

Adoption of the arrangements for consultation under Article VII of the MLC, 2006

1. The Chairperson of the Committee observed that although no request for consultations under Article VII of the MLC, 2006, on Consultation with Shipowners' and Seafarers' Organizations had been submitted, it was important for the Special Tripartite Committee to decide on the arrangements which would enable the Committee to perform its consultation function.
2. The Secretary-General recalled the text of Article VII, which clearly identified the role of the Special Tripartite Committee. In addition, article 14 of the Standing Orders of the Special Tripartite Committee called for the Committee to make arrangements to provide the advice that it may be required to give in the performance of its consultative function. The lack of requests for consultation under this provision of the Convention was possibly due to the fact that the practical arrangements had not yet been established. In this regard, the speaker referred to paragraphs 55–57 of the Background paper, which listed possible elements based on the criteria provided in article 14 of the Standing Orders. Paragraph 56 of the Background paper suggested that the Committee might wish to consider the possibility of entrusting to the Office the task of preparing, under the guidance of the Officers of the Committee or a subcommittee, a draft proposal for detailed arrangements. The two main decisions that were to be considered by the Committee were the following: (i) whether the Committee would consider delegating to the Office, under the guidance of the Officers of the Committee, taking into account any elements discussed at its first meeting, the preparation of a draft proposal for the detailed arrangements; and (ii) whether the Committee would consider delegating the authority to the Officers, a subcommittee or a working group, to consider any request that could be received by the Office between this meeting and the Committee's next meeting, if no meeting was foreseen within six months of the receipt of such request.
3. The Shipowner spokesperson considered it important that, when a request was made, the advice would be given expeditiously. Regarding the various alternatives, the Officers of the Special Tripartite Committee should be empowered to establish a subcommittee or a working group to provide expeditious advice between meetings, if requested. During previous preparatory meetings, the Shipowners' group had emphasized that consultations should mirror national practices. The tripartite panel should give advice and not make decisions.
4. The Seafarer spokesperson indicated that his group disagreed with the proposals contained in the Background paper. The practicalities of establishing the consultation mechanism raised many questions, such as how the Officers would recommend that a derogation from the Convention be heard by the Special Tripartite Committee; the payment for the advice mechanism; action taken if the Committee disagreed with the advice from the working group; and whether the Special Tripartite Committee would facilitate the ratification of the MLC, 2006, in States that did not have seafarers' and shipowners' representative organizations. Consistency and transparency were key. Consultation requests should be brought before regular meetings of the Committee which should, in turn, be careful not to undermine tripartism at the national level by allowing governments to undermine trade unions or to use the "substantial equivalence" provisions of the Convention to avoid consultations. The proposal was thus a slippery slope and was not the way forward. In accordance with Article VII of the MLC, 2006,

consultation requests should be addressed at the next meeting of the Special Tripartite Committee.

5. The representative of the Government of Denmark said that the issue was how to facilitate tripartite consultation for countries in which seafarers' and shipowners' organizations did not exist. This was an issue that ought not to be postponed. The Special Tripartite Committee needed to meet frequently, but resources would be needed to convene the next meeting. With increasing ratifications of the Convention, the high number of members of the Committee would increase even further, and it was therefore important that the Committee as a whole focused on those issues which were relevant for the majority of States while a smaller group addressed specific issues regarding individual States. While the Officers could act as intermediaries, there was a clear need for arrangements to be put in place. Commitment to tripartism was not the question as the intention of Article VII was precisely to allow States to fulfil their obligation to consult in the absence of the necessary social partners.
6. The Shipowner spokesperson concurred that Article VII of the MLC, 2006, acknowledged that States might not have social partners in the maritime sector. While his group understood the Seafarers' group's concerns, the Convention had sufficient mechanisms to ensure that consultations effectively took place, under article 14 of the Standing Orders of the Special Tripartite Committee, which called for a mechanism to provide advice. The Officers of the Committee should be empowered or should delegate to a subcommittee the authority to provide advice consistent with Article VII of the Convention. Responding to the concern raised by the Seafarers' group, he indicated that the provisions permitting "substantial equivalence" were only found in Part A of the Code and not in the Regulations.
7. A representative of the Government of Norway asked the Office for clarification as to whether member States needed to consult the social partners prior to invoking "substantial equivalence".
8. The Secretary-General said that the MLC, 2006, provisions differed from those in other ILO Conventions since they would not allow a Government to derogate from the Convention without consultation with the maritime social partners. The Convention recognized, however, that in practice, those organizations did not exist in some countries. While it might not be possible to make the necessary arrangements under article 14 of the Standing Orders during the first meeting, the Committee must give due consideration as to how to establish the needed institutional mechanism. No requests for consultation had been made thus far, since no mechanism existed at the time of the meeting. However, those Governments that would be submitting article 22 reports in 2014, and which did not presently have maritime social partners, should not be able to justify the lack of recourse to the consultations provisions simply due to the absence of procedural arrangements. Regarding the question of prior consultation of the social partners for the use of substantial equivalence, she recalled that Article VI, paragraph 3, provided for the possibility of implementing measures which were substantially equivalent to the provisions of Part A of the Code. Each specific example must be addressed based on the specific language of that section of the MLC, 2006. The use of substantial equivalence was, therefore, not a way to avoid consultation with the social partners.
9. The Shipowner spokesperson added that the major provisions of the MLC, 2006, which required consultation, that is the definition of the "seafarer" and that of the "ship" were located in Article II, to which "substantial equivalence" did not apply. Concerning the issue of transparency, which was the most important issue to his group, if consultations were requested before the next meeting of the Special Tripartite Committee, a working group could be formed on the basis of five representatives nominated by each group.

Once the Chairperson received the request, he could submit it to the working group, which would then nominate two representatives from each group with the required language skills and expertise concerning the specific request.

10. The Seafarer spokesperson concurred that transparency was an important issue but indicated that further discussion was needed. He asked for clarification as to whether it would be for the Officers to decide who had the specific expertise for requests. Five members for each group seemed limited, taking into account the different languages spoken in the member States. The issue of how the consultations would be financed was raised and clarification was requested concerning the financing of working group meetings.
11. Responding to the financing query, the Shipowner spokesperson stated that Article VII of the MLC, 2006, referred to consultations and not to the examination of complaints or amendments. Meetings of the working group could therefore be organized through electronic means. The issue of transparency would be adequately ensured as the working group would report back to the Special Tripartite Committee.
12. The Secretary-General recalled that geographical balance was another important element that needed to be taken into consideration when nominating members to a working group.
13. The Chairperson of the Committee read the proposed arrangements for responding to requests for consultation made under Article VII between meetings of the Special Tripartite Committee:

*Arrangements for responding to requests for consultation
made under Article VII between meetings of the Committee*

Pursuant to article 14 of its Standing Orders, the Special Tripartite Committee agreed upon the following interim arrangements for responding to any requests made by a ratifying Member between meetings of the Committee, for consultation under Article VII of the Maritime Labour Convention, 2006:

1. There will be a panel made up of representatives of the Government group the Shipowners' group and the Seafarers' group who will be available to provide advice, on behalf of the Committee, in the case of requests for consultation received from a government in accordance with Article VII of the Convention between meetings of the Committee.
 2. Upon receipt of a request for consultation pursuant to paragraph 1 of article 14 of the Standing Orders, the Officers of the Committee will, taking account of all relevant factors such as the subject matter of the request and the language needed to communicate with the government concerned, form a working group to provide the requested advice to the government concerned. Each Vice-Chairperson will select two members of the working group from their respective group.
 3. The Officers will determine unanimously how consultation will proceed. This consultation process should not incur significant cost.
 4. In accordance with paragraph 3(e) of the Committee's Standing Orders, the advice provided will be made available to the Committee at its next meeting and – to the extent approved by the Committee – to all Members of the Organization.
 5. The government concerned will communicate to the Office the result of its determination made after consultation. The Office will then communicate it to the Committee.
14. The Shipowner and Seafarer spokespersons supported the proposed text and the latter observed, for the record, that the Seafarers' group considered that it was important that

article 14, paragraph 3(b), of the Standing Orders be understood to also include an indication of the translation facilities which may be required for the consultation.

15. The Chairperson of the Government group also supported the proposed text.
16. Referring to Article VII of the MLC, 2006, and to article 14 of the Standing Orders, the Chairperson of the Committee declared that the arrangements for responding to requests for consultation made under Article VII between meetings of the Special Tripartite Committee were adopted, and five members were nominated by the Shipowners' group and the Government group as follows:

Shipowners:

Mr Springett
Mr Ludwiczak
Mr Cox
Mr Borromeo
Mr Koltsidopoulos

Government:

Mr Schwartz (Australia)
Mr Moussat (France)
Mr Mbatha (South Africa)
Ms Villamonte Santos (Panama)
Mr Krezel (Poland)

VIII. Closing remarks

17. The Shipowner spokesperson said that the main task of the Committee had been to produce acceptable texts concerning the issues of abandonment and crew claims. The Committee was tasked to consider amendments to the MLC, 2006, in view of the nine Joint Working Group meetings held over ten years. The Government representatives and the social partners had spent an enormous amount of time, energy and resources to prepare for the meeting and the success of the latter was due, almost exclusively, to the good spirit and wide cooperation and compromise exhibited by all parties. The discussions at the first meeting of the Special Tripartite Committee marked a major step forward in the history of the MLC, 2006, and confirmed the wisdom of those who created the unique concept of the Special Tripartite Committee within the ILO. Shipowners, as well as governments, as flag States, port States or labour supply States, had a role to play with regard to the issue of abandonment of seafarers. The resolution of that issue further strengthened the MLC, 2006. The Committee's successful completion of this important work and the clarification of the application of Standard A4.2 to claims for death and long-term personal injury were a solid achievement. He concluded by recalling his group's request to the Office to send a letter to governments before future meetings of the Committee in order to clearly articulate the process of nomination of social partners to attend future meetings of the Special Tripartite Committee.
18. The Seafarer spokesperson echoed the sentiments of the Shipowner spokesperson and indicated that his group was pleased with the work that the Committee had accomplished with respect to the adoption of the first set of amendments to the MLC, 2006, marking a historic day for the shipping industry. Abandonment was an important issue for seafarers and had been adequately dealt with by the Committee. Recalling the work that had been done by the Joint Working Group over the nine preparatory meetings, he looked forward to the entry into force of the amendments.

- 19.** The Chairperson of the Government group thanked the Shipowners' and Seafarers' groups and said that the work performed would prove very important to abandoned seafarers. Every case of abandonment was serious and had important consequences for the seafarers and their families who needed to be ensured financial security through repatriation and compensation. The work of the Committee was important to ensure that the MLC, 2006, remained relevant with a view to providing decent working and living conditions for seafarers and a level playing field for shipowners.
- 20.** The representative of the Government of the Republic of Korea thanked the participants for successfully addressing the outstanding issues, which had existed for 15 years, concerning abandonment of seafarers and financial security for contractual compensation in the event of occupational accidents or sickness. The rapid entry into force of the amendments, following adoption by the International Labour Conference, would address the urgency in resolving the pending issues. He stressed that direct access to financial security providers by seafarers should be possible for all injuries covered by their financial security providers, recalling that, according to article 19, paragraph 8, of the ILO Constitution, which was restated in the Preamble of the MLC, 2006, the adoption of a Convention should not affect any law or practice which ensures more favourable conditions to workers. He expressed appreciation to the representatives of the International Group of P&I Clubs for their answers regarding abandoned seafarers, and stressed that direct access to financial security providers by seafarers should be possible for all injuries covered by their financial security providers.
- 21.** The representative of the Government of Greece, speaking on behalf of the Member States of the European Union which had ratified the MLC, 2006, recalled that the Convention was of significant importance. The result of the first meeting of the Special Tripartite Committee showed that the amendment process operated well and served the enterprise, which had started a decade ago, for the benefit of the shipping industry and the continuous improvement of seafarers' working and living conditions. He was confident that the procedures set out in Article XV of the Convention would facilitate the effectiveness of the amendment process and stressed that the European Union Member States remained committed to the coherent implementation of the MLC, 2006, and would review the new provisions constructively.
- 22.** The representative of the Government of the Philippines, speaking on behalf of 360,000 Filipino seafarers expressed satisfaction at the adoption of the proposed amendments to the Convention.
- 23.** The Chairperson of the Committee expressed his appreciation for the work accomplished by the Committee and the valuable contribution of all parties – the Shipowners', Seafarers' and Government groups, in the discussions during the meeting, stating that he looked forward to continuous collaboration in the future. The Chairperson declared the meeting closed.