

INTERNATIONAL LABOUR ORGANIZATION

International Labour Standards Department  
Sectoral Activities Department

## **Preparatory Tripartite MLC, 2006 Committee**

**Final report**

Geneva, 20–22 September 2010





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## I. Introduction

1. The Preparatory Tripartite MLC, 2006 Committee was established by the 306th Session of the Governing Body to “review the preparations by Members for implementing the MLC, 2006, identify any common issues and prepare the work for the future Special Tripartite Committee on any question that might need to be dealt with as a matter of urgency after entry into force of the Convention, including the rules of procedures of the Committee”. It met from 20 to 22 September 2010 at the headquarters of the ILO in Geneva. This report has been prepared by the International Labour Office.

## II. Composition of the Committee

2. The Committee was composed of representatives of interested member States and representatives nominated, respectively, by the International Shipping Federation (ISF) and the International Transport Workers’ Federation (ITF), as well as their advisers. There were 59 Government delegations, 45 Shipowner and 41 Seafarer participants. Representatives of a number of non-governmental international organizations and intergovernmental organizations also attended the meeting. The list of participants is attached at the end of this report.
3. The Officers of the Meeting were as follows:

*Chairperson:* Mr Naim Nazha (Government member, Canada)

*Vice-Chairpersons:* Mr Arsenio Dominguez (Government member, Panama)

Mr Arthur Bowring (Shipowner member, Hong Kong, China)

Mr Dave Heindel (Seafarer member, United States)

## III. Opening statements

4. The Secretary-General, Mr Guy Ryder, Executive Director for Standards and Fundamental Principles and Rights at Work, noted that the pace of ratification of the Convention, and interest in the Action Plan to achieve its rapid and widespread ratification and effective implementation, demonstrated that the momentum which had led to the nearly unanimous adoption of the Convention has been maintained. However, the adoption of the Convention was only the start of a process, and the Preparatory Tripartite MLC, 2006 Committee had therefore been convened to prepare the way for the Special Tripartite Committee to be established under Article XIII of the Convention once it entered into force. He noted that the participants would first be asked to share information and experiences on progress towards ratification of the Convention. They would then be asked to identify common, significant issues related to the implementation of the Convention, and then to provide advice on the procedures for the functioning of the Special Tripartite Committee. The latter would include consultation procedures under Article VII of the Convention. He noted the impact of the current economic difficulties on all countries. In carrying out this work, he reminded the Committee of the importance of its work, bearing in mind the link between conditions of work of seafarers and the ILO’s commitment to fair globalization and social justice.
5. The Chairperson, after thanking the participants for giving him the honour and challenge of chairing the meeting, pointed to the spirit that had led to the adoption of the Convention and hoped this spirit would continue. He noted the short amount of time provided for the completion of the Committee’s work.

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6. The Shipowner spokesperson reiterated the support of the Shipowners' group for the MLC, 2006, which they had demonstrated through their participation in seminars, tripartite missions and other follow-up activities. The Shipowners looked forward to the discussion on common issues identified in the Office background document and those that might be raised during the meeting. He recalled that the Convention provided for flexibility in its application through consultations at the national level and through the principle of substantial equivalence. He fully supported, in this regard, the intention of using the discussion to serve the interests of both flexibility and uniformity; not reducing a Member's ability to apply flexibility to suit its national requirements, but, at the same time, encouraging uniformity of application where this might be possible. The Shipowners' group remained most concerned about the number of ships that needed to be certified prior to the entry into force of the Convention.
  7. The Shipowners' group greatly appreciated the work that was being done by the recognized organizations (ROs) to prepare for the task of inspection and certification, and urged these ROs to take advantage of the ILO course in Turin to assist in their understanding of the ILO process, which was very different to the International Maritime Organization (IMO) process, as it was not the provisions of the Convention itself that have to be complied with, but the national laws and regulations that implemented the Convention. In this regard, the Shipowners were very concerned that only a few of the Members who had ratified the Convention had authorized their ROs, issued relevant instructions or produced Part I of the Declaration of Maritime Labour Compliance (DMLC). The Shipowners understood that some potential organizations had been offering voluntary certification, which, of course, without the authorization, instruction, issuance of Part I of the DMLC or even the ratification of the Convention by the flag State concerned, meant very little. Such initiatives had led to confusion and concern.
  8. The Shipowners' group, therefore, urged Members who wished to authorize ROs to do so upon ratification, and at the same time issue their instructions and Part I of the DMLC, in order to guide owners of their registered ships on how to prepare for the entry into force of the Convention. Finally, the Shipowner spokesperson said that his group had also requested Members to consider the application of the *Resolution concerning the practical implementation of the issue of certificates on entry into force*, that had been adopted in 2006 by the 94th (Maritime) Session of the International Labour Conference, and to publicly state whether they intended to apply the provisions of this resolution both to ships registered under their flag as well as to their port State inspection services. Such clear guidance was needed to assist owners in their certification process.
  9. The Seafarer spokesperson expressed satisfaction with the holding of this preparatory meeting. The Special Tripartite Committee had yet to be formally established, but it would have an essential role to play in ensuring that the MLC, 2006, remained relevant for the future years and to keep the Convention under continuous review. He also highlighted the importance for the ILO's Committee of Experts to receive advice from the aforementioned Committee, in order to ensure that the MLC, 2006, was implemented in the manner that had been intended. He then expressed the Seafarers' interest in learning more about the progress made in member States to bring the Convention into force and noting any areas of difficulty. He wished that the present meeting would help keep the momentum and contribute to rapidly bringing the Convention into force by securing the necessary number of ratifications. The Seafarers had great expectations that the MLC, 2006, would improve their working and living conditions and were looking forward to benefiting from the protection and rights it provided. He referred to the background paper<sup>1</sup> prepared by the Office for this meeting as being a useful document to assist the discussion of the various

<sup>1</sup> Background paper, PTMLC.2010.



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issues. The document made clear that there was an expectation that the tripartite agreement set out in Appendix III would be incorporated into the MLC, 2006, in the future and that until then, the IMO would remain seized of the issue and would monitor progress. The Seafarer spokesperson also recalled the historical importance of the adoption of the Convention, which represented an important milestone in the history of the ILO and showed the way forward for the future. The Seafarers' group looked forward to actively working with their social partners and governments to ensure the success of this meeting and contribute to the swift entry into force of the MLC, 2006.

- 10.** The Deputy Secretary-General noted that ten years had passed since 2001, the year when the Geneva Accord was adopted by the Joint Maritime Commission and began the process to develop the MLC, 2006. She recalled the composition and purpose of this Preparatory Tripartite MLC, 2006 Committee. She noted that the functions and mandate of the Preparatory Committee were different from the Article XIII Committee. The Preparatory Committee is expected to meet only once – this meeting – and it has a very specific remit of three interrelated matters: to keep under review the preparations by Members for implementing the MLC, 2006; to identify any common issues; and to prepare the work for the future Special Tripartite Committee on urgent matters such as the rules of procedure (Standing Orders) or other issues. It was important for the Office to have a global assessment of where Member countries were in their ratification efforts, and identify areas where there were difficulties so that possible solutions might be discussed.
- 11.** The Deputy Secretary-General recalled a number of steps which countries had to take besides adopting laws and regulations: implement procedures, train inspectors, and inspect and certify ships. As regards common issues, the Office's background paper had identified a few specific difficulties for implementation that some countries or sectors had experienced; however these were not insurmountable matters. Some countries had developed approaches to solutions that could be shared. She noted, in connection with potentially urgent matters for the Special Tripartite Committee, in addition to the Standing Orders, the proposals of the Joint IMO–ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers which were set out in the appendix to the background paper
- 12.** This Committee's role was to exchange views on a tripartite basis on all these matters, the results of which would be conveyed to the Governing Body. This exchange could consider any matter that would fall within the competence of the Special Tripartite Committee. This competence principally related to reviewing the working of the Convention and deciding upon amendments to the Code of the Convention, subject to the approval of the International Labour Conference. Furthermore, the Special Tripartite Committee had a unique role under Article VII in relation to the obligation to consult with the social partners when exercising flexibility, where a representative organization was not yet established in a country. She also pointed out that the Special Tripartite Committee would not have competence to make any interpretation of the Convention, as at present, only the International Court of Justice had that competence. It was essential to remember that it was up to national administrations, after consulting with their social partners, to make decisions on how to implement, in good faith, their obligations, including exercising any flexibility under the Convention. However, she stated that one of the main purposes of this meeting was to provide for an open exchange of information so that common issues could, as far as possible, be dealt with in the same way, bearing in mind the objective of the level playing field. The second purpose of this Preparatory Tripartite Committee meeting was to give an update on progress made by member States to achieve rapid and widespread ratification and effective implementation of the Convention. To date, the Convention had been ratified by ten countries representing about 46 per cent of the world gross tonnage of ships. However, 20 more ratifications were needed. The goal to obtain these ratifications in 2011 was feasible especially in light of the European Union (EU) decision to invite Members to ratify the Convention before the end of 2010 and the landmark agreement between the

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social partners in the EU which would become a directive on the date the Convention entered into force.

- 13.** The Deputy Secretary-General also stressed the importance of the promotional activities around the world in order to build capacity. Numerous activities, international, regional, and national tripartite promotional seminars and workshops had been carried out since 2006. She explained that these seminars had been complemented by legal reviews of national laws and regulations (gap analysis) conducted in participating countries. Some of these had been supported by the Office. In the last 12 months alone, 25 countries in Africa, the Caribbean, Southeast Asia and in the South Pacific had undertaken such gap analyses with Office support. She further invited the participants to share their views on the preliminary discussions that had been held with the IMO on the development of the MLC, 2006, electronic information database.
- 14.** Information was also given on the development of a very important implementation-oriented activity, the “Training of Trainers” course for the inspection system being implemented by the ILO’s Training Centre in Turin, Italy. Six courses had been held since 2009 and about 150 trainers and inspectors for flag State administrations, port State control offices, seafarers’ organizations, shipowners and ROs had been trained from all regions. The Deputy Secretary-General noted with satisfaction that more than 20 of them were attending the meeting. She concluded by informing that, in March 2010, the ILO Governing Body had adopted the article 22 report form which was the form that ratifying governments would be required to fill out when reporting to the ILO supervisory bodies on their implementation of the MLC, 2006.
- 15.** The Chairperson of the Government group reported on the discussions which had taken place in his group. The main issue discussed concerned certification of ships flying the flag of non-ratifying member States. Governments in favour of such a certificate argued that this was in conformity with standard IMO practice and should therefore also apply to the MLC, 2006. Governments that took the opposite view questioned the validity of such a document, as the certificate was proof of legislative conformity of national legislation with the provisions of the Convention. Other issues included the application of the Convention to yachts, the certification of vessels sailing in coastal waters and questions regarding the DMLC but no conclusions had been reached.
- 16.** The representative of the Government of the Republic of Korea stated that regarding the application of the Convention to larger yachts, the Convention would apply as long as they would be regarded as ships. However, some provisions might be applied using substantial equivalence. Concerning the application of the Convention to Mobile Offshore Drilling Units (MODUs), he was of the view that the decision of the flag State in each case would have to be based on the definition of a ship set out in Article II, paragraph 1, of the Convention. His Government concurred with the proposal in the Office’s background paper to delegate the consultation process under Article VII to the Officers of the future Special Tripartite Committee. He indicated that his Government would seek a legal interpretation on the “hours of rest” requirements in light of the recently adopted “Manila amendments” to the IMO’s STCW Convention. His Government also proposed that an interim maritime labour certificate should be allowed to be issued about three months prior to the entry into force of the Convention.
- 17.** The representative of the Government of the Philippines stated that the meeting offered an opportunity to discuss concerns raised on a tripartite basis and to arrive at a common understanding on those issues. He expressed the hope that during the Committee’s discussions due consideration would be given to the unique specificities of each country.

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18. The representative of the Government of France emphasized the critical role but also the original nature of the Special Tripartite Committee in ensuring the continued relevance and impact of the Convention over time.
  19. The representative of the Government of Greece sought a clarification, as asked for by the representative of the Government of the Republic of Korea, as to whether or not there were any contradictions between the Manila amendments proposed for the STCW Convention and the provisions of the MLC, 2006. He also pointed out that the MLC, 2006, was not solely a document consolidating previous maritime instruments but it also contained innovative provisions, such as those on risk evaluation in Standard A4.3, paragraph 1(a). He questioned whether the IMO Maritime Safety Committee Resolution MSC.273(85) concerning amendments to the ISM Code calling for the assessment of identified risks to ships, personnel and the environment and the establishment of appropriate safeguards met this requirement.
  20. The representative of the Government of Bangladesh suggested that model laws should be developed by the Office in order to help member States in implementing the Convention.
  21. A representative of the International Maritime Health Association (IMHA) stated that his organization had supported the development and adoption of the Convention and that IMHA would continue to assist with matters related to seafarers' welfare.
  22. A representative of the International Association of Classification Societies (IACS) stated that since much of the inspections on compliance with the MLC, 2006, would be carried out by the classification societies, it was important to follow closely any new developments concerning the scope and content of the Convention and also to understand the reasoning behind such developments.
  23. A representative of the International Christian Maritime Association (ICMA) stated that it would be useful to develop models and disseminate best practices that could be used to improve the working and living conditions of seafarers worldwide, such as seafarers' welfare boards.

#### **IV. Review of country preparations**

24. The representative of the Government of Switzerland stated that the MLC, 2006, had gone through both chambers of Parliament and that following a three-month period (to allow for the possible launching of a referendum), the ratification process could be completed by early next year.
25. Another representative of the Government of Switzerland brought forward a question identified during the ratification process, which was also a matter of concern in other countries: the qualifications of ships' cooks. Guideline B3.2.2, paragraph 3, of the MLC, 2006, provided guidance for training, examination and certification of ships' cooks. The Certification of Ships' Cooks Convention, 1946 (No. 69), was still in force. Recalling that according to Standard A3.2, paragraph 5, of the MLC, 2006, ships with more than ten persons needed a qualified cook, he pointed out that the STCW Convention did not cover ships' cooks and hence there were difficulties to recruit qualified cooks. In the absence of adequate training requirements, he suggested that the ILO should establish basic guidelines on the training and certification of ships' cooks. The guidance could be similar to the training courses provided by the IMO on the STCW for watchkeeping ratings or for basic safety.

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- 26.** The representative of the Government of Kenya stated that the Ministry of Transport had prepared a Memorandum on the MLC, 2006, for Cabinet's approval. After approval, the Minister for Foreign Affairs would deposit the ratification instrument. The ratification process had been delayed because until very recently the Kenyan flag was not on the IMO White List. In fact, it was only since May 2010 that the provision of training to seafarers as per STCW requirements was made possible. His Government was conscious that the ratification would have a great impact on the alleviation of unemployment in the country and expected to ratify the Convention by February 2011.
- 27.** The representative of the Government of Australia indicated that it was hoped to complete the ratification process of the Convention by December 2011. He highlighted that ratification could only occur once all law and practice both at the federal level, as well as in each state and territory, was fully compliant with the Convention. Therefore, the focus to date had been on identifying all compliance gaps and working towards addressing each of those. The country had been working closely with the social partners, including the Maritime Union of Australia, the Australian Shipowners' Association, the Australian Council of Trade Unions, the Australian Chamber of Commerce and Industry and the Australian Industry Group. The Commonwealth Government had recently agreed to support the ratification of the MLC, 2006, and all state and territory governments were now moving towards ratification. As a result of the gap analyses, only minor technical amendments had been identified, which could be undertaken before the end of 2010.
- 28.** The representative of the Government of the Republic of Korea stated that his country had been preparing towards ratification of the MLC, 2006, since the Convention had been adopted in 2006. The Convention had been translated into Korean and distributed to the social partners and interested parties. Two research projects to identify gaps had been completed in 2007 and 2008. Upon the completion of the gap analyses, a special tripartite committee had been set up to propose amendments to the Korean Seafarers' Act and its subsidiary presidential and ministerial decrees. A draft amendment to the Seafarers' Act had been submitted to the National Assembly in November 2009 and was expected to be approved by the end of 2010.
- 29.** The representative of the Government of Panama explained that after the ratification of the MLC in 2009, the Government, after consulting the social partners, had analysed the compliance of national legislation with the requirements of the Convention. In this regard, the requirements of Regulation 4.1 had proved to be challenging, as the regulation of the provision of medical care on board ship and ashore – which was previously the sole responsibility of shipowners – now called for action on the part of the Government. The Government was further working to comply with its obligations under Regulation 4.4 requiring facilitation of access for all seafarers to Panamanian shore-based welfare facilities.
- 30.** The representative of the Government of Denmark was confident that her country would meet the “deadline” set by the EU decision. Currently, emphasis was being placed on the training of ship surveyors. Two Danish delegates had already participated in the ILO's “Training of Trainers” course in Turin.
- 31.** The representative of the Government of the Philippines reported that his country had started the preparatory work for the ratification of the MLC, 2006, as early as February 2006. These efforts had been encouraged by the high-level tripartite mission, which led to the creation of an Inter-agency Technical Committee on the MLC, 2006, to undertake an intensive review of the Philippine domestic laws, regulations and practices. The findings had been shared with the ILO. Many tripartite meetings and regional consultations in 2007 and 2008 identified a number of obstacles to ratification. In 2009, several ILO-funded information campaigns had been conducted. In June 2010, the private sector Philippine Inter-Island Shipping Association submitted a road map for the ratification of the MLC,

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2006, and a national action plan had been established for the ratification of the MLC, 2006. The delay in ratifying the Convention was due to several factors, including the fact that the process of tripartite consultations had been lengthy and complex, the necessity to develop domestic maritime labour standards, the involvement of different line departments of the Government, the need for continuing capacity-building programmes, as well as the national elections and changes of officials in the administration.

- 32.** The representative of the Government of Singapore stated that soon after the adoption of the MLC, 2006, a national working group had been established to discuss the Convention's requirements with the social partners and government agencies involved in maritime and manpower issues. Tripartite consultations and agreements were in their final stages. Work on changes in legislation had started. Training was being provided to shipping companies, PSCOs, seafarers and other interested parties. One remaining issue was clarifying the application of the requirement of Standard A1.4, paragraph 2, of the MLC, 2006, for consultations with the shipowners' and seafarers' organizations before introducing any changes to a standardized system of licensing or certification of private employment agencies for the recruitment of seafarers. This requirement could create difficulties for governments that had already established a system that applied to all workers, including seafarers, when making changes that did not appear to relate to seafarers or shipowners.
- 33.** The representative of the Government of the Russian Federation indicated that his Government was approaching the final stages of the ratification process. Tripartite consultations had been conducted with representatives of shipowners and seafarers. However, meeting requirements concerning repatriation, recruitment and placement, medical care on board and ashore, food and catering, and enforcement, demanded new regulations or modifications of existing ones. He further stated that the Government interacted systematically with the representative organizations of shipowners and seafarers on the preparation of the ratification of the MLC, 2006.
- 34.** The representative of the Government of the United Republic of Tanzania explained that the Ministry of Labour had started the process of ratification of the MLC, 2006, which had reached the Cabinet level. However, considering the upcoming general elections in October 2010, Cabinet's approval was expected early next year before ratification by Parliament. Meanwhile, steps were being taken to identify implementation gaps and other issues through consultations. She thanked the ILO for technical assistance on reporting on the implementation of ILO Conventions and Recommendations.
- 35.** The representative of the Government of the Netherlands stated that her Government had been working together with the social partners on the implementation of the Convention for the last four years. The Council of Ministers planned to submit the Convention to Parliament after 10 October 2010.
- 36.** The representative of the Government of China reported on the joint efforts of the Government, the shipowners' and seafarers' organizations for the early ratification of the MLC, 2006. Besides two sessions of the Shenzhen Maritime Forum, focusing on seafarers in 2006 and 2008, in 2006 the China Maritime Safety Administration conducted a survey on the ratification of the Convention for submission to concerned governmental departments, followed by an official tripartite seminar on the ratification and implementation in 2007. With the Regulations of the People's Republic of China on Seafarers, which became effective on 1 September 2007, for the first time, specific legislation for one professional group had been promulgated. The National Tripartite Coordination Mechanism of Marine Labour Relations, forming the key platform for conducting regular meetings, composed of the Ministry of Transport, the China Shipowners' Association and the Chinese Seamen and Construction Workers' Union, had been launched in December 2009. Under the direction of the National Tripartite Coordination Mechanism of Marine Labour Relations, the Chinese Seamen and

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Construction Workers' Union and the China Shipowners' Association had signed a collective bargaining agreement regulating employment contracts and management.

37. The representative of the Government of Japan indicated that, since 2006, a tripartite working group consisting of government, shipowners' and seafarers' representatives worked on the identification of necessary amendments to national laws and regulations. The working group agreed on all issues in July 2010 and the Government was now in the process of preparation for the necessary amendment of the relevant national laws and regulations in order to achieve the goal of ratifying the Convention before its entry into force.
38. The representative of the Government of Spain indicated that Spain had ratified the Convention in February 2010, and that it was currently working on small, necessary adjustments to comply fully with the requirements. In this respect, it was incorporating comments of a tripartite working group into texts for enforcement and implementation of the MLC, 2006.
39. The representative of the Government of the United Kingdom stated that the Convention could not be ratified until all national legislation was in conformity to the Convention's requirements. The United Kingdom would continue to work towards implementing the Convention's requirements into national law. Tripartite meetings had been held regularly since 2007 to advise the Government, particularly regarding issues such as large yachts and the application of the crew accommodation requirements, as well as on the use of substantial equivalence. National legislation already covered many of the provisions of the Convention, but some changes would be needed, in some cases following determination by other government agencies. Delays had occurred with the change in government in May 2010. Ratification was not expected before April 2011. Surveyors had been trained at the ILO Turin Training Centre, and had held training seminars in 2010 while further events were planned for 2011.
40. The representative of the Government of Malta said that, as an EU Member, it aimed to ratify the Convention by the end of 2010. National legislation already had to be in place to effectively implement the Convention's requirements, and a gap analysis confirmed that its current legislation incorporated the Convention. Primary legislation was already in force, and now it was finalizing secondary legislation. Once it concluded this stage, it would consult the stakeholders. Training of port State and flag State inspectors, based on the training offered by the ILO Turin Training Centre, was being undertaken.
41. The representative of the Government of the United States highlighted that in May 2010 the Secretary of Labor convened a meeting on international legislation to consider a number of ILO Conventions. She reaffirmed that there was tripartite participation in setting the ground rules and a tripartite advisory panel to review the feasibility of ratification. She added that it was necessary to find ways to resolve concerns of national compliance, and that the process mandated an examination of national laws, regulations and practice with a view to considering ratification or other appropriate action. The United States could not ratify without having in place the necessary regulations. The United States Coast Guard had undertaken a comparative analysis of the national legislation.
42. The representative of the Government of Canada indicated that ratification in June 2010 had been followed by regulatory action: the Marine Occupational Health and Safety Regulations came into force on 3 June 2010, and the Marine Personnel Regulations were already in force as of 1 July 2007. Since then, the Marine Safety Transport had begun the revision of the training course for Canadian ship inspectors. Canada had participated in the first pilot ILO training course in Turin. Furthermore, its port State control courses had been reviewed and amended to include elements of the Convention and training to that effect would take place over the next months. Finally, most recently, it had received a delegation

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of the Ministry of Labour of Brazil, consisting of three labour inspectors, and provided them with an overview of occupational and health inspection in Canada, including provisions implementing the Convention.

43. The representative of the Government of Namibia observed that his country was a strong proponent of the Convention and had played a central role in its adoption. Currently, Namibia was reviewing existing legislation, including the outdated Merchant Shipping Act. Consultations with social partners and experts were ongoing with the aim of working towards ratification. The training of administrators and port State control officers was a challenge. He added that Namibia would probably ratify the Convention before its fifth anniversary in February 2011.
44. The representative of the Government of Bulgaria noted that her country had ratified the Convention and was currently participating in tripartite working groups tasked with transposing the Convention into national legislation. Among other things, the Government had conducted a workshop with representatives from Spain to exchange experiences.
45. The representative of the Government of Nigeria stated that the Government and competent authorities had drawn up an action plan for ratification. His Government had carried out a sensitization seminar in 2008 and a one-day seminar with the social partners in 2009. It was now at the stage of holding advisory meetings, where it would need to provide justifications for ratification. Nigeria had participated in the training programme in Turin. The responsibility for implementing the MLC, 2006, was now with the National Maritime Administration and Safety Agency. He expressed the importance of ensuring decent work for seafarers and quality shipping and he hoped that ratification would be completed by February 2011.
46. The representative of the Government of France indicated that the Convention was pivotal, and that France had supported it throughout its preparation. He indicated that his Government would ratify the Convention in 2011. Various experts had carried out work, with the aim of having a revised maritime labour code by the end of 2010. He added that consultations would continue and different services would be involved in order to complement labour inspection and ship safety services. France was trying to develop cooperation between government departments, which were particularly important because France was not delegating inspection and certification responsibility to classification societies.
47. The representative of the Government of Luxembourg stated that work towards ratification had started in 2008. She underlined that it started with awareness raising and ensuring support for the Convention. The second stage of the process involved tripartite meetings to review the Convention point by point. Luxembourg would then have to prepare institutional rules and provisions to implement the Convention and fill gaps in its national legislation. It was expected that legislation would be submitted for adoption in 2010–11. The third stage would be to establish codes.
48. The representative of the Government of Norway stated that the Convention was ratified in February 2009 but there was still a lot of work to be done; putting in place a certification system, particularly with respect to Part I of the DMLC, was difficult. The country was currently creating a user-friendly document that shipowners and inspectors could use. Extensive guidance was needed on how to inspect with respect to the DMLC Part I. He anticipated that this document would be finalized by the end of 2010. Norway had authorized five classification societies, so it would have to draw up relevant instruments and amend existing agreements to ensure uniformity. Furthermore, the country was trying to adjust its inspections under Convention No. 178 so they would conform to the MLC, 2006. He noted that his Government was providing incentives for shipowners to voluntarily undertake inspections. Experts who had completed the training course in Turin

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had trained nearly 120 staff members. There was some secondary legislation that needed adjusting, particularly with respect to accommodation, but the remainder of the issues were fairly well addressed.

- 49.** The representative of the Government of the Marshall Islands stated that the Maritime Administration had been very active since ratification of the MLC, 2006. The Maritime Act, and all relevant maritime regulations and national policies of the Marshall Islands had been reviewed, and amended as necessary, to implement the Convention. His Government aimed to also finalize the agreements authorizing ROs with regard to performing ship inspection and certification functions under the Convention on its behalf. A representative of the Maritime Administration had participated in the ILO training course in Turin. These activities were completed in 2009 to enable a voluntary inspection and certification programme to be available as of 2010 for shipowners and operators. The first inspection under this programme was successfully completed on board a Marshall Islands-flagged ship in September 2010. His Government had hosted a series of seminars to raise awareness of the potential implications of the entry into force of the Convention, to emphasize the advantages of undergoing the inspection and certification process at an early stage, and to solicit input on a variety of issues. A dedicated web page was developed to single out all of those referenced national provisions, including a general version of the DMLC Part I (listing all of the national provisions addressing the 14 inspection items) and description of the voluntary inspection and certification programme.
- 50.** The representative of the Government of Italy stated that ratification of the Convention was a priority goal and that, in June 2010, the Ministry of Trade and Labour finished considering the text and forwarded it to the Foreign Ministry for rapid ratification. She expressed the hope that the Convention would be submitted to Parliament by the end of 2010. She informed that the Maritime Administration had drawn up a technical code for health and safety on ships under Titles 3 and 4 of the Convention and had also examined Title 5 regarding inspection.
- 51.** The representative of the Government of Greece indicated that his Government had examined domestic legislation to determine gaps, and took into account comments and questions raised by the Office regarding previously ratified ILO maritime Conventions. It had also established a procedure for consultations with the social partners. As a member of the EU, it was working towards submitting the Convention to Parliament for ratification by the end of 2010.
- 52.** The representative of the Government of Portugal indicated that the necessary legislative measures had to be taken before ratification of the Convention could be envisaged. First, the Government had established working groups with the participation of different services. Secondly, it had undertaken a gap analysis and currently was drafting new legislation.
- 53.** The representative of the Government of Lithuania stated that meetings had been held to assign responsibility to competent authorities for different areas of the Convention. The objective was to bring its national legislation into line with the requirements of the Convention, especially regarding Title 5. The Government worked with shipowners' and seafarers' organizations to draft new laws. The submission to the Cabinet of Ministers and then to Parliament would possibly be delayed by the upcoming elections but it was hoped that ratification would take place by the end of the year.
- 54.** The representative of the Government of Tunisia indicated that, in consultation with the social partners, the Government sought to determine where changes in legislation and practice were needed. He indicated that the ILO should develop model legislation to make it easier for countries, and that the Office could provide practical guidance similar to the one prepared for Convention No. 181.



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55. The representative of the Government of Belgium indicated that the ratification process was under way, and that the Committee of Experts had reviewed its legislation in June 2008. The social partners and administration would be involved in preparing draft bills that they hoped to submit to Parliament. Then, they would deal with inspection services, penalties, and a separate bill concerning approval of the Convention. He indicated that the Convention required cooperation among inspection services and would increase the frequency of inspections. The process of inspection would involve considerable work for both federal and local authorities.
56. The representative of the Government of Egypt noted that a working group had been set up to review the Convention, and workshops with seafarer participation had been organized. The Government was developing the infrastructure to implement the Convention and, after consultation with the social partners, would submit the instrument for approval.
57. The representative of the Government of Indonesia indicated that the provisions of the Convention were included in its Shipping Act of 2008, and that it had submitted its gap analysis to the ILO Office in Jakarta. The difficulty was Cabinet-level approval because of concern that many seafarers preferred to work on international voyages rather than on ships in the domestic fleet. His Government hoped to ratify the Convention by the end of 2011.
58. The representative of the Government of the Islamic Republic of Iran stated that his Government had been vigilant in reviewing the Convention. The country had taken considerable steps towards ratification, and had expected that the instrument would be submitted to Parliament in early 2011. However, challenges remained concerning the creation of a unified international framework, and agreed with the earlier proposal that the Office should provide model legislation for implementation of the Convention. He welcomed the ILO training offered in Turin, and hoped that such training would also be available through distance learning.
59. The Seafarer spokesperson raised a number of issues. With respect to Article III of the MLC, 2006. He referred to the comments of the Committee on Freedom of Association on the application by Denmark of Conventions Nos 87 and 98, to the Danish International Ship Register, and asked about the measures that the Government of Denmark intended to take to comply with the requirements of this Article of the Convention. He asked whether it was possible to ratify the Convention and without responding to the Committee on Freedom of Association's repeated requests to amend the national law so as to comply with ILO Conventions on freedom of association and collective bargaining.
60. The Seafarer spokesperson welcomed the ratification of the MLC, 2006, by Panama in February 2009. However, the Seafarers' group expressed concerns about Law No. 30 of 16 June 2010, which seemed to significantly restrict the right to freedom of association of Panamanian workers, in violation of Conventions Nos 87 and 98, as well as Article III of the MLC, 2006. He noted that a formal complaint was filed with the ILO in July 2010 by CONATO, the central association for Panamanian trade unions. With respect to the implementation of the MLC, 2006, the Seafarers' group invited the Government to produce concrete plans particularly with respect to the inspection of ships and the preparation of maritime labour certificates and Declarations of Maritime Labour Compliance. He stressed that proper compliance and implementation of the MLC, 2006, in Panama, with more than 18,000 ships employing approximately 300,000 seafarers, flying its flag, was key to the success of the Convention. The Seafarer spokesperson also drew the Committee's attention to the claim of three Swedish maritime unions that the Bill passed in April 2010 on compensation for seafarers in case of sickness was violating article 19, paragraph 8, of the ILO Constitution. The Seafarers' group stressed that the ratification of the MLC, 2006, should lead to improved conditions for workers and invited Governments

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not to lower existing national standards when aligning their legislation with the MLC, 2006, requirements.

- 61.** In response to the questions asked by the representatives of the Government of Greece and the Republic of Korea regarding the recently adopted “Manila amendments” to the IMO’s STCW Convention regarding fitness for duty, the Deputy Secretary-General replied noting, first, that the Office would try to be helpful to the discussion of issues that may be impeding ratification or in connection with potential solutions. However she emphasized that this meeting was not an appropriate forum for seeking on the spot legal opinions on the text of the MLC, 2006, or wider issues as this would involve consultations with other colleagues in other departments. She pointed out that Governments and Worker and Employer organizations can always write to the Office for a formal legal opinion if it is needed. She explained that she could of course provide some information or preliminary thoughts on matters. However if a Government representative wanted an official “on record” legal opinion on a specific matter then the Office would be happy to provide its views, as always, but through the appropriate channel. She also noted that these views could not bind the Committee of Experts.
- 62.** With respect to the specific questions the Deputy Secretary-General noted that she had indicated that even before it entered into force the MLC, 2006 had an important impact on a number of provisions (hours of rest, medical certificates) that were adopted by the IMO STCW review conference based on the MLC, 2006, text. Her impression, having attended the Conference, was that the aim of the amendments regarding the medical certificate and fitness for duty provisions relating to hours of rest, was to align the text in the STCW Convention with the MLC, 2006 as much as possible, but still taking account of the differing mandate of the IMO and ILO and the differing concerns behind the two Conventions. She noted that she could not comment on the text of an IMO Convention, but could say that the revisions did not introduce provisions that would be regarded as conflicting with the MLC, 2006. The IMO had, however, adopted a provision in connection with minimum hours of rest for STCW personnel that differed in its wording and approach from the MLC, 2006 Standard A2.3, paragraph 13. She explained that Standard A2.3, paragraph 13, provides for potential flexibility with respect to the minimum hours of rest through an authorized or registered collective bargaining agreement. The IMO text also had some flexibility. However the two flexibility provisions, while differing in approach, would not be understood as necessarily conflicting, although there may be instances where a Government in allowing for an exception would need to comply with the higher standard, if they differed, in a particular case. The Deputy Secretary-General also noted that the ILO position, that one hour meal breaks could not be counted as an hour of rest, was noted in the decisions of the Conference.
- 63.** With regard to the request from the representative of the Government of Bangladesh for model laws, the Deputy Secretary-General said that the ILO did not usually follow a model law approach, mainly because of the differing legal systems and also because collective bargaining agreements and practice were included as an aspect of implementation. However, she indicated that the Office intended to develop a basic legislative framework with model provisions that could cover all aspects of the MLC, 2006, for countries that could benefit from such guidance. Countries with existing laws on some matters might also find it useful to use model provisions in order to fill possible gaps.
- 64.** As regards the goal of ensuring uniform inspection systems, the Deputy Secretary-General emphasized that the training activities conducted in conjunction with the ILO Training Centre in Turin would continue in 2011 and that in addition to the three “Training of Trainers” courses, three new curricula were foreseen (one for seafarers, one for shipowners, masters and chief engineers, as well as a workshop on the MLC, 2006, model provisions).

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## V. Preparing for the future Special Tripartite Committee

### Discussion of the Standing Orders

(including procedures for consultation under Article VII)

65. The Chairperson of the Government group stated that governments attached great importance to the Standing Orders, and had generally accepted the ideas set out in paragraph 60 of the Office's background paper. However, they had several comments. First, all member States – both ratifying and non-ratifying States – should be consulted when the draft was ready. Governments were also concerned as to how the Standing Orders should be adopted, and suggested that a second preparatory meeting would be preferred over a correspondence group. Moreover, it was stressed that the Governing Body should ensure that it took into account maritime expertise when approving the Standing Orders or that the Special Tripartite Committee itself should have a final say in adopting them. It would be useful if the Office could at this early stage provide a general framework for the Standing Orders and prepare as soon as possible after the present meeting a draft set of Standing Orders.
66. The Chairperson of the Government group indicated that governments had some general ideas on what should be contained in the draft Standing Orders. Obviously, these would reflect what was already set out in Article XV. In addition, they should address a number of issues such as: election of Officers (bearing in mind the ILO practice of having a Government chairperson); procedures for amending the Standing Orders themselves; time limits for submission of documents; frequency of meetings; time management issues; and distribution of documents.
67. With respect to Article VII, his group supported the proposal in the Office's background paper, but wanted to ensure that any procedures developed ensured that all members of the Special Tripartite Committee were aware of how any determinations were made and that these determinations were compiled and distributed in a manner that guaranteed transparency and expediency. It had been suggested that inspiration might be taken from a similar procedure in the IMO, used with respect to the STCW Convention, and perhaps such a procedure could rely on a pool of governments in order to avoid an undue burden on any one Government member of the Committee. In addition, the question had been raised of how to determine whether a state had representative shipowner or seafarer organizations or not. It had been pointed out the Article VII procedure could not be used until the MLC, 2006, entered into force, and that meanwhile States should encourage the creation of representative organizations of shipowners and seafarers. Finally, with respect to the request for views made by the representative of the Government of Greece regarding risk evaluation and the IMO Maritime Safety Committee Resolution MSC.273(85), the Government group held the view that it was the responsibility of contracting parties to ensure alignment of their international obligations under relevant IMO and ILO instruments.
68. The Shipowner spokesperson stated he agreed with the Government group on the importance of timeline on documents, noting that inspiration might be taken from IMO procedures, where there were two stages of deadlines: one for submission of documents and another for comments on the documents that had been submitted. Regarding the procedure for adoption of the Standing Orders, he agreed with the Government group and hoped that any process would provide enough time for the groups to carry out internal consultations prior to giving their comments. The Shipowner group would also wish to receive more information from the Office on the procedures used by the Governing Body for the adoption of Standing Orders, especially as to whether it was the practice to approve

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them with or without further consultation. It would be very helpful to have the Office prepare a draft of the elements of Standing Orders, including such issues as election of the chairperson, vice-chairpersons, alternates, substitutes other matters, and particularly addressing those areas that were specific to the Special Tripartite Committee. The Shipowner spokesperson further recalled that one of the tasks of the Special Tripartite Committee was to keep the Convention under continuous review. His group wished to know more about how this was done with respect to other ILO Conventions. The Shipowners did not believe that the process of keeping the MLC, 2006, under continuous review was to be accomplished simply through the submission of amendments, as this would not be a positive form of review.

- 69.** The Seafarer spokesperson reported that his group had looked forward to considering a draft set of Standing Orders. He recalled that many issues that had to be addressed in the Standing Orders were already clearly established in Article XIII and could not be renegotiated. There was a need to clarify the role of the Special Tripartite Committee in keeping the MLC, 2006, under continuous review and how it interacted with the Committee of Experts and other ILO bodies. His group felt that the Standing Orders should reflect the status of the Committee, and felt that it should keep the Governing Body informed but not subordinated to it. In some respects, it would have the same authority as a committee of the International Labour Conference. With this in mind, his group was concerned, for example, when voting, in votes cast by a show of hands, it might be difficult to distinguish between Government representatives of ratifying States and those observers of non-ratifying States. With respect to procedures for the Article VII function, and paragraphs 59 and 60 of the Office's background paper, the Seafarer spokesperson noted that the MLC, 2006, had to be in force before the Committee could exercise its functions. The delegation of consultation could be considered, but it would have to be transparent, and decisions would have to be taken on the basis of consensus between groups.
- 70.** Responding to a comment of the Seafarer spokesperson that they had hoped for a draft document on the Standing Orders of the Special Tripartite Committee to serve as a basis for discussions, the Deputy Secretary-General explained that no such document could have been drafted without having first asked and received input from the constituents and this had been the approach that had been consistently followed thus far. There were of course pro forma provisions to be found in the Standing Orders of various ILO bodies and meetings which could be used for some aspects; however they did not address the unique functions foreseen for the Article XIII Committee. In addition, time constraints would not have permitted a detailed consideration of such a document. However, the intention of the Office was to draft a detailed set of draft Standing Orders that would reflect the views expressed at this meeting and seek input on the draft.
- 71.** With respect to the question of consultation on draft Standing Orders, the Deputy Secretary-General noted that the ILO had the capacity of conducting broad consultations through the governmental regional coordinators and the secretariat of the Shipowners' and Seafarers' groups. She added that electronic communications might be a useful tool in that area. She attached great importance to making sure that there was an effective input from all the constituents concerned before the proposed text was submitted to the Governing Body. Should there be a second meeting of the Preparatory Tripartite MLC, 2006 Committee, the participants would have another opportunity to review the draft text of the Standing Orders. If there was no second meeting, then the ILO had to make sure that all relevant mechanisms were put in place in order to permit a full consultative process with everyone concerned. The objective was to have the best set of Standing Orders for the Special Tripartite Committee.

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72. With reference to a previous statement concerning the role of the Governing Body, the Deputy Secretary-General emphasized that the Governing Body was a representative body of the ILO irrespective of the issue discussed.
73. In reply to a request of the Shipowner spokesperson for clarification on how other ILO Conventions were kept under review, the Deputy Secretary-General explained that the ILO Governing Body had a Committee on Legal Issues and International Labour Standards (LILS), which examined all standards-related issues and periodically reviewed all Conventions and Recommendations to determine which instruments continued to meet the ILO objectives and therefore should be considered to be up to date. The findings of the last review exercise were presented in 2002.
74. The representative of the Government of the Islamic Republic of Iran suggested that the work of the Special Tripartite Committee under Article VII of the Convention could be organized by establishing subcommittees which might follow the structure of the Convention (e.g., one subcommittee on minimum requirements, another on conditions of employment, etc.).
75. The representative of the Government of Denmark expressed the view that it was too early to decide how the Special Tripartite Committee would organize its work. Regarding Article VII, she indicated that this would only come into play in case an exemption or derogation was envisaged and also stressed that it was purely consultative in nature.
76. The representative of the Government of Greece referring to the exact manner in which the consultations provided for in Article VII were to be carried out, stated that these consultations had to be cost-effective and not time-consuming.
77. The representative of the Government of the United States pointed out that the Convention did not provide for an interim process and therefore the consideration of Standing Orders should be entrusted to the Special Tripartite Committee once it was set up following the coming into force of the Convention. The purpose of this Meeting was to identify the elements of Article VII relevant to the working of the Special Tripartite Committee. It was important to give an indication as to whether consultation could be delegated or had to remain with the Committee itself. The former option might be preferable from the point of view of expediency while the latter might be preferable from a transparency perspective. Methods used in the IMO might be relevant in some respect, for instance when the STCW amendments were delegated from the IMO Subcommittee to groups of experts.
78. The representative of the Government of Greece concurred with the view expressed by the representative of the Government of the United States and suggested that another meeting of the Preparatory Committee focusing only on Standing Orders could be envisaged as this would facilitate the work of the Office.
79. The Seafarer spokesperson also supported the view expressed by the representative of the Government of the United States. The Special Tripartite Committee could not function without the MLC, 2006, having entered into force and the consultations required in Article VII would only then be possible.
80. Responding to the statement of the representative of the Government of Greece, the Deputy Secretary-General explained that the ILO was currently in the 2010–11 biennium. The Governing Body had only allocated budgetary resources for one meeting in this biennium and the funding of another meeting could only be allocated for the 2012–13 biennium. If, however, constituents could fund such a meeting, the Office would be in a position to host it.

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- 81.** In relation to the consultations that the Article VII procedure would be replacing, the Shipowner spokesperson requested clarification from the Office as to the meaning of “in consultation with”, “after consultation with” and “through consultation with”.
- 82.** The Deputy Secretary-General explained that “in consultation with” required a continuous process whereas “after consultation” meant that the Government would consult and would take a decision after having completed the consultations with the social partners. In Article VII, the expression used was “through consultation”, which meant that the medium of consultation was the Committee referred to in Article XIII.
- 83.** With regard to the issue of how to evaluate the representative character of seafarers’ and shipowners’ organizations in relation to Article VII, the Deputy Secretary-General indicated that this determination lay in the first place with the government concerned, it being understood that such determination might be contested through various procedures such as the procedure before the Committee on Freedom of Association (CFA), the Credentials Committee of the International Labour Conference or the procedures provided for in articles 22, 23 and 24 of the ILO Constitution. Apart from the issue of representativity of workers’ and employers’ organizations, there was of course a factual situation faced in some countries where no trade unions or employers’ organizations existed while in others there were no seafarers’ or shipowners’ organizations.
- 84.** In reply to a request for clarification by the representative of the Government of Greece who asked who would be Officers of the Special Tripartite Committee, if the Article VII process was delegated to the Officers, the Deputy Secretary-General stated that the mechanism or the procedure for consultation (Article VII) had to be set in the Standing Orders, including the persons who should participate in that procedure. This could be the whole Committee or it could be just the Officers. Under Article XIII, paragraph 3, regarding the right of participation, she recalled that the Government representatives of Members which had not ratified the Convention might participate in the Committee but would have no right to vote on any matter dealt with under the Convention. The Governing Body might also invite other organizations or entities to be represented on the Committee by observers.
- 85.** The Shipowner spokesperson felt that although Article VII was quite clear, it might be possible for the Special Tripartite Committee to delegate to its Officers the responsibility to engage in consultations. That decision needed to be made without specific reference to Article VII. It should also be decided whether the Officers would be elected for a long period or only for each session of the Committee. If they were elected for a period, then it would be possible to delegate certain responsibilities to the Officers of the Committee. However, if the composition of the Committee and its Officers changed for each meeting of the Article XIII Committee, it would be difficult to delegate the consultation process under Article VII to the Officers, if it occurred between meetings.
- 86.** In reply to a question on the frequency of meetings anticipated for the Special Tripartite Committee, the Deputy Secretary-General indicated that, in the discussions during the preparation of the MLC, 2006, it had been thought that it was more cost-effective to have a meeting of the Special Tripartite Committee every year instead of a maritime session of the International Labour Conference every ten years.

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## **Identification of matters that will require urgent action by the Special Tripartite Committee**

### ***Urgent actions stemming from the work of the Joint ILO–IMO Ad Hoc Working Group on Liability and Compensation regarding claims for death, personal injury and abandonment of seafarers in March 2009***

87. The Chairperson drew attention to the action identified in paragraph 55 and Appendix III of the Office's background paper concerning amendments to the MLC, 2006, on claims for liability, injury and death and abandonment of seafarers.
88. The Seafarer spokesperson was of the opinion that the proposed text in Appendix III should be transmitted to the Special Tripartite Committee without further consultations or work on the text at this point.
89. The representative of the Government of the United States recalled that during the preparatory work of the MLC, 2006, all constituents had agreed to not include the controversial issue of liability and compensation regarding claims for death, personal injury and abandonment of seafarers in the Convention's final text pending the completion of the work of the joint IMO–ILO working group. She supported the wording of paragraph 55 and wanted the Special Tripartite Committee to be entrusted with finding a solution to the issue.
90. The representative of the Government of the Republic of Korea highlighted that a solution to the issue had only been found during the joint ILO–IMO Ad Hoc Expert Working Group meeting in 2009 and that, as was agreed during that meeting, its inclusion should follow the procedure outlined in Article XV of the MLC, 2006, to amend Standards A2.5 and A4.2. The Seafarer spokesperson concurred with this view.
91. The Shipowner spokesperson opposed the view expressed by the representative of the Government of the Republic of Korea because, in his opinion, this Preparatory Committee had no decision-making power and that only the Special Tripartite Committee had the authority to deal with the subject matter. In response, the Chairperson observed that the representative of the Government of the Republic of Korea had only proposed using the simplified amendment procedure under Article XV of the MLC, 2006, for inserting the proposed standards in the Convention. This did not mean that the Preparatory Committee had been charged with making this decision. The Shipowner spokesperson clarified that the procedures to be followed with respect to amendments to the MLC, 2006, depended on whether a proposed amendment referred to regulations, standards or guidelines. It should be left for the Special Tripartite Committee to consider what provisions would need to be amended, and thus what procedure to follow.
92. A number of elements that the Office should consider in developing a draft text for the Standing Orders were identified and are set out in the outcome document in the appendix to this Report.

### ***Views on a ILO MLC, 2006, database for port State control actions and other matters***

93. The Seafarer spokesperson, referring to paragraphs 12 and 57 of the Office's background paper, observed that his group supported a comprehensive database for PSC officers, integrated with currently available databases of the various MoUs, with information on the

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results of port State inspections as well as on derogations, exemptions and substantial equivalencies of flag States.

94. The representative of the Government of Denmark expressed the opinion that advantage should be taken of existing databases, and any process should link with existing reporting procedures. She was willing to discuss the idea of a new database but was concerned about the potential administrative and financial implications for the Office.
95. The representative of the Government of the United Kingdom concurred with the view expressed by the representative of the Government of Denmark and noted that the *Equasis* database, initially established by the European Commission and the French Maritime Administration, now collated information from the databases of the Paris MoU, Tokyo MoU and the United States Coast Guard.
96. The representatives of the Governments of Norway, Greece and the United States concurred with the views expressed by the representatives of the Governments of Denmark and the United Kingdom.
97. The representative of the Government of the United Kingdom further explained that the Paris MoU was working on the coding of information required by the MLC, 2006, while the representative of the Government of Canada said that the Tokyo MoU was also harmonizing its database with the MLC, 2006, requirements.

### **Tripartite exchange of views on common issues and approaches to solutions**

98. The representative of the Government of the United Kingdom stated that one of the areas that would require the attention of the Special Tripartite Committee, once the Convention enters into force, is in connection with a complaint which had been received from seafarers alleging that they had been charged for their accommodation. Her Government's view, which other flag States shared, was that charging seafarers for accommodation was not permissible. While the MLC, 2006, explicitly forbade charging for food, it was silent on the question of charging for accommodation.
99. The representative of the Government of Denmark, concurring with the view expressed by the representative of the Government of the United Kingdom, indicated that besides the free supply of food to seafarers, the MLC, 2006, also required adequate accommodation. This would imply that it had to be provided free of charge.
100. The representative of the Government of the Marshall Islands supported the view expressed by the representative of the Government of the United Kingdom. During the meeting concerning the ILO flag State and port State Guidelines, a similar interpretation of Regulation 3.2, paragraph 2, of the MLC, 2006, had been raised as this provision could be interpreted as only providing for the supply of food free of charge – and not of drinking water. An analogous interpretation could be drawn with respect to accommodation as the obligation to provide decent living conditions had to include free accommodation. The Seafarer and Shipowner spokespersons, as well as the representatives of the Governments of Norway and the Republic of Korea fully supported the statement by the representative of the Government of the United Kingdom that charging crews for accommodation would be contrary to the spirit of Regulation 3.1, paragraph 1, of the Convention.
101. Concerning the application of the Convention to larger yachts that were not pleasure crafts, the representative of the Government of the United Kingdom indicated that the MLC, 2006, requirements were difficult to apply for reasons related to ship design. The Government was currently seeking a solution using substantial equivalence. It was



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consulting with the social partners, the yachting industry and other governments. He asked whether any other country was facing a similar problem, and offered to make an informal presentation to other interested parties to explain his Government's approach and share some ideas towards a negotiated solution.

- 102.** The representative of the Government of Denmark expressed the view that, regardless of how a ship was built, if pleasure yachts were engaged in commercial activities they fell within the scope of the Convention, as did the seafarers engaged on board. However, member States could use substantial equivalence.
- 103.** The representative of the Government of Malta stated that his Government was also discussing the issue of accommodation on large yachts with all parts of the industry as well as other flag States, including the United Kingdom, in order to find a satisfactory solution. Malta expressed the view that it would be desirable in the interest of the maritime industry that there would be universal acceptance of common standards of substantial equivalences. This would eliminate differing standards between different administrations, thus further protecting the seafarers.
- 104.** The representative of the Government of the Republic of Korea recommended that substantial equivalence provisions be used as the Convention gave member States discretion to determine that any law, regulation, or collective agreement could be considered substantially equivalent if that Member satisfied itself that it was conducive to the full achievement of the general object and purpose of Part A of the Code. He stated that large yachts had to be regarded as ships and as ordinarily engaged in commercial activities under Article II, paragraph 4. As regards any possible amendments to Standard A3.1 on crew accommodation, it was up to member States to propose jointly such amendments in accordance with Article XV of the Convention, but only after the entry into force of the Convention.
- 105.** The representative of the Government of Australia stated that in his country there were a very large number of ships of less than 200 gt engaged in coastal voyages. The vast majority of these vessels were not engaged in voyages of the type that required the crew to treat the vessel as both a workplace and home. Instead they were likely to be involved in short voyages. It would be unreasonable and impractical to apply to these vessels all the detailed provisions of the Convention, particularly those on conditions of employment and accommodation. Having consulted with the social partners, his Government intended to rely on Article II, paragraph 6, of the Convention allowing the competent authority to exclude ships of less than 200 gt not engaged in international voyages. In Australia the MLC, 2006, would therefore cover ships of 200 gt or over regardless of whether they were engaged in international voyages and ships less than 200 gt engaged in international voyages. Nevertheless there had still been difficulties for implementation with respect to larger ships operating only in domestic voyages. The seafarers on those ships do not work on board for extended periods of time and are, therefore, not expected to treat the ship as a workplace and a home. Australia considered that it had found a pragmatic solution by looking closely at the definition of a "ship": under Article II, paragraph 1(i), After consultations with the state and territory governments, it had been decided that it was appropriate to define the boundary of sheltered waters, or waters closely adjacent to sheltered waters, as being within 30 nautical miles from the coast, or 50 nautical miles in the Greater Barrier Reef area. It was believed that this interpretation was based on the wording in the Convention and was also consistent with the spirit of the MLC, 2006. The Government was reasonably confident that it was able to exclude those ships not operating on long voyages, The MLC, 2006, would still cover ships 200 gt and over regardless of whether they were making an international voyage or not. Similarly, ships of less than 200 gt engaged in international voyages would be covered by the Convention. On this basis, approximately 100 Australian-registered ships would be covered by the Convention in Australia.

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- 106.** The representative of the Government of the United Kingdom expressed concern about the application of the Convention to ships under 200 gt that operate internationally. He noted that, although Standard A3.1, paragraph 20, of the MLC, 2006, allowed a reduction of floor areas in sleeping accommodation, there were still a number of other provisions that would be difficult, if not impossible, for these ships to comply with. These concerned, for example, the prohibition of crew cabins below the load line; no direct opening between the crew sleeping area and engine spaces; watertight bulkheads; separate catering facilities for crew and passengers; sanitary facilities; minimum berth size; lockers; desks; dedicated mess facilities; and recreational space on deck for crew. Some requirements, for example overhead height in accommodation spaces, might adversely influence vessel stability. He suggested that the ILO Work in Fishing Convention, 2007 (No. 188), was more appropriate for these kinds of smaller ships as the patterns of operation were similar and their size comparable. This was a matter to be considered in the future.
- 107.** The representative of the Government of Singapore recalled the question he had brought forward concerning the requirement for consultation with the social partners as provided for in Standard A1.4, paragraph 2, of the MLC, 2006. As his Government was currently revising the legislation with regard to private employment agencies, he requested clarification whether this provision meant that consultations with the social partners were required with regard to all changes affecting private employment agencies or only those directly related to the recruitment and placement of seafarers.
- 108.** The Deputy Secretary-General replied to a question, while first noting again that this was not the forum for rapid legal opinions and reminding participants of how “on record” legal opinions could be requested from the Office, With respect to the application of Standard A1.4, paragraph 2, in the context of national legislation that regulated recruitment and placement services covering all economic sectors, the question was whether the Government was required to consult when revising such legislation in general or only in cases the revision concerned the maritime sector. She noted that the requirement set out in Standard A1.4, paragraph 2, pertained only to the maritime sector and stated her opinion that if an employment law or regulation covered several sectors, including the maritime sector, there would be no obligation to consult on changes, unless the changes had a significant impact on the provisions of the employment law relating to the maritime sector.
- 109.** The representative of the Government of Nigeria raised a question regarding the possible application of the MLC, 2006, to mobile offshore drilling units (MODU(s)). He considered that the last sentence of paragraph 45 of the Office’s background paper was problematic and questioned whether the floating production, storage and offloading workers could be defined as seafarers.
- 110.** The representative of the Government of Mexico, also referring to paragraph 45 of the Office’s background paper, recalled that during the 94th (Maritime) Session of the ILC, the delegates of the Republic of the Congo, United Kingdom, Norway and Mexico were of the opinion that an inclusion of MODUs in the scope of the Convention was not possible, *inter alia*, because this would not be in accordance with the United Nations Convention on the Law of the Sea. Mobile offshore drilling units were dealt with sufficiently in the IMO MODU Code (Res. A.649(16)) to which Mexico was a party. This view was, however, independent of his Government’s efforts towards ratification of the Convention.
- 111.** The representative of the Government of Norway supported the comments made by the representative of the Government of Mexico and considered that paragraph 45 of the Office’s background paper did not reflect the results of the 2004 preparatory meeting on the subject. Quoting from the record of that meeting (PTMC–04-5, page 93, report of Committee No. 1), he stated that members could decide on a case-by-case basis whether to apply the Convention to MODUs.

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- 112.** The representative of the Government of the Republic of Korea explained that the question should be addressed in the light of the definition of a ship as stipulated in Article II, paragraph 1(i), of the Convention. Drill ships were normally equipped with self-propelling machinery and were required to navigate and move from one drilling point to another and could, therefore, be regarded by flag States as ships for the purpose of the Convention. FPSOs (floating, production, storage and offloading units) normally stayed at specific drilling points but were equipped with self-propelling machinery and could navigate the sea. Therefore, unless these FPSOs were located in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations applied, they could not be excluded from the Convention.
- 113.** The representative of the Government of Denmark aligned herself with the position of the representative of the Government of Norway but cautioned against reopening the debate about the definition of ships.
- 114.** The Shipowner spokesperson, supporting the comments of the representatives of the Governments of Mexico and Norway, stated his view that an agreement had been reached in 2004 that left to the discretion of each member State to decide whether to apply fully, partially, or not at all the Convention to MODUs.
- 115.** The Deputy Secretary-General clarified that, as the record of the meeting in 2004 (as referred to by the representative of the Government of Norway) showed, the initial negotiating text for the MLC, 2006, had included a provision to exclude MODUs under Article II, paragraph 4. No agreement could be reached on its inclusion and, as stated by the representative of the Government of Norway, the PTMC working group had ultimately agreed to delete that provision. However, by not including an express exception, from a legal perspective, the Convention would apply to MODUs, when they are considered by the flag State in question to be a ship, as defined by the Convention. This is similar to the situation under Convention No. 147.
- 116.** The representative of the Government of Norway reiterated that he did not agree that paragraph 45 of the Office's background paper reflected the outcome of discussions in 2004. He stated that the deletion was done with the understanding that application of MODUs should be decided on a case-by-case basis by the member State concerned. The representative of the Government of Mexico concurred with the view of the representative of the Government of Norway.
- 117.** The Deputy Secretary-General explained that it was ultimately for the ILO supervisory bodies to make this determination, but the text was clear that the application of the MLC, 2006, to MODUs was not expressly excluded. She drew attention to both authentic texts, English and French, and indicated that the Committee of Experts would make an interpretation of compliance by looking at the text and the preparatory work.
- 118.** The Seafarer spokesperson noted that under certain country tax regimes, seafarers could be charged with taxes for the value of the food provided on-board and asked the Office whether such practice would be in violation of Regulation 3.2, paragraph 2, of the Convention.
- 119.** The Deputy Secretary-General noted her earlier comments regarding legal opinions. She could not give any clear information without further careful consideration as taxation law is a complex issue and not addressed by the MLC, 2006. However she was able to identify two elements that seemed relevant. The first element was that the Convention was addressed to governments, which thus had the obligation to ensure that shipowners did not charge for food. They had the same obligation, however, if such a charge came from any other source. If therefore taxation constituted such a charge, governments would have a responsibility to remove it in accordance with Regulation 3.2. The second element related

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to the question whether or not taxation should be considered as a charge. She observed that taxation was presumably on the income of the seafarer, in which not only the wage but also other factors were taken into account, such as not having to pay for food. In any event, she expressed the hope that governments would refrain from taxation in this case.

- 120.** The representative of the Government of the Netherlands asked whether the free use of accommodation could be legitimately taxed or whether it would be in breach of the Convention following the same logic as in the case of taxation for food.
- 121.** The Deputy Secretary-General replied that, presumably, the same principle would apply as the service was supposed to be free of charge, as the meeting had discussed earlier.
- 122.** The representative of the Government of the Republic of Korea raised a question regarding interpretation of Standard A2.3, paragraph 14 of the Convention, and asked whether it covered issues such as marine pollution, security matters, the detention of the ship or other overriding operational circumstances. He drew attention to paragraphs 468 and 469 of Provisional Record No. 7, Part I, Report of the Committee of the Whole, 94th (Maritime) Session, Geneva, 2006.
- 123.** The Deputy Secretary-General noted that the question raised by the representative of the Government of the Republic of Korea concerned a ship's master's right to suspend the hours of rest under Standard A2.3, paragraph 14. In her view the overriding operational circumstances of the kind referred to would, in any event, often be covered as they would also involve one or more of the kinds of emergency circumstances referred to in paragraph 14.
- 124.** The representative of the Government of the Republic of Korea followed up on his earlier question regarding the IMO's recently adopted amendments (the Manila amendments) to the STCW. He recalled that Standard A2.3, paragraph 13, of the MLC, 2006, provided for flexibility if there were a collective agreement. However, according to the Manila amendments to the STCW Convention, exceptions to hours of rest should be limited to two weeks, 70 hours per week. In order for member States to meet these standards, the competent authority could not allow the exceptions as adopted, even if provided for under a collective bargaining agreement. He requested clarification on this matter.
- 125.** The representative of the Government of Greece noted that he also appreciated the answer to his earlier question on this and sought further clarification regarding the Manila amendments. He asked whether in order to comply with the MLC, 2006, requirements, the exceptions to hours of rest provided for in the Manila amendments could only be implemented through a collective agreement.
- 126.** The Deputy Secretary-General, responding to the clarification requested by the representatives of the Governments of the Republic of Korea and Greece, confirmed that – from an ILO perspective – meeting the obligations arising from the STCW and the MLC, 2006, meant that any flexibility corresponding to that provided for in the STCW Code could only be exercised subject to a collective bargaining agreement, as provided for in the MLC, 2006.
- 127.** The Shipowner spokesperson said that his group was concerned about the Office statements on the relationship between the Manila amendments to the STCW Convention and the MLC, 2006, in respect of minimum hours of rest. Accordingly, they wished to place a reservation regarding these statements. Much of what was contained in Standard A2.3 of the MLC, 2006, had been taken up in the revised Section A-VIII/1 of the STCW but there were significant differences between the text, purpose, and application of the two Conventions, both in terms of mandatory provisions and recommendatory guidance. It would be for governments to reconcile these differences through their national

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legislation to implement both the Manila amendments and the MLC, 2006. He questioned whether it was appropriate for the meeting to be attempting to provide interpretations that might undermine the role of governments in interpreting and applying these Conventions. He also requested the Office to clarify what it meant by the concept of a “model law” that had been referred to by several governments and that the Office had indicated it was developing.

- 128.** The Deputy Secretary-General stressed that governments were to make determinations in the first place, but ultimately it would be for the ILO Committee of Experts to pronounce itself on compliance. In response to the question about the concept of a “model Law” the Deputy Secretary-General noted that several governments in many parts of the world had raised the question of how best the ILO could assist them in legal implementation of the MLC, 2006. She noted that these countries were developing countries that lacked the legal capacity to undertake the drafting task. She explained that the basic approach so far had been to help countries undertake legislative gap analyses. To date, 45 such analyses had been completed, reviewed at national tripartite seminars and formally submitted to the governments concerned as an input to their process of reviewing their legislation. She indicated that these governments had been extremely grateful for that assistance, but for many, further assistance was required. Concretely, a number of governments had asked for “model legislation”, an approach often taken by the IMO. She recalled that the ILO Declaration on Social Justice for a Fair Globalization specifically called upon the Office to assist member States to meet the objectives of the ILO. She also referred to past experience of drafting, together with the United Nations Economic and Social Commission for Asia and Pacific, guidelines on maritime labour legislation for countries in the Asia and Pacific region. The idea therefore would be to assist with putting together some model provisions that a country might wish to use or adapt as it wished.
- 129.** The Shipowner spokesperson thanked the Office for that explanation and suggested that the phrase “model provisions” was more accurate than “model law”. He added that his group strongly supported the type of assistance envisaged by the Office.
- 130.** The Seafarer spokesperson asked the representative of the Government of Denmark whether the Danish Government, when ratifying the MLC, 2006, would revise its national legislation with respect to the Danish International Ship Register in order to comply with ILO Conventions Nos 87 and 98 and meet the requirements of Article III of the MLC, 2006. He indicated that his group had listened with interest to the views of speakers thus far on the application of Article VII of the MLC, 2006, on possible derogations, exemptions or flexible application of the Convention. He stated that it seemed to be the consensus that in countries where representative seafarers’ or shipowners’ organizations did not exist, there was no scope under Article VII for any consultations with an interim body on derogations, exemptions or flexible application of the Convention prior to entry into force and the establishment of the Special Tripartite Committee. He asked the Office whether it could confirm this understanding.
- 131.** The representative of the Islamic Republic of Iran, referring to the implementation of the no more favourable treatment provision (Article V, paragraph 7), recalled that there were two kinds of rights under the MLC, 2006: first, substantive rights such as the right to receive due wages, and second, formal rights such as the right to complain against any violation of the Convention. The second kind of rights were provided to secure the first kind. With this in mind, he asked whether port State authorities of member States of the MLC, 2006, could control the application of not only the substantive rights of seafarers in ships flying the flag of States that had not ratified the MLC, 2006, but also the formal rights of those seafarers (for example, controlling the existence of complaint procedures under Standard A5.1.5).

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- 132.** The Deputy Secretary-General clarified that Article V, paragraph 7, refers to a Member's responsibilities under the Convention. No distinction is made between responsibilities that are considered as formal and those considered as substantive. It seemed to follow that the requirement to ensure that the implementation of those responsibilities does not result in more favourable treatment for the ships of non-ratifying States applies regardless of the nature of the responsibilities or the rights to which they relate. She noted that more information on the subject was to be found in paragraph 27 (page 11 of the English version) of the *Guidelines for port State control officers* adopted by the Tripartite Expert Meeting in 2008.
- 133.** The representative of the Government of Latvia asked a question concerning the criteria that would be applied with respect to the establishment by seafarer recruitment and placement services of an adequate system of compensation, by way of insurance or an equivalent appropriate measure, as provided for in Standard A1.4, paragraph 5(c)(vi),.
- 134.** The Deputy Secretary-General explained that the intention seemed to be that an adequate amount should be available to cover the risks of monetary loss due to the failure by the recruitment service or the relevant shipowner to meet their obligations. It was also reasonable to require a seafarer to promptly draw attention to violations, such as non-payment of wages, so that the risk could be limited to one or two months only of unpaid wages.
- 135.** The Chairperson of the Government group reported on the group discussion of the various issues raised by representatives of various governments. He explained that, in connection with the Office's background paper, he had asked the group whether anyone was having difficulties when applying the MLC, 2006, on cruise ships. There had been no indication of a difficulty in that respect. Regarding application of the Convention to yachts, a number of governments favoured using substantial equivalence in the interest of keeping such ships within the scope of the Convention. Another government proposed the adoption of guidelines or a resolution to deal with the issue of large yachts. Proposing possible amendments to the Convention was considered to be premature. Some governments also hoped for the development of some uniformity on substantial equivalence, as proposed by the United Kingdom. Concerning the application of the Convention to ships of 200 gt and above that were not engaged in international voyages, which was addressed in paragraph 46 of the Office's background paper, it was pointed out that there were no exemption clauses in the MLC, 2006, and that member States should rely on flexibility clauses and the definition of "ship". The Government group recalled that it was shipowners' responsibility to ensure that they did not use manning agents which charged fees to seafarers, as much as it was governments' responsibility to exercise control over those agencies. Regarding taxation in relation to provision of food, governments agreed it was their responsibility to ensure that shipowners provided food free of charge, but that taxation issues fell outside the scope of the Convention. Regarding the relationship between the Manila amendments to the STCW Convention and the MLC, 2006, the Government group suggested that the Office prepare a paper on that issue. Regarding the relationship between the risk evaluation provisions in the MLC, 2006 and the IMO Resolution MSC.273(85) on the Adoption of Amendments to the International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), which stated that it was necessary to "assess all identified risks to its ships, personnel and the environment and establish appropriate safeguards". His group concluded that States party to SOLAS and the MLC, 2006, had to find ways to ensure compliance with the international obligations arising from both instruments. Finally, clarification was requested on the issue raised by some governments with regard to cadet accommodation, as the MLC, 2006, requirements might in some cases provide a disincentive for shipowners to train young seafarers.

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- 136.** The representatives of the Governments of the Marshall Islands and the Bahamas stated that they would appreciate it if information on the problems reported to, and explanations provided by, the Office on questions regarding the application of the MLC, 2006, to cruise ships were made available to all participants.
- 137.** The representative of the Government of Denmark clarified that the reason why she had not raised the question on the application of the MLC, 2006, to cruise ships in the Government group was because it had previously been raised many times in the preparatory meetings to the Convention. The Seafarer spokesperson concurred with this view and referred to resolution VII concerning information on occupational groups, adopted by the 94th (Maritime) Session of the International Labour Conference.
- 138.** The Deputy Secretary-General explained that resolution VII concerning information on occupational groups was adopted to guide member States in cases of doubt as to whether certain persons should be regarded as seafarers. The Office intended to produce a compilation of the Office views and legal opinions given during the preparatory meetings and after the adoption of the Convention, in response to specific questions.
- 139.** In reply to a question asked by the representative of the Government of Panama regarding whether certain hotel personnel on board cruise ships could be excluded from the scope of the Convention as not being seafarers, the Deputy Secretary-General referred to a letter addressed to the Government of Panama in October 2009 which confirmed that cruise ship personnel were generally to be regarded as seafarers.
- 140.** The representative of the Government of the Republic of Korea expressed the view that an interim maritime labour certificate should be allowed to be issued up to three months prior to the entry into force of the Convention because: (i) ships on delivery up to three months prior to the entry into force of the Convention would become existing ships by the time it entered into force and would immediately become subject to the full maritime labour certificates; (ii) one of the main purposes of introducing an interim maritime labour certificate was to establish that it would be difficult for shipowners of ships on delivery to establish necessary procedures and implement Convention requirements effectively immediately after delivery of the ships; and (iii) it would be compatible with the purpose of the interim scheme for those ships on delivery about three months prior to the entry into force of the Convention to be made subject to the interim certificate rather than to a full maritime labour certificate.
- 141.** Responding to the question asked by the representative of the Government of the Republic of Korea as to whether it was possible to issue an interim maritime labour certificate three months prior to the entry into force of the MLC, 2006, the Office recalled that resolution XVII adopted by the 94th (Maritime) Session of the International Labour Conference encouraged States that were among the 30 which brought the MLC, 2006 into force to issue certificates before the entry into force of the Convention, but recognized that States should be lenient, in connection with port State control, if ships did not have the maritime labour certificate in the first 12 months after entry into force as long as conditions on board were otherwise in compliance with the Convention. If an interim certificate were issued in the circumstances permitted by the Convention three months before its entry into force, this would, therefore, seem to be acceptable as it followed the spirit of the above resolution.

## **Consideration of the summary document**

- 142.** The Deputy Secretary-General explained that the purpose of the draft Outcome note that the meeting was reviewing was to highlight the subject areas discussed and to reflect guidance on the elements for the draft Standing Orders that was provided during the

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meeting. Therefore, the discussion on the specific questions and the application of the Convention to various sectors had not been detailed, but the discussion on those and other similar areas would be reflected in the final report.

- 143.** The wording in the draft Outcome document was adjusted to more fully reflect the discussions of the meeting. The final text is included in the appendix.



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## Appendix

### **Outcome of the Preparatory Tripartite MLC, 2006 Committee meeting (20–22 September 2010)**

1. The Committee was established by the Governing Body of the ILO with the mandate to “keep under review the preparations by Members for implementing the MLC, 2006, identify any common issues and prepare the work for the future Special Tripartite Committee on any questions that might need to be dealt with as a matter of urgency after entry into force of the Convention, including the rules of procedure of the Committee”.
2. A summary of main outcomes of the Committee’s discussion on these areas is set out below. A report on the meeting will be prepared after the meeting.

#### **1. Review of Member preparations**

3. Information was presented by many Governments on their preparations for ratification, if they had not yet ratified, and on their implementation activities. Several representatives indicated that they expected their countries to ratify by either the end of 2010 or during 2011. A few Governments indicated that it would be helpful to have sample provisions or legislative guidance on the MLC, 2006, developed by the ILO.

#### **2. The process for developing Standing Orders for the Article XIII Special Tripartite Committee**

4. The meeting was asked to provide its views on possible Standing Orders for the Article XIII Special Tripartite Committee.
5. The Committee expressed its strong interest in the Standing Orders and their development. In particular, there was a concern expressed about the importance of the present members of the Committee being afforded an opportunity for review of a draft text of the Standing Orders before they are finally adopted by the Governing Body. Specifically, the Committee considered that it would be useful if a second meeting could be arranged to discuss a draft text, once developed. The Committee noted that many of the elements of the Standing Orders could be drawn from existing ILO Standing Orders. However, there were also some functions of the Special Tripartite Committee that were unique and required special attention.
6. In the preparation of the first draft by the Office in consultation with the Officers, the following areas were identified as needing special attention.

#### ***General (Composition of the Article XIII Committee: Dealt with in Article XIII)***

- Terms of reference for the Article XIII Committee including the function of “continuous review” and relationship to the supervisory and other ILO bodies.
- Officers: Number of vice-chairpersons, powers of chairpersons and vice-chairpersons, appointed for a term or ad hoc and length of appointment?
- Rights of non-ratifying governments (what is the scope of “participation”, “with no right to vote” in Article XIII, paragraph 3?).
- Methods of voting.
- Frequency of regular meetings.
- Timeline for the submission of documents, taking into account IMO practices, and for the availability of office documents.

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- Communication with the Governing Body.

### ***Amendment of the Code (Article XV)***

- Process for making proposals for amendments and gathering required support (see paragraph 2).
- Time given to the Director-General to “promptly communicate” the proposal to ILO Members (see paragraph 3).
- Time limit for transmitting observations on the proposal (“three to nine months”, see paragraph 3).
- Procedure for transmitting amendments to the ILC.

### ***Consultation under Article VII***

- Possibility of Committee to delegate this function to:
  - its Officers?
  - subcommittee(s)? or expert groups?
  - pool of designated Members?
- Participation of non-ratifying Members?
- Possibility for consultation by correspondence.
- Process for a government to request consultation.
- Process and time limit for communicating the Committee’s views to governments.
- Requirement for reporting to the Committee in the case of consultation by delegation or through correspondence.
- Recording of views provided by the Committee in the consultation process.

## **3. Identification of urgent matters for the Special Tripartite Committee, once established, and any preparatory work that would be needed**

7. The Committee was of the view that once the Special Tripartite Committee has been established, one urgent action will be the review and consideration of the principles agreed at the Ninth Session of the Joint IMO–ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers (Joint Working Group) in March 2009. The Special Tripartite Committee would need to assess, first, whether or not these principles could take the form of amendments to the Code of the MLC, 2006, and, if so, propose a draft text for amendments, in accordance with Article XV of the MLC, 2006. Since the first question (concerning what is included in the Code) is likely to depend on a substantive discussion of the principles themselves, and since they had been thoroughly discussed at the preparatory level, the Committee was of the view that the principles, as adopted by the Working Group, should be transmitted directly to the Special Tripartite Committee without any further preparatory work.

## **4. Identification of common issues and potential approaches to solutions**

8. The following areas of common difficulty were identified and views exchanged on some potential solutions or approaches.
  - The application of Title 3 – Accommodation – requirements to large commercial yachts.
  - The application of the MLC, 2006 requirements to ships of less than 200 gt that do not go on international voyages.

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- The application of the MLC, 2006 requirements to ships above 200 gt that do not go on international voyages.
  - Limited scope of the Standard A3.1, paragraph 20 exemptions for ships of less than 200 gt that go on international voyages (and are thus not covered by Article II, paragraph 6).
9. The general view was expressed that these four areas could usually be addressed within the existing definitions and the flexibility mechanisms in the Convention, including use of substantial equivalence. Some matters such as details of accommodation as it applies to particular ships might need amendment in the future once the Convention enters into force to achieve a more uniform approach.
- The application of the MLC, 2006, to MODUs.
10. There were differing views and national practices on this matter at present but no particular solution was discussed.
- The obligation of Members to consult when exercising flexibility and the situation for countries that do not have appropriate social partners.
11. It was noted that the Article VII mechanism could not operate before the Convention comes into force.

## **5. Other issues**

12. These were a number of specific matters and questions raised with the Office or the meeting by individual representatives of Governments or by the Shipowners or Seafarers, that did not appear to be common issues of difficulty for implementation.
13. There was discussion on developing an electronic MLC, 2006 database in cooperation with the IMO-PSC MOU database, but there were questions about duplication of information and resources.



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**List of participants**  
**Liste des participants**  
**Lista de participantes**



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- Mr Tim Springett, Head of Labour Affairs, Chamber of Shipping
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