resolution. However, some questions had been raised with regard to the meaning of the word "governments" in paragraphs (a), (b) and (c) of the resolution, and whether the intention was to refer to flag States, port States or the country of nationality of the seafarer. That issue could be resolved by using the term "member States". While there was broad support in the Government group for paragraph (c), some concern had been expressed at the reference to "consular" support, which was not specified by the 2014 amendments. Moreover, while the 2014 amendments placed the primary responsibility for abandoned seafarers on shipowners, the resolution appeared to change the emphasis to governments.

240. The Shipowner Vice-Chairperson could agree with the use of the term member States. He added that it was important to recall that the term "urged" in the resolution created no legal obligation. It was necessary for all governments, including flag and port States and the countries of nationality of seafarers, to take an interest and participate in reporting cases of abandoned seafarers. Although the reference to consular services was not contained in the 2014 amendments, such services could be important, for example in the case of a passport being withheld. The IMO–ILO *Guidelines on Provision of Financial Security in case of Abandonment of Seafarers* included reference to consular services.

241. With regard to reporting cases of abandonment to the IMO–ILO database, the Seafarer Vice-Chairperson said that the ITF was currently almost alone in entering information into the database. It would be beneficial for all concerned to receive as much information as possible from other entities or persons. While some governments already reported to the system, more should be encouraged to do so.

242. A representative of the Government of Norway noted that the documents prepared by the IMO clearly showed its desire to play an active role in resolving cases of abandonment. However, it was necessary to know beforehand who should be contacted in such cases, for example in the ILO and the IMO.

243. The Secretary-General indicated that the ILO had developed a well-established practice under which cases of abandonment were channelled through the Office of the Director-General, who used his good offices to intervene and remind the Members concerned of their obligations under the Convention, or under the IMO–ILO guidelines in the case of member States that had not ratified the MLC, 2006.

244. A spokesperson for the Seafarer group said that in many cases of abandonment, neither the flag nor the port State had ratified the Convention, particularly when such cases occurred in the Gulf, although some of the countries concerned were beginning to take more effective

action. What was required was support from governments collectively, and also individually, to endeavour to overcome the intolerable situation of seafarers who were abandoned.

245. A spokesperson for the Shipowner group added that in certain cases, for example where seafarers were seriously ill and urgent humanitarian assistance was required, it was not easy for the social partners to take effective action. In such cases, special assistance was requested from the Office.

246. The resolution, as adopted, is contained in Appendix V.

(c) Resolution concerning facilitation of shore leave and transit

247. The draft resolution was submitted by the Seafarer and Shipowner groups.

248. The Shipowner Vice-Chairperson, introducing the resolution, emphasized that, although shore leave was essential for the health and welfare of seafarers, they faced great difficulties in that regard in some parts of the world. The draft resolution therefore, while acknowledging security concerns, expressed concern at the difficulties experienced by seafarers in gaining access to shore leave and transit in certain ports and terminals around the world, and identified some of the areas concerned. He proposed to amend the title of the draft resolution to bring it into conformity with the terminology that was widely accepted, including by the IMO, through the addition of the words "and transit".

249. A spokesperson for the Seafarer group proposed an amendment to paragraph (c) to recognize that "an increased number of" member States had ratified Convention No. 185, and to replace the words "port chaplain and ship visitors" by the more general terms "visitors to the ship, including representatives of seafarers' welfare and labour organizations", which would also be followed by the following footnote: "International Ship and Port Facility Security Code (ISPS Code) 2003, as amended, Article 16.3.15".

250. The Chairperson of the Government group, noting the support for the draft resolution by the social partners, indicated that the representatives of governments from the regions mentioned in the text had taken note of the situation. He also noted that the issue of Schengen visas was still under discussion. Although he questioned whether the proposed footnote was necessary, a representative of the Government of Nigeria confirmed the importance of the ISPS Code. He added that, while it was clearly important for the lives of seafarers to be less lonely, it was important that any visits or access to port facilities was granted within the ambit of the relevant security measures.

251. A representative of the Government of the Islamic Republic of Iran emphasized that problems related to the access of seafarers to shore leave were not new and it was very important for the shipping industry that the provisions of international instruments were given effect. Seafarers had been subject to unfair treatment in that regard for many years, at least in some parts of the world, and new measures were needed to give effect to legally binding instruments, including the MLC, 2006, and Convention No. 185. He proposed the addition of references to other relevant international instruments, and particularly Standards 3.44 and 3.44bis of the Annex to the FAL Convention, 1965, and IMO Assembly Resolution A.1090(28) on "Fair treatment of crew members in respect of shore leave and access to shore-side facilities". Those provisions set out the requirement to grant shore leave irrespective of political opinion, social origin or the flag State of the ship and to avoid unfair treatment of crew members.

252. The resolution was adopted with the amendments proposed by the Shipowner and Seafarer Vice-Chairpersons and the representative of the Government of the Islamic Republic of Iran. The resolution, as adopted, is contained in Appendix VI.

(d) Resolution concerning decent work in the inland navigation sector

253. The draft resolution was submitted by the Seafarer group.

254. The Seafarer Vice-Chairperson, introducing the resolution, indicated that inland navigation played an important role in the transportation of goods and persons in many parts of the world. However, workers in that sector were faced with unique living and working conditions that sometimes failed to meet decent standards. Indeed, the only ILO instrument specifically covering inland navigation was the Hours of Work (Inland Navigation) Recommendation, 1920 (No. 8). Although inland navigation was extremely regionalized, certain global trends had emerged over recent years. For example, technologic advancements had generally tended to ease or in some cases replace the traditional work of crews. In some regions, including Latin America, some workers in the sector had reported violations of the right to freedom of association and collective bargaining. Moreover, in recent years there had been many accidents involving inland navigation vessels in Asia and Africa, to which poor training, dangerous working practices, inadequate regulations, poor enforcement and lack of social dialogue had contributed. For example, in the Panama Canal, there had been disputes between workers and the Canal Authority concerning operational safety, which had escalated due to the lack of constructive social dialogue. In view of the links between maritime and inland navigation, the resolution called for the STC to make a recommendation to the Governing Body to convene a sectoral meeting in the 2020–21 biennium to discuss the promotion of decent work in the inland navigation sector and to give workers in the sector an opportunity to have their views heard.

255. The Shipowner Vice-Chairperson indicated that his group had no authority to comment on the inland navigation sector.

256. A representative of the Government of Panama said that the proposal was very positive for member States. The intention was not to extend the MLC, 2006 to inland navigation, but to start the process of developing regulations for the sector. A representative of the Government of Philippines added that it offered a good opportunity to address issues of the abuse of seafarers engaged in inland navigation, review their entitlements in comparison with those of seafarers and examine the general working conditions of workers in inland waterways.

257. A representative of the Government of China, recalling that China had many kilometres of inland rivers, recalled that the STC only dealt with the MLC, 2006, which only covered seagoing ships. Representatives of the Governments of Bulgaria and Thailand agreed that the mandate of the STC did not cover inland navigation. A representative of the Government of the United States indicated that the purpose of the resolution was not to extend the MLC, 2006, to inland waterways, but to extend the working conditions of seafarers to workers in inland waterways. However, the STC did not have a mandate to do that.

258. The Seafarer Vice-Chairperson indicated that the draft resolution was not endeavouring to extend the scope of the MLC, 2006. Its only purpose was to encourage the holding of a sectoral meeting on the issue of decent work in the inland navigation sector.

259. The resolution, as adopted, is contained in Appendix VII.

(e) Resolution concerning amendments to the ILO flag State inspection and port State control guidelines to reflect amendments to the Code of the MLC, 2006

260. The draft resolution was submitted by the Shipowner and Seafarer groups.

261. The Shipowner Vice-Chairperson explained that the resolution was intended to fill another gap which had been identified in relation to the Convention, namely the need to update the flag State inspection and port State control guidelines to reflect the amendments to the Code adopted in 2014 and 2016, and for future amendments. In accordance with the advice provided by the Office, the solution proposed was intended to handle the process of amending the guidelines as rapidly as possible after the entry into force of amendments in order to seek harmonization in the implementation and enforcement of the Convention. The proposed subsidiary body would work by correspondence and its four/four/four composition was designed to ensure that it was small enough to work effectively while remaining representative.

262. A spokesperson for the Seafarers' group said that wording could also be included to ensure that the output of the correspondence group was sent out, before finalization, to all member States for comment by the competent authority, within one month of receipt.

263. The Chairperson of the Government group indicated that his group, while supporting the rationale behind the proposed resolution and agreeing in principle, had a number of issues to raise. First, although the establishment of a correspondence group could expedite the work involved, it might result in interested governments being excluded from the process. Broader involvement would result in wider acceptance of the output. Indeed, some government representatives feared that the proposed procedure might be unsafe and emphasized that a more inclusive process was needed.

264. The Government of the United States recalled that Article XIII specified that Members which had not ratified the Convention had no right to vote, but could participate. However, the drafting of the resolution excluded them from any participation. She also emphasized that the correspondence group would need very good terms of reference to guide its work.

265. A representative of the Government of the Islamic Republic of Iran said that it was necessary to clarify that constituents would have the right to comment before the outcome was submitted to the Governing Body, and that the correspondence group would be a subsidiary body of the STC. In addition, it would be necessary to allow sufficient time for the national authorities to hold consultations with their own competent bodies, including port State authorities.

266. The Shipowner Vice-Chairperson agreed that the correspondence group would be a subsidiary body of the STC and that all the member States concerned, and not just those that had ratified the Convention, should be included in the consultation process.

267. The Chairperson explained that the correspondence group would carry out its work, then circulate the output for comments to be made in accordance with the deadline, and that the comments would go back to the correspondence group for consolidation before the output was submitted to the Governing Body.

268. A representative of the Government of the Republic of Korea emphasized that a period of one month would not be sufficient and would not allow the full participation of the Members concerned. He therefore proposed a period of three months. Representatives of the

Governments of the Bahamas, Bulgaria, Canada, India, Kenya, Norway, Portugal and Thailand agreed on the three-month period.

269. A new subparagraph was added to the resolution providing that the output of the work by the correspondence group for the amendment of the flag State inspection and port State control guidelines would be circulated, before finalization, to all member States for comment by the competent authorities, within three months of receipt.

270. The resolution, as adopted, is contained in Appendix VIII.

(f) Resolution concerning improvements to the process for preparing proposals for amendments to the Code of the MLC, 2006

271. The draft resolution was adopted by the Working Group of the STC and transmitted to the STC for approval and adoption, with the attached template.

272. The Chairperson of the Government group indicated strong support for the use of the template on a voluntary basis when submitting proposals for amendments to the Code of the MLC, 2006, as a means of facilitating their examination. A representative of the Government of the Republic of Korea proposed the removal of the square brackets that had remained in the template. It was so agreed.

273. The resolution, as adopted, is contained in Appendix IX.

(g) Draft resolution on transitional measures relating to the entry into force of the amendments to the Code of the MLC, 2006, concerning piracy and armed robbery against ships

274. A representative of the Government of Bulgaria, introducing the draft resolution, indicated that it had become apparent that a problem might arise in the implementation of the amendments to the Code that had been adopted by the present meeting in relation to the documentation required under the MLC, 2006, and particularly Parts I and II of the DMLC. The draft resolution therefore called for member States to recognize the need for a transitional period in order to issue or renew Maritime Labour Certificates and DMLCs that were in accordance with the Convention, as amended, and to acknowledge that the entry into force of the amendments should not in any way serve to invalidate the Maritime Labour Certificates or DMLCs that had been duly issued prior to the entry into force of the amendments, including in relation to the exercise of port State control.

275. The Shipowner Vice-Chairperson indicated that, when considering the proposals for amendment to the Code, the Shipowner group had been clear that it could not accept those amendments that related to a new financial security system, based on concerns about whether it was necessary, appropriate or proportionate. The other major concern related to the administrative burdens that the regularity of the amendments to the Code had begun to place on governments and shipowners, particularly in relation to changes in national laws and regulations and documentation, and specifically the DMLC Parts I and II. Noting the comments made by governments concerning the challenges of implementing the amendments that had already been adopted, and observing the effort required from shipowners to comply with the 2014 amendments, the draft resolution gave rise to serious concern. While the Shipowner group had agreed to the amendments adopted by the present meeting on the understanding that they codified current practice and wrote it into the

Convention for a degree of comfort, it had not changed its view that the protection of seafarers' wages in the event of piracy or armed robbery against ships was already provided for in the Convention as adopted in 2006. It therefore considered that changes to the DMLC Parts I and II as a result of the amendments might well be unnecessary. While it was the prerogative of member States to decide whether changes to the DMLC were appropriate, the draft resolution gave too strong an impression that such changes were necessary, and could cause confusion, significant burdens and difficulties. He therefore opposed the draft resolution.

276. The Chairperson of the Government group indicated that certain delegations could support the draft resolution, while others strongly opposed it.

277. A representative of the Government of Norway expressed strong opposition to the draft resolution. It was the policy of his country to include in the DMLC Part I only the references to the laws and regulations that were necessary, that is, those that would be the subject of inspection on board. It was clear in that respect that the rights of seafarers who were detained in the event of piracy or armed robbery could not be subject to inspection on board. Moreover, although the amendments that had been adopted to the Code would require action for their implementation through laws and regulations, no changes would be needed in the documents that ships had to carry. A representative of the Government of Barbados also expressed strong opposition to the draft resolution, which might lead to port States trying to impose their own national laws on ships visiting their ports. Representatives of the Governments of Panama and Philippines agreed that the draft resolution was not appropriate.

278. The Seafarer Vice-Chairperson, in light of the comments made, did not support the draft resolution.

279. The draft resolution was withdrawn.

X. Any other business

280. The Seafarer Vice-Chairperson, in light of the discussion concerning the abrogation or withdrawal of specific Conventions, and most notably, the likely withdrawal of Convention No. 147 at the next STC, encouraged the Office to engage with the United States in an effort to discuss the benefits of the ratification of the MLC, 2006 for the United States and the international maritime industry, including the effects of the United States port State control programme on the implementation of the Convention. That would ensure decent work and living conditions for seafarers worldwide.

281. A representative of the Government of the United States noted that the question of the status of abrogated instruments that were listed in Convention No. 147 was a matter for port States. The United States understood its responsibilities under Convention No. 147 and the legislation would continue in force, even if Convention No. 147 were to be abrogated.

282. The Seafarer Vice-Chairperson wished to remember all those seafarers who had lost their lives in maritime accidents since the last meeting of the STC and to wish their families well.

Nomination of the Officers of the Committee

283. The Officers of the Committee for the period up to and including the next meeting of the STC were nominated as follows:

Chairperson:	Ms Julie Carlton (Government member, United Kingdom)
Vice-Chairpersons:	Mr Martin Marini (Government member, Singapore)
	Mr David Heindel (Seafarer member, United States)
	Mr Dirk Max Johns (Shipowner member, Germany)

Date of the fourth meeting of the Special Tripartite Committee

284. It was agreed that the fourth meeting of the STC would be held from 18 to 22 April 2021.

XI. Closure of the meeting

285. The Secretary-General commended the Committee for fulfilling its mandate and accomplishing the numerous tasks foreseen on its heavy agenda. Noting that Mr Bowring would no longer be continuing as the Shipowner Vice-Chairperson and a member of the Committee, she recalled that he had led the Shipowner group at the ILO since 2006 and had acted as spokesperson for the Shipowners' group in the discussions on compliance and enforcement prior to the 2006 Conference which had adopted the MLC, 2006. Mr Bowring had been attending meetings at the ILO on behalf of the Shipowners' group for over 20 years and had always been a great advocate of the process of social dialogue. She thanked him for his support for maritime work outside formal ILO meetings, and for his passion and willingness to make progress on issues that affected the welfare of seafarers. His active involvement in trying to resolve the cases of abandonment relating to the "Liberty Pruddencia" and "Bramco 1" was to be applauded. She also thanked Mr Cacdac, Government Vice-Chairperson of the Committee, who had contributed with his wisdom, expertise and constructive guidance during his two terms as Vice-Chairperson.

286. The Shipowner Vice-Chairperson indicated that, despite the severe time pressures, the Committee had been able to have fruitful discussions on a number of the challenges facing the maritime sector. He considered that the fact that the Convention could be amended, did not imply that it needed to be amended: every amendment had implications, known and unknown, and could cause potential conflicts and unintended consequences. In particular, the Convention did not need to be amended when the issues raised were already covered, even in a general sense, by existing provisions. The MLC, 2006, was clearly setting a new direction for the industry and for the Office. The work of the Committee had considerably increased knowledge of the Convention and clarified the manner in which it should be utilized in the future. He was delighted that the Convention had been ratified by 86 Members and that further ratifications were in the pipeline. He hoped that it would be ratified by many more countries so as to reach the original objective of ratification in line with MARPOL, SOLAS and the STCW. He added that the Shipowners' group took very seriously its responsibilities towards ensuring seafarer welfare. Although the new insurance provisions in the Convention were starting to minimize the impact of cases of abandonment, work still needed to be done to effectively resolve outstanding issues. Flag States, port States and States of residency needed to act responsibly by fulfilling their obligations, as outlined in the MLC, 2006 and the joint IMO–ILO guidelines on abandonment. As it was his last meeting of the STC, he expressed gratitude for the honour and privilege of having led the

dynamic and committed Shipowners' group and wished everyone tripartite success in the future.

287. The Seafarer Vice-Chairperson observed that the adoption of the amendments to the Code was at least a small step in mitigating the adverse impact of piracy for seafarers and their families. The STC had also achieved important progress through its review of a number of earlier maritime instruments and had reaffirmed the importance of respect for the fundamental rights of seafarers pursuant to Article III of the Convention. It was vital to continue encouraging further ratifications of the MLC, 2006 and of Convention No. 185. The discussions on the joint IMO–ILO database on abandonment and the ITF study had also been important in drawing attention to trends, the progress made and continuing challenges in resolving those cases. He expressed appreciation of the efforts of the Shipowners and governments in supporting the whole process and thanked Mr Bowring for his commitment and Mr Cacdac for his active participation.

288. The Chairperson expressed appreciation of the work accomplished by the Committee and the valuable contribution made by all of the groups during the discussions. She also thanked the members of the Committee for her re-nomination for another term. She declared the meeting closed.

Appendix I

Agenda for the third meeting of the Special Tripartite Committee
(Geneva, 23–27 April 2018)

1. Report from the Working Group of the Special Tripartite Committee

2. Consideration of any proposals for amendments to the Code of the Maritime Labour Convention, 2006, as amended (MLC, 2006)

3. Exchange of information related to the implementation of the MLC, 2006

4. Consideration of any request for consultation under Article VII of the MLC, 2006

5. Review of maritime-related international labour standards (on the basis of the request formulated by the Governing Body in the context of the functioning of the Standards Review Mechanism [1]

6. Any other business

[1] The Governing Body "referred the maritime instruments (sets of instruments 18 and 20), to the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006), for its expert review and report to the Governing Body". See GB.326/LILS/3/2. Decision available at: http://www.ilo.org/gb/decisions/GB326-decision/WCMS_461376/lang--en/index.htm.

Appendix II

Information session on the implementation of the 2014 Amendments of the MLC, 2006 (P&I Clubs)

David Bolomini
Jonathan Hare

MLC 2006/2014

International Group of P&I Clubs

www.igpandi.org

Current principal underwriting International Group Members

gard
UK P&I CLUB
West of England
SKULD
The London P&I Club
SHIPOWNERS
BRITANNIA P&I
The Swedish Club
Standard Club
STEAMSHIP MUTUAL
THE AMERICAN CLUB
NORTH
JAPAN P&I CLUB 日本船主責任相互保険組合
IGP&I

The International Group

Comprises 13 mutual marine insurance associations which between them insure and pool third party liabilities relating to the use and operation of ships

- 90% of world ocean-going tonnage
- 95% of ocean-going tankers
- c.1.16 bn. GT
- c.60,000 vessels

Regulation 2.5 , Repatriation

Regulation 2.5 Repatriation:
Purpose: to ensure that seafarers are able to return home

This is achieved by -

Standard A2.5.1	Repatriation (2006 MLC)
Standard A2.5.2	Financial security (2014 amendments)
Guideline B2.5	Repatriation

Background to Regulation 2.5 insurance arrangements

- Cover for contractual salary arrears was a new head of risk for insurers
- Club boards agreed to cover MLC 2006 liabilities in time for the Convention's entry into force in August 2013
- IG and social partners worked collaboratively in advance of the April 2014 STC & continue to do so
- Reinsurance arrangements (next slide) ensure Clubs can issue certificates to owners
- Certificates issued in the name of insured person i.e. Registered Owner
- The current arrangements seem to be working

IGP&I

MLC – Standard 2.5.2 insurance and reinsurance

Unique International Group insurance and reinsurance cover arrangements for liabilities arising under Standard 2.5.2 structured as follows -

- P&I Club pays first USD 10 million of an abandonment claim

Followed by

- Ring-fenced IG MLC reinsurance for claims arising under Standard 2.5.2

▪ Club retention	USD 10 million
▪ IG reinsurance	USD 200 million
▪ Total per abandonment event	USD 210 million

Certification under the 2014 amendments

- In June 2016, IG established a consultation group to consider issues relating to Standard 2.5.2 and Standard 4.2 financial security certification.
- IG thanks those States that participated in correspondence
- Wording of certificates agreed; one for Standard 2.5.2, one for Standard 4.2, as per the 2014 amendments
- Some discussion on party named as "shipowner".
- Certificates verifiable on Club websites updated in real time

IGP&I

Certification under the 2014 amendments cont/

- 1. Registered owner is included in the definition of Shipowner (MLC *Art. II*.1(j)) and liability for financial default will always roll back to the registered owner
- 2. Registered owner is the insured person named on the contract of P&I insurance
- 3. Parties named on the DMLC part I and part II (for operational reasons) may not be parties to the insurance contract

Certification under the 2014 amendments cont/

- **The name of the shipowner is not relevant for Standard 2.5.2 claims .** When a claim is made the shipowner is in default and repatriation and payment of wages etc will be effected by the issuer of the financial security certificate
- Some issues still arising where PSC has issued deficiency notice to ships that do not name the party on the DMLC – need to update PSC guidelines to reflect widely accepted practice to ensure system works uniformly in all MLC Member States

HANDLING CLAIMS BY SEAFARERS

FIRST STEPS

- Club contact details on Certificate
- Check whether MLC certificate is valid
  - are the 2014 amendments in force?
  - is this an MLC claim?
- Contact shipowners
- Establish line of communication
  - local correspondents
  - seafarer's representatives

HANDLING CLAIMS BY SEAFARERS

FOLLOW UP ISSUES

- Are the shipowners going to pay?
- Do the seafarers want to be repatriated?
- Quantifying the claims and arranging payment
- Practical arrangements for repatriation
- Collaboration with seafarers' representatives
- Identifying local issues

EXPERIENCE SO FAR – IG DATA

- 15 months since entry into force
- cases handled - 19
  reported in
  2017 10
  2018 9
- 198 seafarers repatriated
- USD 1.9 million wages paid

EXPERIENCE SO FAR

Owners promise to pay

- factors in their decision
  - wish to continue to operate the vessels
  - if Club pays, they are obliged to reimburse the Club

❖ Club has direct liability to seafarers under financial security

- Crew may not want to be repatriated
  - wages entitlement dependent on repatriation

- Delays due to local factors

EXPERIENCE SO FAR

Scope for more liaison between flag and port states when abandonment occurs as this could facilitate repatriation of abandoned crew more quickly

MLC, Standard 2.5.1 Repatriation

2.5.1.7 Each Member shall facilitate the repatriation of seafarers serving on ships which call at its ports or pass through its territorial or internal waters, as well as their replacement on board.

2.5.1.8 In particular, a Member shall not refuse the right of repatriation to any seafarer because of the financial circumstances of a shipowner or because of the shipowner's inability or unwillingness to replace a seafarer.

- Several examples of delays in repatriation due to demands for replacement crew
- Request Member States to respect the above obligations in order to facilitate the prompt repatriation of seafarers following abandonment

MLC – ABANDONMENT - SUMMING UP

Positives

- Certification
- Communication with seafarers' organisations
- Claims handling
  - still in learning phase

Challenges

- Port state deficiences
  - ❖PSC Guidelines to address 2014 amendments
- Port state obstacles to repatriation
- Local variations – lack of uniformity

Thank you!

Appendix III

Amendments to the Code of the MLC, 2006, relating to Regulation 2.1

Standard A2.1 – Seafarers' employment agreements

Insert new paragraph 7:

7. Each Member shall require that a seafarer's employment agreement shall continue to have effect while a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, regardless of whether the date fixed for its expiry has passed or either party has given notice to suspend or terminate it. For the purpose of this paragraph, the term:

(a) *piracy* shall have the same meaning as in the United Nations Convention on the Law of the Sea, 1982;

(b) *armed robbery against ships* means any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea, or any act of inciting or of intentionally facilitating an act described above.

Amendments to the Code of the MLC, 2006, relating to Regulation 2.2

Standard A2.2 – Wages

Insert a new paragraph 7:

7. Where a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, wages and other entitlements under the seafarers' employment agreement, relevant collective bargaining agreement or applicable national laws, including the remittance of any allotments as provided in paragraph 4 of this Standard, shall continue to be paid during the entire period of captivity and until the seafarer is released and duly repatriated in accordance with Standard A2.5.1 or, where the seafarer dies while in captivity, until the date of death as determined in accordance with applicable national laws or regulations. The terms *piracy* and *armed robbery against ships* shall have the same meaning as in Standard A2.1, paragraph 7.

Amendments to the Code of the MLC, 2006, relating to Regulation 2.5 – Repatriation

Guideline B2.5.1 – Entitlement

Replace paragraph 8 by the following:

8. The entitlement to repatriation may lapse if the seafarers concerned do not claim it within a reasonable period of time to be defined by national laws or regulations or collective agreements, except where they are held captive on or off the ship as a result of acts of piracy or armed robbery against ships. The terms *piracy* and *armed robbery against ships* shall have the same meaning as in Standard A2.1, paragraph 7.

Appendix IV

Summary of the recommendations concerning maritime-related instruments

Minimum age			
Instrument	Classification	Action proposed	
C.7	Outdated	Withdrawal	
C.58	Outdated	• Encourage countries bound by C.58 to ratify the MLC, 2006 • Encourage countries having ratified the MLC, 2006 and still bound by C.58 in respect of NMTs, to extend the application of the MLC, 2006 to NMTs • Encourage States still bound by C.58 that have ratified C.138 but have set a minimum age of 14 years: (i) to set a minimum age of at least 16 years, in accordance with the MLC, 2006; or (ii) for those that have set the minimum age for maritime labour at 18 years, to send a declaration to the Office stating that Article 3 of C.138 is applicable to maritime labour • Review the situation of C.58 at the next STC	
R.153	Outdated	Withdrawal	
Medical examination (seafarers)			
Instrument	Classification	Action proposed	
C.16	Outdated	Abrogation	• Encourage countries having ratified the MLC, 2006 and still bound by C.16 or C.73 in respect of NMTs, to extend the application of the MLC, 2006 to NMTs • Promote ratification of the MLC, 2006 among countries still bound by C.16 or C.73
C.73	Outdated	Abrogation	
Training and qualifications (seafarers)			
Instrument	Classification	Action proposed	
C.53	Outdated	Abrogation	• Encourage countries having ratified the MLC, 2006 and still bound by C.53 or C.74 in respect of NMTs, to extend the application of the MLC, 2006 to NMTs • Promote ratification of the MLC, 2006 among countries still bound by C.53 or C.74
C.74	Outdated	Abrogation	
Recruitment and placements (seafarers)			
Instrument	Classification	Action proposed	
C.9	Outdated	Abrogation	• Promote ratification of the MLC, 2006 among countries still bound by C.9 and provide technical assistance to that effect • Encourage countries having ratified the MLC, 2006 and still bound by C.9 in respect of NMTs, to extend the application of the MLC, 2006 to NMTs
C.179	Outdated	Withdrawal	
R.107	Outdated	Withdrawal	
R.186	Outdated	Withdrawal	
Seafarers' employment agreements			
Instrument	Classification	Action proposed	
C.22	Outdated	• Encourage countries bound by C.22 to ratify the MLC, 2006 • Encourage countries having ratified the MLC, 2006 and still bound by C.22 in respect of NMTs, to extend the application of the MLC, 2006 to NMTs • Review the situation of C.22 at the next STC	
Seafarers' wages, hours of work and hours of rest, and manning ships			
Instrument	Classification	Action proposed	
C.57	Outdated	Withdrawal	
R.49	Outdated	Withdrawal	
C.76	Outdated	Withdrawal	
C.93	Outdated	Withdrawal	
C.109	Outdated	Withdrawal	
R.109	Outdated	Recommend that the Governing Body take note of the juridical replacement of R.109 by R.187	
C.180	Outdated	Withdrawal	
R.187	Outdated	Withdrawal	
Entitlement to leave (seafarers)			
Instrument	Classification	Action proposed	
C.54	Outdated	Withdrawal	
C.72	Outdated	Withdrawal	
C.91	Outdated	Abrogration	Encourage countries bound by C.91 to ratify the MLC, 2006

C.146	Outdated	• Encourage countries bound by C.146 to ratify the MLC, 2006 • Encourage countries having ratified the MLC, 2006 and still bound by C.146 in respect of NMTs, to extend the application of the MLC, 2006 to NMTs • Review the situation of C.146 at the next STC • Recognize that C.146 provides that States may extend its application to persons excluded from the definition of seafarers in the Convention, or certain categories thereof, and draw the attention of the SRM TWG to any issues this may raise.	
Repatriation of seafarers			
Instrument	Classification	Action proposed	
C.23	Outdated	• Encourage countries bound by C.23 to ratify the MLC, 2006 • Encourage countries having ratified the MLC, 2006 and still bound by C.23 in respect of NMTs, to extent the application of the MLC, 2006 to NMTs • Review the situation of C.23 at the next STC	
R.27	Outdated	Withdrawal	
C.166	Outdated	• Encourage countries bound by C.166 to ratify the MLC, 2006 • Encourage countries having ratified the MLC, 2006 and still bound by C.166 in respect of NMTs, to extend the application of the MLC, 2006 to NMTs • Review the situation of C.166 at the next STC	
R.174	Outdated	Withdrawal	
Seafarer compensation for the ship's loss or foundering			
Instrument	Classification	Action proposed	
C.8	Outdated	Abrogation	Encourage countries having ratified the MLC, 2006 and still bound by C.8, to extend its application to NMTs
Career and skill development and opportunities for seafarers' employment			
Instrument	Classification	Action proposed	
R.77	Outdated	Recommend that the Governing Body take note of the juridical replacement of R.77 by R.137	
R.137	Outdated	Withdrawal	
R.139	Outdated	Withdrawal	
C.145	Outdated	Abrogation	• Encourage countries bound by C.145 to ratify the MLC, 2006 • Encourage countries having ratified the MLC, 2006 and still bound by C.145 in respect of NMTs, to extend the application of the MLC, 2006 to NMTs
R.154	Outdated	Withdrawal	

Appendix V

Resolution concerning action to be taken in relation to seafarer abandonment

The Special Tripartite Committee (STC) established by the Governing Body under Article XIII of the Maritime Labour Convention, 2006, as amended,

Having met at its third meeting in Geneva from 23 to 27 April 2018,

Having adopted measures related to seafarer abandonment at its first meeting, and further having discussed issues still arising at its second and third meetings,

Recognizing the need for prompt and effective resolution of cases where seafarers are abandoned,

Recognizing further that support is required for seafarers that are abandoned from, in or while serving on ships flying the flags of States that have not ratified the Maritime Labour Convention, 2006, as amended, through the application of the ILO/IMO *Guidelines on provision of financial security in case of abandonment of seafarers*;

(a) encourages all member States that have yet to do so to accept the Amendments of 2014 to the Maritime Labour Convention, 2006, so that seafarers will have the necessary protection as provided for by them, and encourages member States which have not yet ratified the Maritime Labour Convention, 2006, as amended, to do so immediately;

(b) urges all member States to promptly report cases of abandonment in their jurisdictions so that they can be recorded on the joint ILO/IMO database of reported cases of abandonment and to update the status of cases once resolved;

(c) urges all member States to provide necessary welfare, consular and medical support to affected seafarers in accordance with the provisions of the Amendments of 2014 to the Maritime Labour Convention, 2006, or taking into account the guidance contained within the ILO/IMO *Guidelines on Provision of Financial Security in case of Abandonment of seafarers* on a timely basis and to assist with the swift repatriation of affected crew members;

(d) invites the Governing Body to request the Director-General to work closely with the International Maritime Organization in order to have dialogue with the respective parties, and to assist in the resolution of difficult cases.

Appendix VI

Resolution concerning facilitation of shore leave and transit

The Special Tripartite Committee (STC) established by the Governing Body under Article XIII of the Maritime Labour Convention, 2006, as amended,

Having met at its third meeting in Geneva from 23 to 27 April 2018,

Acknowledging that the International Labour Organization, through its adoption of amendments to Annexes I, II and III of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), identified the efficient facilitation of shore leave for seafarers as a matter of importance,

Noting that in Convention No. 185, member States recognize that seafarers work and live on ships involved in international trade and that access to shore facilities and shore leave are vital elements of seafarers' general well-being and, therefore, to the achievement of safer shipping and cleaner oceans,

Noting that Regulation 4.4 of the Maritime Labour Convention, 2006, as amended, requires Members to ensure that shore-based welfare facilities, where they exist, are easily accessible,

Noting also the other relevant international instruments, in particular Standards 3.44 and 3.44bis of the Annex to the IMO Convention on Facilitation of International Maritime Traffic, 1965, as amended (the FAL Convention), and the IMO Assembly Resolution No. 1090 on "Fair treatment of crew members in respect of shore leave and access to shore-side facilities":

(a) acknowledges that States seek to secure their air, land, and sea borders;

(b) expresses concern about the difficulties seafarers continue to have in accessing shore leave and transiting in certain ports and terminals around the world;

(c) recognizes that although an increased number of member States have ratified Convention No. 185, there still appear to be problems in ensuring the Convention works in the way that it was originally intended, as well as continued challenges faced by visitors to the ship, including representatives of seafarers' welfare and labour organizations [1] in accessing some port areas;

(d) urges member States to acknowledge the right of seafarers to shore leave and to ensure access to shore leave and the associated transit is facilitated efficiently in accordance with the Maritime Labour Convention, 2006, as amended;

(e) invites the Governing Body to request the Director-General to disseminate this resolution and to bring it to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

[1] International Ship and Port Facility Security Code (ISPS Code) 2003, as amended, Article 16.3.15.

Appendix VII

Resolution concerning decent work in the inland navigation sector

The Special Tripartite Committee (STC) established by the Governing Body under Article XIII of the Maritime Labour Convention, 2006, as amended,

Having met at its third meeting in Geneva from 23 to 27 April 2018,

Noting the close links between maritime shipping and inland navigation and the interlinkage between the two sectors within the transport supply chain,

Noting that the fatal accidents in the inland navigation sector tarnish the public image of the shipping sector as a whole,

Noting that the only instrument of the International Labour Organization covering the inland navigation sector is the Hours of Work (Inland Navigation) Recommendation, 1920 (No. 8),

Regrets the regular loss of life caused by accidents in parts of the sector,

Noting that inland navigation personnel are faced with unique living and working conditions which require special consideration,

Noting the contents of the Working Paper No. 297, "Living and working conditions in inland navigation in Europe", published by the International Labour Office in 2013,

Recognizing that there is a deficit in parts of the sector in relation to decent living and working conditions and that there should be some action by the ILO to address that deficit,

Acknowledging the importance of internal waterways as a sustainable mode of transport for both cargo and people;

Encourages the sectoral advisory bodies, [1] which will meet in January 2019, to consider recommending to the Governing Body a sectoral meeting in the 2020–21 biennium to discuss how decent work in the inland navigation sector could be promoted.

[1] Sectoral advisory bodies (composed of governmental regional coordinators, coordinators of the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) and representatives of relevant Global Union federations and IOE sectoral partners, and supported by the Office) were established in 2007, to deepen the consultation process on reviewing the content and type of sectoral activities, making recommendations in order to assist the Office in setting priorities for sectoral work (see GB.298/12(Rev.), para. 40).

Appendix VIII

Resolution concerning amendments to the ILO flag State inspection and port State control guidelines to reflect amendments to the Code of the Maritime Labour Convention, 2006, as amended (MLC, 2006)

The Special Tripartite Committee (STC) established by the Governing Body under Article XIII of the Maritime Labour Convention, 2006, as amended,

Having met at its third meeting in Geneva from 23 to 27 April 2018,

Recalling that the International Labour Conference, having adopted the Maritime Labour Convention, 2006, adopted Resolution XIII concerning the development of guidelines for flag State inspection and Resolution IV concerning the development of guidelines for port State control, which called for tripartite meetings of experts to develop guidelines for flag State inspections and in order to assist port State control officers carrying out Maritime Labour Convention, 2006, inspections,

Noting that, on the basis of the abovementioned resolutions, the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*, and the *Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006*, were adopted in 2008,

Noting the adoption of the 2014 and 2016 amendments to the Code of the Maritime Labour Convention, 2006, and bearing in mind the continued consideration and adoption of potential amendments to the Convention,

Mindful that the abovementioned flag State inspections and port State control guidelines do not provide guidance to flag and port State authorities with respect to amendments to the Code of the Maritime Labour Convention, 2006, and that this has led to concerns about the lack of harmonization in their implementation and enforcement,

Decides, in accordance with article 15 of its Standing Orders, to establish a subsidiary body with the following terms of reference:

(i) to work by correspondence to amend the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006, and the Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006*, to only reflect the amendments to the Convention;

(ii) to circulate the output, before finalization, to all member States for comment by the competent authority, within three months of receipt;

(iii) to submit the outcome of this work to the Governing Body for authorization to publish the amended guidelines on the ILO website.

The subsidiary body shall be composed of four Government representatives, four Shipowner representatives and four Seafarer representatives, in keeping with the Standing Orders of the STC, and supported by the Office.

The work of the subsidiary body shall be coordinated by the Officers of the STC.

Appendix IX

Resolution concerning improvements to the process for preparing proposals for amendment to the Code of the Maritime Labour Convention, 2006, as amended (MLC, 2006)

The third meeting of the Special Tripartite Committee (STC) of the Maritime Labour Convention, 2006, having received the recommendations of the Working Group established by the second meeting of the STC and endorsed by the Governing Body at its 326th Session (March 2016), on improvements to the process for preparing proposals for amendment to the Code of the MLC, 2006, in accordance with Article XV of the Convention:

(i) decides to recommend the use of the attached template to serve as guidance for the preparation and submission of proposal(s) for amendment, and in this connection;

(ii) suggests that the STC Officers can, either directly or upon request, provide feedback and comments on a confidential basis to the author(s) of the proposal(s) for amendment with a view to facilitating any subsequent discussion(s) in the STC; and

(iii) emphasizes that the voluntary communication to the STC Officers should not obstruct the right to submit a proposal(s) for amendment, as provided for in Article XV, paragraph 2, of the Convention and should not delay the prompt communication of the proposal(s) for amendment to all Members of the Organization as required by Article XV, paragraph 3.

Template for submitting proposals for amendments to the Code of the Maritime Labour Convention, 2006, as amended (MLC, 2006) in accordance with Article XV

This template, to be used on a voluntary basis, contains an indicative list of information to facilitate consideration by the STC of a proposed amendment to the Code of the MLC, 2006

Date: day/month/year

Topic

Proposal submitted by (please tick as appropriate)

☐ Government(s) of ..... (supported by: .....) ☐ Shipowners ☐ Seafarers

Contact details

Name: ..... Position: ..... Email: ..... Telephone: .....

Reference (for ILO Office use only)

Background

Please explain the background of the proposal *(by providing, for example, relevant international instruments or discussions, data or statistics, action by international organizations, activities in other fora, etc.)*.

Purpose

Please provide the reason(s) for the proposal *(by explaining, for example, the need for an amendment to either Standards (Part A), Guidelines (Part B) or both, and how this amendment meets the strategic objective(s) of the MLC, 2006, as amended)*.

Relevant considerations

Please explain the benefits and implications (social, financial, practical/administrative, or other) of the proposal, if applicable.

Proposed amendment

Standard	**Guideline**	**Current text** (if new text, please indicate "not applicable")	**Proposed text**

Transitional measure(s), if applicable

Please specify any suggested transitional measure that should be adopted with the proposed amendment.

Please attach any relevant materials or references in support of the proposal.

Note: Proposer may want to informally discuss the content of this proposal with the STC Officers prior to its official submission.

Amendments to the Code

Article XV

1. The Code may be amended either by the procedure set out in Article XIV or, unless expressly provided otherwise, in accordance with the procedure set out in the present Article.

2. An amendment to the Code may be proposed to the Director-General of the International Labour Office by the government of any Member of the Organization or by the group of Shipowner representatives or the group of Seafarer representatives who have been appointed to the Committee referred to in Article XIII. An amendment proposed by a government must have been proposed by, or be supported by, at least five governments of Members that have ratified the Convention or by the group of Shipowner or Seafarer representatives referred to in this paragraph.

3. Having verified that the proposal for amendment meets the requirements of paragraph 2 of this Article, the Director-General shall promptly communicate the proposal, accompanied by any comments or suggestions deemed appropriate, to all Members of the Organization, with an invitation to them to transmit their observations or suggestions concerning the proposal within a period of six months or such other period (which shall not be less than three months nor more than nine months) prescribed by the Governing Body.

4. At the end of the period referred to in paragraph 3 of this Article, the proposal, accompanied by a summary of any observations or suggestions made under that paragraph, shall be transmitted to the Committee for consideration at a meeting. An amendment shall be considered adopted by the Committee if:

(a) at least half the governments of Members that have ratified this Convention are represented in the meeting at which the proposal is considered; and

(b) a majority of at least two-thirds of the Committee members vote in favour of the amendment; and

(c) this majority comprises the votes in favour of at least half the government voting power, half the Shipowner voting power and half the Seafarer voting power of the Committee members registered at the meeting when the proposal is put to the vote.

5. Amendments adopted in accordance with paragraph 4 of this Article shall be submitted to the next session of the Conference for approval. Such approval shall require a majority of two-thirds of the votes cast by the delegates present. If such majority is not obtained, the proposed amendment shall be referred back to the Committee for reconsideration should the Committee so wish.

6. Amendments approved by the Conference shall be notified by the Director-General to each of the Members whose ratifications of this Convention were registered before the date of such approval by the Conference. These Members are referred to below as “the ratifying Members”. The notification shall contain a reference to the present Article and shall prescribe the period for the communication of any formal disagreement. This period shall be two years from the date of the notification unless, at the time of approval, the Conference has set a different period, which shall be a period of at least one year. A copy of the notification shall be communicated to the other Members of the Organization for their information.

7. An amendment approved by the Conference shall be deemed to have been accepted unless, by the end of the prescribed period, formal expressions of disagreement have been received by the Director-General from more than 40 per cent of the Members which have

ratified the Convention and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified the Convention.

8. An amendment deemed to have been accepted shall come into force six months after the end of the prescribed period for all the ratifying Members except those which had formally expressed their disagreement in accordance with paragraph 7 of this Article and have not withdrawn such disagreement in accordance with paragraph 11. However:

(a) before the end of the prescribed period, any ratifying Member may give notice to the Director-General that it shall be bound by the amendment only after a subsequent express notification of its acceptance; and

(b) before the date of entry into force of the amendment, any ratifying Member may give notice to the Director-General that it will not give effect to that amendment for a specified period.

9. An amendment which is the subject of a notice referred to in paragraph 8(a) of this Article shall enter into force for the Member giving such notice six months after the Member has notified the Director-General of its acceptance of the amendment or on the date on which the amendment first comes into force, whichever date is later.

10. The period referred to in paragraph 8(b) of this Article shall not go beyond one year from the date of entry into force of the amendment or beyond any longer period determined by the Conference at the time of approval of the amendment.

11. A Member that has formally expressed disagreement with an amendment may withdraw its disagreement at any time. If notice of such withdrawal is received by the Director-General after the amendment has entered into force, the amendment shall enter into force for the Member six months after the date on which the notice was registered.

12. After entry into force of an amendment, the Convention may only be ratified in its amended form.

13. To the extent that a maritime labour certificate relates to matters covered by an amendment to the Convention which has entered into force:

(a) a Member that has accepted that amendment shall not be obliged to extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member which:

(i) pursuant to paragraph 7 of this Article, has formally expressed disagreement to the amendment and has not withdrawn such disagreement; or

(ii) pursuant to paragraph 8(a) of this Article, has given notice that its acceptance is subject to its subsequent express notification and has not accepted the amendment; and

(b) a Member that has accepted the amendment shall extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member that has given notice, pursuant to paragraph 8(b) of this Article, that it will not give effect to that amendment for the period specified in accordance with paragraph 10 of this Article.

List of participants
Liste des participants
Lista de participantes

Chairperson of the third meeting of the Special Tripartite Committee
of the Maritime Labour Convention, 2006, as amended (MLC, 2006)
Présidente de la troisième réunion de la Commission tripartite spéciale
de la convention du travail maritime, 2006, telle qu'amendée (MLC, 2006)
Presidenta de la tercera reunión del Comité Tripartito Especial
para el Convenio sobre el trabajo marítimo, 2006,
en su versión enmendada (MLC, 2006)

Ms Julie CARLTON, Maritime & Coastguard Agency, United Kingdom

Government representatives
Représentants des gouvernements
Representantes de los gobiernos

AUSTRALIA AUSTRALIE

Mr Greg PUSEY, Australian Maritime Safety Authority

BAHAMAS

Capt. Dwain E. HUTCHINSON, The Bahamas Maritime Authority, United Kingdom

Mr Oli OLSEN, The Bahamas Maritime Authority, United Kingdom

BANGLADESH

Mr M.D. Shahjahan HOWLADER, Department of Shipping

Mr Habibur RAHMAN, Directorate of Seamen & Emigration Welfare

BELGIUM BELGIQUE BÉLGICA

M. Bart HEYLBROECK, Service public fédéral Mobilité et Transports – DG Navigation

M^{me} Anyès NAUWELAERTS, Service public fédéral Mobilité et Transports – DG Navigation

M^{me} Thérèse BOUTSEN, mission permanente de la Belgique, Genève, Suisse

BENIN BÉNIN

M. Guy Basilide AGUEHOUNDE, Direction de la marine marchande

BULGARIA BULGARIE

Mr Marko BAZLYANKOV, Bulgarian Maritime Administration

CANADA CANADÁ

Mr Bernard LECLERC, Transport Canada

Ms Lysane DURAND, Department of Justice

CHILE CHILI

S. E. Sra. Carla SERAZZI, Misión Permanente de Chile, Ginebra, Suiza

Sr. Alex SALDÍAS, Misión Permanente de Chile, Ginebra, Suiza

Sr. Ricardo MATUTE, Misión Permanente de Chile, Ginebra, Suiza

Sra. Daniela FERREIRA, Misión Permanente de Chile, Ginebra, Suiza

CHINA CHINE

Mr Yuli CHEN, Shanghai Maritime University

Mr Ping GUO, Dalian Maritime University

Mr Mao HONGXIN, Guangdon Maritime Safety Administration

Mr Yu HONG JIANG, Maritime Safety Administration

Mr Wang CHENG, Ministry of Human Resources and Social Security

Mr Li GANG, Ministry of Human Resources and Social Security

Mrs Li GUANYU, Ministry of Transport

Mr Yang XINZHAI, Maritime Safety Administration

Ms Ming Hong LI

CÔTE D'IVOIRE

M. Djenan Jean-Claude BABY, Officier des affaires maritimes et portuaires

M. Yao AMANI, Officier des affaires maritimes et portuaires

M. Assi Laurent EBAKOUÉ, mission permanente de Côte d'Ivoire, Genève, Suisse

CROATIA CROATIE CROACIA

Ms Ana-Marija BATINOVIĆ, Ministry of Sea, Transport and Infrastructure

CUBA

Sra. Alicia GONZÁLEZ GUTIÉRREZ, Misión Permanente de Cuba, Ginebra, Suiza

DENMARK DANEMARK DINAMARCA

Ms Nanna Elm Bille ADAMSEN, Danish Maritime Authority

Ms Charlotte Ahrendt STEEN, Danish Maritime Authority

Ms Kristina RAVN, Danish Maritime Authority

DJIBOUTI

M. Houmed Gaba Maki HOUMED GABA, mission permanente de Djibouti, Genève, Suisse

DOMINICAN REPUBLIC
RÉPUBLIQUE DOMINICAINE
REPÚBLICA DOMINICANA

S. E. Sra. Gilka MELÉNDEZ, Misión Permanente de la República Dominicana, Ginebra, Suiza

Sra. Priscila BAUSTISTA DE LA CRUZ, Misión Permanente de la República Dominicana, Ginebra, Suiza

FINLAND FINLANDE FINLANDIA

Ms Aino-Maija ALSTELA, Ministry of Social Affairs and Health

Mr Nico STEINER, Ministry of Economic Affairs and Employment

FRANCE FRANCIA

M. Yves LE NOZAHIC, ministère de la Transition écologique et solidaire, Direction des affaires maritimes

M. Thibault ROCHARD, ministère de la Transition écologique et solidaire, Direction des affaires maritimes

GEORGIA GÉORGIE

Mr Merba KADJAIA, LEPL Maritime Transport Agency

GERMANY ALLEMAGNE ALEMANIA

Ms Dietz ULRIKE, Bundesministerium für Arbeit und Soziales

Mr Sebastian KANNENBERG, Federal Ministry of Labour and Social Affairs

GREECE GRÈCE GRECIA

Mr Vasiliki ANTONAKOU, Hellenic Ministry of Maritime Affairs Insular Policy

Ms Marina CHARALAMPOUS, Hellenic Ministry of Maritime Affairs and Insular Policy

INDIA INDE

Mr Venkatesan SRIKANTH, Ministry of Labour and Employment

Mr Subhash BARGUZER, Ministry of Shipping

INDONESIA INDONÉSIE

Ms Rina SETYAWATI, Permanent Mission of Indonesia, Geneva, Switzerland

Mr Epafras SITEPU, Ministry of Foreign Affairs

ISLAMIC REPUBLIC OF IRAN
RÉPUBLIQUE ISLAMIQUE D'IRAN
REPÚBLICA ISLÁMICA DEL IRÁN

Mr Abbas TAVAZONI ZADEH, Ports and Maritime Organization

Mr Aliakbar MARZBAN, Ports and Maritime Organization

JAPAN JAPON JAPÓN

Mr Tomoyasu IZAKI, Ministry of Land, Infrastructure, Transport and Tourism

Mr Setsuo NOMURA, Japan Maritime Center

Mr Satoru YANASE, Management Systems Department

Ms Mariko OTA, Ministry of Land, Infrastructure, Transport and Tourism

Mr Fumihiko KANEKO, Permanent Mission of Japan, Geneva, Switzerland

JORDAN JORDANIE JORDANIA

Mr Walid Ismail AL HANNINI, Jordan Maritime Commission

KENYA

Ms Josephine Mabuti NTHIA, Kenya Maritime Authority

KIRIBATI

Capt. Etekieru IOTUA, Marine Training Centre

KOREA, REPUBLIC OF
CORÉE, RÉPUBLIQUE DE
COREA, REPÚBLICA DE

Mr Jung-Hee KANG, Ministry of Oceans and Fisheries

Mr Ho-Hyun JIN, Ministry of Oceans and Fisheries

Mr Hyun-Wook DOO, Korea Institute of Maritime & Fisheries Technology

Mr Yeong-Woo JEON, Korea Maritime & Ocean University

Mr Yung-sok CHOE, Korea Maritime Institute

Mr Byeong Hee KWON, Permanent Mission of Korea, Geneva, Switzerland

LATVIA LETTONIE LETONIA

Ms Sandra LIELBARDE, Maritime Administration of Latvia

LIBERIA LIBÉRIA

Mr David PASCOE, Liberian International Ship and Corporate Registry

LUXEMBOURG LUXEMBURGO

M[me] Annabel ROSSI, ministère de l'Economie

M. Marc SIUDA, ministère de l'Economie

MALAYSIA MALAISIE MALASIA

Mr Abdul Aziz ABDULLAH, Ikhtisas Kelautan Malaysia

Mr Mohd Hisham RUBANI, Marine Department of Malaysia

Mr Shaharuzzaman BAHARUM, Marine Department Malaysia

MALTA MALTE

Mr Gordon CUTAJAR, Merchant Shipping Directorate

Mr Ivan TABONE, Merchant Shipping Directorate

MARSHALL ISLANDS ILES MARSHALL ISLAS MARSHALL

Capt. Thomas HEINAN, Republic of the Marshall Islands Maritime Administrator, United States

Ms Elizabeth BOUCHARD, Republic of the Marshall Islands Maritime Administrator, United States

Capt. Giorgio DE SCIORA, ISM, ISPS, MLC, Tonnage and Operational Issues, Italy

Mr Alexander VON STEIN, Republic of the Marshall Islands Maritime Administrator, United States

Capt. Ashley COOPER, Republic of the Marshall Islands Maritime Administrator, Monaco

MYANMAR

Mr Kyaw THU NYEIN, Permanent Mission of Myanmar, Geneva, Switzerland

Ms Ngu WAR SWE, Permanent Mission of Myanmar, Geneva, Switzerland

NAMIBIA NAMIBIE

Mr George TSHATUMBU, Namibian High Commission to the United Kingdom

NETHERLANDS PAYS-BAS PAÍSES BAJOS

Ms Monique RAQUET, Ministry of Social Affairs and Employment

Mr Erik BIJMOLT, Foundation Shipping Industry

Mrs Conny OLDE OLTHOF, Ministry of Social Affairs and Employment

NIGERIA NIGÉRIA

Mr Rotimi FASHAKIN, Nigerian Maritime Administration and Safety Agency

Mr Amos KUJE, Maritime Labour Office

Mr Ibrahim S. UMAR, Special Assistant to the Director-General

NORWAY NORVÈGE NORUEGA

Mr Haakon STORHAUG, Norwegian Maritime Authority

Mr Kjetil KÅSAMOEN, DNV GL

Ms Unn Caroline LEM, Norwegian Maritime Authority

OMAN OMÁN

Mr Salim ALBADI, Ministry of Manpower

Mr Abdulla ALMULLAHI, Ministry of Manpower

PANAMA PANAMÁ

S. E. Sr. Ramón Alberto MORALES QUIJANO, Misión Permanente de Panamá, Ginebra, Suiza

S. E. Sr. César Augusto GÓMEZ RUILOBA, Misión Permanente de Panamá, Ginebra, Suiza

Sra. Mayte Elisa BURGOS VALDÉS, Autoridad Marítima de Panamá

Sra. Giovanna VILLAMONTE SANTOS, Autoridad Marítima de Panamá

Sra. Vielka Yariely VIGIL DE GRACIA, Ministerio de Trabajo y Desarrollo Laboral

Sra. Karen Elizabeth WILLIAMS GARCIA, Ministerio de Trabajo y Desarrollo Laboral

PARAGUAY

Sr. Jorge BRIZUELA, Misión Permanente del Paraguay, Ginebra, Suiza

PERU PÉROU PERÚ

Sr. Pedro Aristóteles ALARCÓN GARRO, Autoridad Maritima Nacional

Sr. Jaime Ramón BARANDIARÁN LACA

PHILIPPINES FILIPINAS

Mr Hans Leo J. CACDAC, Overseas Worker Welfare Administration

Mr Delmer R. CRUZ, Philippine Overseas Labor Office, Geneva, Switzerland

POLAND POLOGNE POLONIA

Capt. Marek ŁĘSKI, Maritime Office

Ms Magdalena NOJSZEWSKA-DOCHEV, Permanent Mission of the Republic of Poland, Geneva, Switzerland

PORTUGAL

Sr. Luís Claudino DE OLIVEIRA, Dirección General del Empleo y de las Relaciones de Trabajo

Sra. Carlota Leitão CORREIA, Dirección General de Recursos Naturales, Seguridad y Servicios Marítimos

Sra. Ana Maria Pestana TONILHAS DA SILVA MORÃO, Dirección General de Recursos Naturales, Seguridad y Servicios Marítimos

RUSSIAN FEDERATION
FÉDÉRATION DE RUSSIE
FEDERACIÓN DE RUSIA

Mr Sergey ARISTOV, Ministry of Transport

Mr Alexander POSHIVAY, Federal Agency of Maritime and River Transport

Ms Olga SHCHEGLOVSKAYA, Ministry of Transport

Mr Pavel ZEMLIANSKII, Russian Registry

Ms Elena LAVRENTEVA, Maritime and Inland Shipping

Ms Inna MAMONOVA, Social Insurance Fund

SAUDI ARABIA ARABIE SAOUDITE ARABIA SAUDITA

Mr Faisal ALSULTAN, Public Transport Authority

SINGAPORE SINGAPOUR SINGAPUR

Mr Martin MARINI, Maritime and Port Authority of Singapore

Mr Wei-Jun MUN, Maritime and Port Authority of Singapore

SPAIN ESPAGNE ESPAÑA

Sra. Alba BALLESTEROS SASTRE, Dirección General de la Inspección de Trabajo y Seguridad Social

Sr. Miguel QUINTERO FERNANDÉZ, Dirección General de la Marina Mercante

SRI LANKA

Mr Nimal Saranatissa SAMARASHINGHE ARACHCHILAGE, Ministry of Labour, Trade Union, Relations and Sabaragamuwa Development

SWEDEN SUÈDE SUECIA

Mr Fredrik JONSSON, Swedish Transport Agency

SWITZERLAND SUISSE SUIZA

M[me] Barbara TRAUTWEILER, Office suisse de la navigation maritime

TANZANIA, UNITED REPUBLIC OF
TANZANIE, RÉPUBLIQUE-UNIE DE
TANZANÍA, REPÚBLICA UNIDA DE

Mr Emmanuel Ewald MARIJANI, Tanzania Shipping Agencies Corporation

THAILAND THAÏLANDE TAILANDIA

Ms Angkana TECHAGOMAIN, Ministry of Labour

Ms Chuleerat THONGTIP, Permanent Mission of Thailand, Geneva, Switzerland

TUNISIA TUNISIE TÚNEZ

M. Mohamed EL FERSI, ministère du Transport

M[me] Lamia ZROUD, ministère du Transport

M. Yassine SALAH, mission permanente de Tunisie, Genève, Suisse

TURKEY TURQUIE TURQUÍA

Ms Basak BOZDEMIR, Ministry of Labour and Social Security

Dr Fatih YILMAZ, Ministry of Transport, Maritime Affairs & Communications

UNITED KINGDOM ROYAUME-UNI REINO UNIDO

Mr John COUSLEY, Department for Transport

Ms Alicia DE VRIES, Department for Transport

Ms Louise UNSWORTH, Maritime and Coastguard Agency

Mr Nelson MARTIN LAWRENCE, Department for Transport

Mr Richard THOMPSON, Department for Transport

UNITED STATES ETATS-UNIS ESTADOS UNIDOS

Ms Mayte MEDINA, US Coast Guard, Department of Homeland Security

Shipowner representatives
Représentants des armateurs
Representantes de los armadores

Ms Eleni ANTONIADOU, International Marine Contractors Association, United Kingdom

Mr David BOLOMINI, International Group of P&I Clubs, United Kingdom

Mr Gerardo BORROMEO, Filipino Shipowners Association, Philippines

Mr Arthur BOWRING, Hong Kong Shipowners Association, Hong Kong, China

Mr Anders BRODJE, Bahamas Shipowners Association, United Kingdom

M[me] Claudia VELLA CASA GRANDE, ECSA, Belgique

Ms Sarah CERCHE, Maritme Industry Australia Limited, Australia

Mr Timothy CLARK, The Japanese Shipowners' Association, United Kingdom

Mr Sophoclis CONSTANTINOU, Cyprus Shipping Chamber, Cyprus

M[me] Virginie COSTEL, Armateurs de France, France

Mr Alexander FROLOV, Russian Chamber of Shipping, Russian Federation

Mr Francesco GARGIULO, IMEC LTA, United Kingdom

Mr Jonathan HARE, International Group of P&I Clubs, United Kingdom

Mr Peter HINCHLIFFE, ISF/ICS, United Kingdom

Mr Stewart INGLIS, International Chamber of Shipping (ICS), United Kingdom

Mr Yuji ISODA, The Japanese Shipowners' Association, Japan

Ms Mitsuka IZUO, The Japanese Shipowners' Association, Japan

Dr Dirk Max JOHNS, VDR German Shipowners' Association, Germany

Mr George KOLTSIDOPOULOS, Union of Greek Shipowners, Greece

Mr Nikolaos MERTZANIDIS, Cruise Lines International Association (CLIA) Europe, Belgium

Ms Hilde PEETERS, Royal Belgian Shipowners' Association, Belgium

Mr Leonardo PILIEGO, Italian Shipowners' Association, Italy

Mr Mark John RAWSON, Liberian Shipowners Council, United States

Mr Brian SALERNO, CLIA, United States

Mr Tim SPRINGETT, UK Chamber of Shipping, United Kingdom

Capt. Rajesh TANDON, V. Ships Crew – V. Ships India PVT. Ltd., India

Mr Paal TANGEN, Norwegia Shipowners' Association, Norway

Ms Anne Windfeldt TROLLE, Danish Shipping, Denmark

Mr Alexander TSITSONIS, RMI Vessel Owners, Greece

Mr Freiderikos VERGADOS, Union of Greece Shipowners, Greece

Ms Natalie WISEMAN SHAW, International Shipping Federation (ISF), United Kingdom

Seafarer representatives
Représentants des gens de mer
Representantes de la gente de mar

Mr Tomas ABRAHAMSSON, Seko – Service-och kommunikationsfacket, Sweden

Mr Michael ANNISETTE, Seamen & Waterfront Workers' Trade Union, Trinity and Tobago

Mr Fabrizio BARCELLONA, International Transport Workers' Federation (ITF), United Kingdom

Ms Hege-Merethe BENGTSSON, NUME, Norway

M. Seddik BERRAMA, Union générale des travailleurs algériens (UGTA), Algérie

Mr Hormaz BHARUCHA, The Maritime Union of India, India

Mr Zillur BHUIYAN, Bangladesh Merchant Marine Officers' Association, Bangladesh

Mr Charles Gerard BOYLE, Nautilus International (UK), United Kingdom

M. Nicholas BRAMLEY, Nautilus International, Suisse

Mr Patrice CARON, Seafarers' International Union of Canada (SIU), Canada

Mr Ioannis CHALAS

M. Jean-Philippe CHATEIL, FOMM UGICT CGT, France

M. Sébastien CROM, Fédération des officiers de la marine marchande (FOMM UGICT CGT), France

Mr Mark DICKINSON, Nautilus International (UK), United Kingdom

Mr Peter GEITMANN, Vereinte Dienstleistungsgewerkschaft (ver.di), Germany

Sr. João de Deus GOMES PIRES, Sindicato dos Engenheiros da Marinha Mercante (SEMM), Portugal

Mr Oleg GRYGORIUK, Marine Transport Workers' Trade Union of Ukraine, Ukraine

Ms Catherine HAIZEL, Ghana Merchant Navy Officers' Association (GMNOA), Ghana

Mr David HEINDEL, Seafarers' International Union of North America (SIU), United States

Mr Guo HEJUN EUGENE, Singapore Organisation of Seamen (SOS), Singapore

M. Matthieu HENRY, Syndicat des officiers de la marine marchande (UGICT CGT), France

M. Simon-Clovis HYVERNAT, Fédération des officiers de la marine marchande (UGICT CGT), France

Mr Jan HOJGAARD

Mr Simon-Clovis HYVERNAT

Sr. Juan Carlos INOSTROZA CARCAMO, Federación de Tripulantes de la Marina Mercante de Chile, Chile

Mr Mats JOHANSSON, Maritime Officers' Association, Sweden

Mr Nopadol KAEWSUWAN, Thai Seafarers' Association, Thailand

Mr Shigeru KAKUCHI, All Japan Seamens' Union, Japan

Ms Sannaleena KALLIO, Finnish Seafarers' Union FSU, Finland

Mr Ting KAM YUEN, Amalgamated Union of Seafarers, Hong Kong

Mr Karsten KRISTENSEN, 3F Denmark, Denmark

Mr Sergii KAZANTSEV, MTWTU, Ukraine

Mr Igor KOVALCHUK, Seafarers' Union of Russia, Russian Federation

Mr Wai Man LEE, Merchant Navy Officers' Guild – Hong Kong, Hong Kong

M. Thierry LE GUEVEL, Fédération générale des transports et de l'équipement (FGTE/CFDT), France

Mr Ziquan Kelvin LIN, Singapore Maritime Officers' Union (SMOU), Singapore

Mr Mikael LINDMARK, SEKO, Sweden

Mr Odd Rune MALTERUD, Norwegian Union of Marine Engineers (NUME), Norway

Sr. Desiderio José MARTÍN JORDEDO, Federación de Servicios para la Movilidad y el Consumo (SMC-UGT), España

Ms Sascha MEIJER, Nautilus International, Netherlands

Mr Lai MING HONG, Amalgamated Union of Seafarers, Hong Kong

Mr Yasumi MORITA, All Japan Seamen's Union (JSU), Japan

Ms Hideko MORITA, All Japan Seamen's Union (JSU), Japan

Mr Carlos Augusto MULLER, Confederação Nacional dos Trabalhadores em Transportes Aquaviários e Aéreos, na Pesca e nos Portos, Brazil

Dr Hossam El Dein MUSTAFA, Workers Union, Egypt

Mr Mohamed Hassan KHALIFA, Workers Union, Egypt

Mr Josiah Aron MWAKIBUJA, Tanzania Seafarers' Union, United Republic of Tanzania

Mr Terje PETTERSEN, Norsk Sjømannsforbund (Norwegian Seafarers' Union), Norway

Mr Kenny REINHOLD, SEKO, Sweden

Mr Saman REZAEI, Iranian Merchant Mariners Syndicate, Islamic Republic of Iran

Mr Jesus SALE, Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP), Philippines

Mr Ake SELANDER, International Organisation of Masters, Mates & Pilots, United States

Ms Jacqueline SMITH, ITF, United Kingdom

Mr Somiruwan SUBASINGHE, International Transport Workers' Federation (ITF), United Kingdom

Mr Yuri SUKHORUKOV, Seafarers' Union of Russia, Russian Federation

Mr Terence TAN, SMOU

Mr Amar Singh THAKUR, The Maritime Union of India, India

Mr Kam Yuen TING, Amalgamated Union of Seafarers, Hong Kong

Mr Yoshihiro TOYOMITSU

Mr Agapios TSELENTIS, Pan-Hellenic Seamen's Federation (PNO), Greece

Mr Jonathan WARRING, ITF, United Kingdom

Mr Trisno WASILAN SLAMET, Kesatuan Pelaut Indonesia (KPI), Indonesia

Mr Hiroyuki WATANABE, All-Japan Seamen's Union (JSU), Japan

Mr Jon WHITLOW, International Transport Workers' Federation (ITF), United Kingdom

Ms Dorotea ZEC, Seafarers' Union of Croatia (Sindikat Pomo Raca Hrvatske), Croatia

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International Trade Union Confederation (ITUC)
Confédération syndicale internationale (CSI)
Confederación Sindical Internacional (CSI)

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Ms Maité LLANOS, ITUC Geneva Office (ITUC-GO), Switzerland

International Seafarers Welfare and Assistance Network (ISWAN)

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Ms Paloma GARCÍA GARCÍA, Directorate-General for Employment, Social Affairs and Inclusion, European Commission, Belgium

Mr Staffan EKWALL, Directorate-General for Mobility and Transport, European Commission, Belgium

Mr Paul PETERS, Directorate-General for Employment, Social Affairs and Inclusion, European Commission, Belgium

Ms Annarita PIAZZA, Permanent Delegation of the European Union to the United Nations in Geneva, Switzerland

Representatives of other international organizations
Représentants d'autres organisations internationales
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Ms Anette Carien DROPPERS, Paris MoU on PSC, Netherlands

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Ms Hege-Merethe BENGTSSON, Norwegian Union of Marine Engineers, Norway

Mr Robert BRINDLE, Lloyd's Register Group Ltd, United Kingdom

Ms Shelley BRYEN, WorldReach Software, Canada

M. Alexandre CHARBONNEAU, Université de Bordeaux, France

Ms Sharon COVENEY

Ms Maria-Cristina DRAGOMIR, Constanta Maritime University, Romania

Mr Steven GRANT, WorldReach Software, Canada

Mr Augusto GRIECO SANT'ANNA MEIRINHO, National Coordination of Port and Waterway Labour (CONATPA), Brazil

Mr Siegfried GRUBER, Austrian State Printing House / Österreichische Staatsdruckerei, Austria

Ms Amy LIEBTHAL

Ms Katherine LOCKWOOD

M. Guillaume LOONIS-QUÉLEN, Union marine et maritime universelle, Suisse

Mr Richard LORIAUX, DLRS Limited (Partner to WorldReach Software), Ireland

Mr Maurício Coentro Pais de MELO, Labour Prosecution Service, Brazil

Mr Chester QUINTAL

Mr Nikolaos SARATZIS, Cargill International SA, Switzerland

Mr Siegfried SKOKOFF, Austrian State Printing House / Österreichische Staatsdruckerei, Austria

Ms Atitlin VAUGHAN

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