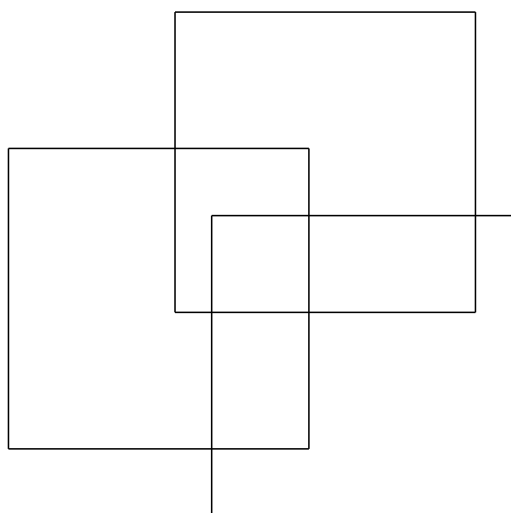




Background paper for the preparation of proposals for amendments to the Code of the Maritime Labour Convention, 2006 (MLC, 2006)

**Working Group of the Special Tripartite
Committee established under the MLC, 2006
(Geneva, 3–5 April 2017)**



STCMLC/WG/2017/1

INTERNATIONAL LABOUR ORGANIZATION

**International Labour Standards Department
Sectoral Policies Department**

**Background paper for the preparation of proposals
for amendments to the Code of the Maritime
Labour Convention, 2006 (MLC, 2006)**

**Working Group of the Special Tripartite Committee
established under the MLC, 2006
(Geneva, 3–5 April 2017)**

Geneva, 2017

INTERNATIONAL LABOUR OFFICE, GENEVA

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with reproduction rights organizations may make copies in accordance with the licences issued to them for this purpose. Visit www.ifro.org to find the reproduction rights organization in your country.

Background paper for the preparation of proposals for amendments to the Code of the Maritime Labour Convention, 2006 (MLC, 2006). Working Group of the Special Tripartite Committee established under the MLC, 2006 (Geneva, 3–5 April 2017), International Labour Office, International Labour Standards Department, Sectoral Policies Department, Geneva, ILO, 2017.

ISBN 978-92-2-130780-8 (print)
ISBN 978-92-2-130788-4 (Web pdf)

Also available in French: *Document d'information pour l'élaboration des propositions d'amendements au code de la convention du travail maritime, 2006 (MLC, 2006).* Groupe de travail de la Commission tripartite spéciale instituée en vertu de la MLC, 2006 (Genève, 3–5 avril 2007), ISBN: 978-92-2-231287-0 (print), ISBN: 978-92-2-231288-7 (Web pdf), Geneva, 2017; and in Spanish: *Documento de información para la preparación de propuestas de enmiendas al Código del Convenio sobre el trabajo marítimo, 2006 (MLC, 2006).* Grupo de Trabajo del Comité Tripartito Especial establecido en virtud del MLC, 2006 (Ginebra 3–5 de abril de 2017), ISBN: 978-92-2-330823-0 (print), ISBN: 978-92-2-330824-7 (Web pdf), Geneva, 2017.

ILO Cataloguing in Publication Data

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications and electronic products can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address, or by email: pubvente@ilo.org.

Visit our website: www.ilo.org/publns.

Contents

| | <i>Page</i> |
|------------------------------------------------------------------------|-------------|
| 1. Introduction..... | 1 |
| 2. Legal framework..... | 2 |
| 3. Discussion during the second meeting of the STC | 3 |
| 4. Existing practices concerning proposals of amendments..... | 3 |
| 4.1. Practice within the International Labour Organization..... | 4 |
| 4.2. Practices within the International Maritime Organization..... | 7 |
| 5. Possible way forward..... | 9 |
| 5.1. A template to submit proposals | 9 |
| 5.2. Possible development of more detailed procedures in the STC | 11 |
| 5.3. Other suggestions | 11 |
| 6. Conclusions..... | 11 |
| Appendix | 13 |

1. Introduction

1. The second meeting of the Special Tripartite Committee (STC) established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006) (Geneva, 8–10 February 2016), decided, in accordance with article 15 of its Standing Orders, to establish a Working Group with the following terms of reference:
 - (i) to examine issues related to the protection of seafarers' wages when the seafarer is held captive on or off the ship as a result of acts such as piracy or armed robbery, and to prepare proposals including an amendment to the Code of the MLC, 2006, to address these issues;
 - (ii) to recommend improvements to the process for preparing proposals for amendments to the Code of the MLC, 2006, for consideration by the STC, in accordance with Article XV of the Convention and article 11 of the Standing Orders of the STC, to promote their earlier and fuller consideration by member States and representative organizations of seafarers and shipowners; and
 - (iii) to deliver a report, with recommendations, to be submitted to the third meeting of the STC, not later than nine months before the meeting.¹
2. The decision to establish a Working Group was endorsed by the Governing Body of the International Labour Office (ILO) at its 326th Session (March 2016).² The members of the Working Group participated in two rounds of consultations which took place by correspondence from August 2016 to January 2017.³
3. This background paper addresses possible improvements to the process of preparing proposals for amendments to the Code of the MLC, 2006. The first part of the background paper presents the legal framework, the relevant discussions at the second meeting of the STC and the existing practices in both the International Labour Organization and the International Maritime Organization (IMO). The second part focuses on the way forward and contains the proposals that could be discussed by the Working Group and which have been prepared on the basis of the inputs provided by its members during the consultations, namely: (i) the adoption of a template that may be used to submit proposals; (ii) the possible development of more detailed procedures in the STC; and (iii) other suggestions.

¹ Resolution concerning the establishment of a Working Group of the Special Tripartite Committee, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meeting_document/wcms_452072.pdf.

² Document GB.326/LILS/6 available at: www.ilo.org/gb/GBSessions/GB326/lils/WCMS_458136/lang--en/index.htm.

³ The Working Group is composed of the Government representatives of Canada, France, Nigeria and Singapore, the Shipowner representatives of China (Hong Kong), Germany, United Kingdom and the Philippines, and the Seafarer representatives of the United States, United Kingdom, Russia and the Philippines. The Government of Nigeria did not submit any comments during the consultations. Details about the members as well as the documents prepared for the two rounds of consultations are available, only in English, at: www.ilo.org/global/standards/maritime-labour-convention/special-tripartite-committee/WCMS_500948/lang--en/index.htm.

2. Legal framework

4. The MLC, 2006, contains two different procedures for the amendments of its provisions. An amendment procedure under Article XIV that covers any provision of the Convention,⁴ and a simplified procedure under Article XV that only applies to amendments to the Code of the Convention. This simplified process was developed to meet the need for a timely updating of the technical elements of the Convention.
5. In view of the terms of reference of the Working Group, this background paper only addresses the proposals of amendments to the Code presented under Article XV of the MLC, 2006.
6. Improvements to the process for preparing proposals for amendments to the Code should be adopted within the framework of the existing relevant provisions of the Convention. As recalled by the Legal Adviser during the second meeting of the STC, the procedure for the submission of amendments is explicitly set out in Article XV of the MLC, 2006, which can only be revised through a formal amendment of the Convention.⁵ As a result, any proposed improvement should take the form of non-binding guidance.
7. The Convention does not impose any specific requirements regarding the content of the proposed amendments or the manner in which the proposed amendments should be presented. The following provisions are relevant in this context:

Article XV, paragraphs 2 and 3 of the MLC, 2006, which state that:

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

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

Article 11 of the Standing Orders, which states that:

1. Proposals for the adoption of amendments to the Code shall follow the procedure set out in Article XV, paragraph 2, of the Convention.

2. Upon receipt of a supported proposal, in accordance with Article XV, paragraphs 2 and 3, the Director-General shall communicate the proposal as soon as possible but not later

⁴ According to Article XIV of the MLC, 2006, amendments to any of the provisions of the Convention “may be adopted by the General Conference of the International Labour Organization in the framework of article 19 of the Constitution of the International Labour Organisation and the rules and procedures of the Organization for the adoption of Conventions. ...”.

⁵ Final report, Second meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006) (Geneva, 8–10 February 2016), para. 156. Available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meeting_document/wcms_459566.pdf.

than one month after its receipt, accompanied by any comments or suggestions deemed appropriate, to all Members of the Organization, with an invitation to them to transmit their observations or suggestions concerning the proposal within a period of six months or such other period prescribed by the Governing Body in accordance with Article XV, paragraph 3.

3. Discussion during the second meeting of the STC

8. During the second meeting of the STC, several governments raised concerns regarding the process of the preparation and presentation of proposals of amendments to the Code of the MLC, 2006, and highlighted the need to develop guidance in this regard.⁶
9. The Chairperson of the Government group indicated that several Government representatives had noted a need for greater explanations and analysis on the implications of proposed amendments. She suggested that it might be necessary to consider additional elements of the IMO amendment procedure.⁷ In particular, a representative from Norway reminded that the expedited procedure for the amendments to the Code of the MLC, 2006, was based on IMO practices, but that the elaborate guidance on the submission of amendments had not been reproduced by the ILO.⁸ A representative of the Bahamas recalled that the MLC, 2006, was subject to continuous amendment, which meant that ratifying countries needed to constantly update legislation that, in many cases, could affect a large number of ships and seafarers. The amendment procedure therefore required further consideration so as to offer guarantees of legal security to facilitate implementation.⁹

4. Existing practices concerning proposals of amendments

10. In the absence of any detailed guidance regarding the manner in which proposals for amendments to the Code of the MLC, 2006, have to be prepared and presented, it is useful to briefly describe existing practices, both within the ILO and the IMO.

⁶ It is interesting to note that, before the meeting, in its comments regarding the proposed amendments to the Code of the MLC, 2006, the Government of Portugal indicated that it was not possible to express an opinion on the specific aspects of the proposals without a clear understanding of the reasoning behind the amendments. See Summary of observations and suggestions on the proposals for amendments to the Code of the Maritime Labour Convention, 2006, para. 7, available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/genericdocument/wcms_448665.pdf.

⁷ *ibid.*, para. 50.

⁸ Final report, Second meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006) (Geneva, 8–10 February 2016), para. 49.

⁹ *ibid.*, para. 51.

4.1. Practice within the International Labour Organization

11. As the amendment provisions in the MLC, 2006, in particular Article XV dealing with amendments to the Code, are the most important innovation of the Convention,¹⁰ the ILO is breaking new ground in this field. However, it is worth examining the limited but rich experience in this area. In addition, the examination of existing practices regarding the revision of other ILO Conventions may be helpful in finding a way forward.
12. Concerning past practices related to the MLC, 2006, three precedent scenarios should be recalled. The first one relates to the amendments to the Code adopted in 2014 relating to Regulation 2.5 – Repatriation, and Regulation 4.2 – Shipowners’ liability. In this case, the proposals for amendment, jointly submitted by the groups of Shipowner and Seafarer representatives, were the result of several years of work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers.¹¹
13. The second scenario concerns the amendments to the Code adopted in 2016 related to Regulation 4.3 – Health and safety protection and accident prevention, and Regulation 5.1 – Flag State responsibilities.¹² While no extensive tripartite discussions had taken place regarding these issues, both proposals had been addressed in other important forums. Regarding Regulation 4.3, the issue of the elimination of shipboard harassment and bullying had been the subject of bipartite discussions at the international level and a *Guidance on Eliminating Shipboard Harassment and Bullying* was in the process of being agreed by the International Chamber of Shipping and the International Transport Workers’ Federation at the time of the submission of the amendment. Concerning Regulation 5.1, the amendment was based on very similar provisions of the IMO’s International Convention for the Safety of Life at Sea (SOLAS), 1974.
14. The third scenario relates to the proposal for amendments to the Code relating to Regulation 2.2 – Wages, submitted in 2016 by the group of Seafarer representatives. While the issue of payment of wages of seafarers held captive by pirates had been mentioned in the context of IMO discussions,¹³ not many elements seemed to be available regarding the solution presented in the proposed amendment. Following a discussion, the STC recognized the importance of the issue, but considered that it required further consideration by a working group. Accordingly, as noted above, it decided to establish a working group to examine issues related to the protection of seafarers’ wages when the seafarer is held captive on or off the ship as a result of acts such as piracy or armed robbery, and to prepare proposals including an amendment to the Code of the MLC, 2006, to address these issues.

¹⁰ Report I(1A), Adoption of an instrument to consolidate maritime labour standards, International Labour Conference, 94th (Maritime) Session, 2006, Note 13.

¹¹ Document GB.322/LILS/3 available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_315447.pdf.

¹² Document GB.326/LILS/6 available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_458136.pdf.

¹³ International Maritime Organization (IMO) (2014): Interim guidelines on measures relating to the welfare of seafarers and their families affected by piracy off the coast of Somalia, submitted by Italy, Republic of Korea, Philippines, the Baltic and International Maritime Council, ICC, ICMA, IFSMA, IMHA, INTERCARGO, INTERTANKO, ITF, the Nautical Institute, and OCIMF. MSC 93/16/1. London. Available at: www.intertanko.com/Documents/MSC%2093-16-1.pdf.

-
15. It should also be noted in relation with the process of amendments to the Code of the MLC, 2006, that so far, the Office has not used the possibility foreseen in Article XV, paragraph 3, according to which the Director-General may add any comments or suggestions deemed appropriate when communicating the proposal for amendment to all Members of the Organization for their observations or suggestions. In fact, the amendments transmitted both in 2014 and 2016 were not accompanied by observations or suggestions from the Office. It is worth mentioning in this connection that Article XV, paragraph 2, requires the “prompt” communication of proposals to ILO Members, which article 11 of the STC Standing Orders sets at not later than one month after receipt of the proposals by the Director-General.
16. Turning to the practice related to other ILO Conventions, it is to be underlined that there is no equivalent procedure to that provided for in Article XV of the MLC, 2006, for the submission of proposals by governments or the employers’ or workers’ groups relating to the adoption or revision of Conventions. Proposals for revising a Convention in whole or in part are considered by the Governing Body, which will place the corresponding item on the agenda of the International Labour Conference.¹⁴
17. In considering the proposals to be placed on the agenda, the Governing Body is required by article 14, paragraph 1 of the ILO Constitution, to consider any suggestions made by the government of any of the Members or by any representative organization of workers or employers, or by any public international organization, but no rules or guidance have been adopted concerning the form of such “suggestions”. In practice, however, the details and justification for potential proposals for standard-setting items are prepared by the ILO under the guidance of the Governing Body.
18. In order to facilitate the Governing Body discussions on the agenda of the Conference, the Office has developed, for internal use, a template for potential agenda item proposals, which include in particular the following elements:¹⁵
- **Source, nature and context of the proposed item** (including: among others, where relevant, the level of support expressed by constituents during previous examination by the Governing Body and during the informal tripartite consultations; ILO action in relation to the topic; and related actions by other international organizations);
 - **Response to the needs and realities of constituents in light of the ILO’s strategic objectives** (including: the number of employers and workers concerned; the geographical scope of the proposed item; any data already available on the proposed item; and the specific needs of developing countries);
 - **Added value** (including: for standard-setting items; references to the available preparatory work; demonstrated added value for standard-setting action; purpose and objective of a Conference discussion of the proposed item; and the urgency of a new standard, or the revision of an existing standard); and

¹⁴ Standing Orders of the Governing Body, section 5.2, available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---jur/documents/genericdocument/wcms_429623.pdf.

¹⁵ References to this template can be found in Document GB.319/WP/GBC/1, p. 23, available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_224245.pdf.

-
- **Preparation for the Conference discussion** (including existing resources in terms of research and analytical work and research gaps to be covered).

19. The ILO, in full consultation with the tripartite constituents, plays an important role in the development of the background of proposals. The use of this template for the partial revision of an existing Convention can be illustrated by a recent example related to the adoption of the 2014 Protocol to the Forced Labour Convention, 1930. In November 2012, as a follow up to the conclusions of a recurrent discussion at the Conference,¹⁶ the Office submitted to the Governing Body a proposal on the basis of the existing template¹⁷ to supplement the ILO's forced labour Conventions to address prevention and victim protection as well as human trafficking for labour exploitation. Following a preparatory meeting of experts on the subject, the Governing Body decided to place the issue on the agenda of the 103rd Session (2014) of the Conference as a standard-setting item.¹⁸
20. It is also relevant to refer to the experience of the amendment of Convention No. 185 on Seafarers' Identity Documents Convention (Revised), 2003. The Annexes of the Convention contain a series of very technical details that can be amended by the Conference, acting on the advice of an ILO tripartite maritime body. This procedure, while not identical, is similar to the one adopted for the Code of the MLC, 2006. In February 2015, a tripartite meeting of experts recommended the amendment of the Annexes of the Convention and requested the Office to prepare a preliminary draft of the amendments.¹⁹ An Ad Hoc Tripartite Maritime Committee met in February 2016 to discuss the proposal prepared by the Office and agreed on a set of amendments to the Annexes that were adopted by the Conference in June 2016.
21. Finally, it is important to recall in this context the well-known role played by the Joint Maritime Commission²⁰ in providing advice to the Governing Body on maritime issues, including standard setting for the shipping industry. This Commission played a key role in the design of the MLC, 2006, when it concluded, in 2001, that many of the existing ILO maritime labour instruments were outdated and not reflective of modern practices, that those which were up to date and pertinent were not sufficiently ratified, and that the best way

¹⁶ A proposal to follow up the resolution and conclusions adopted at the 101st Session (2012) of the International Labour Conference concerning the recurrent discussion on the strategic objective of fundamental principles and rights at work.

¹⁷ Document GB.316/INS/4, available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_192447.pdf.

¹⁸ Document GB.317/PV, available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_214435.pdf.

¹⁹ Document GB.323/LILS/4, p. 4, available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_346449.pdf.

²⁰ The Joint Maritime Commission is composed of a Chairman of the Governing Body; two Governing Body members (one Worker, one Employer); twenty regular Shipowner members; twenty regular Seafarer members; four deputy Shipowner members; and four deputy Seafarer members. Its Standing Orders are available at: www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/jur/governance-meetings/WCMS_431606/lang--en/index.htm.

forward was the adoption of a single “framework” instrument which would consolidate the existing body of ILO maritime Conventions and Recommendations.²¹

4.2. Practices within the International Maritime Organization

22. It is well known that the MLC, 2006, provisions on amendments to its Code draw on IMO convention procedures. It is therefore relevant to briefly examine the way in which the IMO deals with the preparation of proposals of amendments, bearing in mind that, without a tripartite structure, the IMO is fundamentally different from the ILO.
23. IMO conventions, like the MLC, 2006, do not provide indications on the form and content of the proposed amendments. However, the different committees of the IMO have adopted detailed guidelines and a series of checklists which carefully frame the process. IMO members are required to strictly observe those guidelines.
24. For the purpose of this background paper, it is helpful to refer in particular to the *IMO Guidelines on the Organization and Method of Work of the Maritime Safety Committee (MSC) and the Marine Environment Protection Committee (MEPC) and their Subsidiary Bodies*. More specifically, when referring to the submission of proposals for unplanned outputs – which cover the case of proposals calling for new conventions or amendments to existing conventions – the IMO Guidelines state that, to enable the Committees to carry out a proper assessment of proposals for inclusion of unplanned outputs, submissions of such proposals should, at a minimum, contain the following information, including demonstration and documentation:²²
1. *IMO objectives*: Provide evidence as to whether and how the proposal:
 1. is within the scope of IMO’s objectives; and
 2. is strictly related to the scope of the Strategic Plan and contributes to the implementation of the high-level actions established in the Plan.
 2. *(Compelling) need*: Demonstrate and document:
 1. the need for a proposed measure; and
 2. the compelling need addressed by a proposal for a new convention or an amendment to an existing convention.
 3. *Analysis of the issue*: Provide an analysis of the proposed measure, including a plausible demonstration of its practicability, feasibility and proportionality.
 4. *Analysis of implications*: Provide an analysis of the implications of the proposal, addressing the cost to the maritime industry as well as the relevant legislative and administrative burdens.

²¹ Document GB.280/5, available at: www.ilo.org/public/english/standards/relm/gb/docs/gb280/pdf/gb-5.pdf.

²² MSC-MEPC.1/Circ.4/Rev.4, section 4.8 and Annex I.

-
5. *Benefits*: Provide evidence that the benefits in terms of enhanced maritime safety, maritime security or protection of the marine environment expected to be derived from the inclusion of the new item justify the proposed action.
 6. *Industry standards*: Provide information on whether adequate industry standards exist or are being developed.
 7. *Output*: Specify the intended output in SMART terms (specific, measurable, achievable, realistic, time-bound). If a final output cannot be specified, an interim output to be produced before the end of the current biennium should be specified in SMART terms.
 8. *Human element*: Provide the completed Checklist for considering human element issues by IMO bodies to demonstrate that the human element has been sufficiently addressed.
 9. *Priority/urgency*: Provide, with reference to the current Strategic Plan and High-level Action Plan:
 1. evidence for the urgency of the proposed unplanned output;
 2. the date by which the proposed unplanned output should be completed; and
 3. the timescale needed for the respective IMO organ to complete the work.
 10. *Action required*: Specify the action required of the IMO organ.
- 25.** When analysing the implications of the proposals, IMO members are required to use a checklist for identifying administrative requirements and burdens,²³ including costs related to notification and reporting, record keeping, publication and documentation, permits and applications, and any other burden.
- 26.** Non-governmental organizations are also entitled to submit proposals that should be co-sponsored by Member Governments. Such organizations are also able to submit comments and recommendations on outputs for the provisional agenda of any committees or subsidiary bodies, thus providing expert advice, contributing to discussion and enabling optimal decisions to be reached by the organs concerned.²⁴
- 27.** The Committee concerned will carry out a comprehensive and thorough assessment of a proposal before deciding to include an unplanned output in its agenda.²⁵ If, after consideration of a proposal, the Committee decides to incorporate it in the agenda of one of its subsidiary bodies, this body will be responsible for the detailed consideration of the technical aspects of the proposal and the development of appropriate requirements and/or recommendations. The Committee may also request the subsidiary body or other bodies concerned to consider the proportionality and feasibility of the proposal on a preliminary

²³ *ibid.*, Annex V.

²⁴ *ibid.*, section 4.11.

²⁵ *ibid.*, section 4.15.

basis, and to advise it as to whether the unplanned output should be included in the subsidiary body's agenda.²⁶

28. The subsidiary body or subcommittee concerned will therefore consider the proposal for at least one session before presenting the result of its work to the relevant main Committee. Following its discussion, the main Committee may agree with the circulation of the proposed amendment to IMO members for comments before its review by a drafting group and eventual adoption.²⁷ It is important to recall, in this context, that both the MSC and the MEPC meet three times in a two-year cycle and that their sub-committees meet annually.

5. Possible way forward

29. As a general remark, the Seafarer representatives of the Working Group stated that any possible way forward should be considered as a recommendatory guideline that cannot, in law or practice, weaken the provisions of Article XV of the MLC, 2006. Along the same lines, the Shipowner representatives indicated that any new procedure or documentary requirements should not be intended to obstruct future amendments nor lose sight of the goal of the mechanism contained in Article XV of the MLC, 2006, which is to permit an accelerated process of amendments to its Code. The Government of Norway, in a communication transmitted by the Government of France, affirmed in this regard that the purpose of this discussion is not to obstruct future proposals of amendments but to provide member States a fair opportunity to give proper consideration to amendments in order to make informed decisions.

30. The following options were considered by the Working Group during its work by correspondence.

5.1. A template to submit proposals

31. There are converging views among the members of the Working Group that the adoption by the STC of a simple template that may be used to submit proposals can constitute a useful way forward.
32. There are also converging views that the template should include the following elements:
- (a) the purpose of the proposal and the reasons why the proposal is needed;
 - (b) the background of the proposal including existing relevant documentation on the subject known to the proposer; and
 - (c) any suggested transitional measure that the STC should adopt together with the proposed amendments.

²⁶ *ibid.*, section 4.23.

²⁷ Reference to this procedure can be found in IMO conventions. See for example, Article VIII(b)(i) of the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS); Article 16(2)(a) of the International Convention for the Prevention of Pollution from Ships, 1973, and the Protocol 1978 (MARPOL 73/78); and Article XII(a)(i) of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), as amended.

-
33. The Office notes that while Shipowner and Government representatives supported the inclusion in the template of the following elements, Seafarer representatives considered that they are not necessary:
- (a) when relevant, an explanation on why an amendment to Part A of the Code is needed and why an amendment to Part B could not achieve the desired effect;
 - (b) information on any previous bipartite or tripartite international discussions or negotiations known to the proposer on the subject;
 - (c) information on relevant international instruments;
 - (d) the possible (financial, administrative and legislative) implications of the proposal for Seafarers and Shipowners and their organizations and member States, as appropriate;
 - (e) an explanation of how the proposal meets the strategic objective of the MLC, 2006;
 - (f) an analysis of the proposal, including its practicability, feasibility and proportionality; and
 - (g) the benefits of the proposal.
34. In addition, the Government of Singapore suggested including an element on the timescale and the expected entry into force of the proposed amendment.
35. On the basis of the existing agreement and using a model submitted by the Government of Canada, the Office has prepared the template included in the appendix. The Government of Canada considered that the proposed template has not included sufficient sections to properly submit clear and concise proposals to amend the MLC, 2006, and that, in order to meet its purpose, it should cover the points listed above in paragraph 33. ***The Working Group is invited to further discuss the additional elements that should be included in the form.***
36. There are converging views about the idea that in order to ensure that the proposals are sufficiently detailed and allow for constructive discussions, the Officers of the STC could play a role to ensure that any proposal submitted meets the requirements of the template. As a result, when a proposal is considered incomplete, the Officers could request the proposers to amend, clarify or provide further information as necessary within a particular time frame. Only the format and the extent of the information submitted should be considered at this stage without any reference to the substantive nature of the proposal. The Seafarer representatives indicated in this regard that consideration should be given to the way in which a decision is taken in case of lack of consensus among the Officers, as this should not be a reason to block a proposed amendment. A majority of the members agreed that the proposers should retain the right to submit their original proposal unchanged. ***The Working Group may wish to further discuss this possibility.***
37. The Office had requested the views of the members of the Working Group on the incorporation of the use of the template as a recommended practice in the Standing Orders of the STC. This possibility has not gathered general support among the members. Noting that some of those who supported the idea suggested that, in any case, it would be important to give some time for experience and fine-tuning before any such incorporation, the members of the Working Group may wish to suggest that the STC examines this possibility at a later stage. ***The Working Group may wish to further discuss this possibility and set a time frame after which an evaluation of the template could be conducted.***

5.2. Possible development of more detailed procedures in the STC

38. The Office notes that views diverge among the members of the Working Group concerning the possible development of a procedure enabling the STC to refer an amendment proposal to an intersessional Working Group or other subsidiary body for further consideration prior to resubmission to a subsequent session of the STC.
39. While the Government members and the Shipowner representatives support the idea, Seafarer representatives consider that the possibility suggested is already provided for in article 15 of the Standing Orders of the STC related to subsidiary bodies. They therefore indicate that there is no need for further elaboration of such a procedure for the submission of amendments.
40. The Shipowner representatives state that while article 15 of the Standing Orders refers to the establishment of working groups or other subsidiary bodies, it does not contain information about the actual procedure enabling the STC to refer an amendment proposal to an intersessional working group or other subsidiary body for further consideration prior to resubmission to a subsequent session of the STC. The lack of clear provisions in this regard could create legal uncertainty and delays in the amendment process. They therefore suggest to include a simple reference to this possibility in article 15 of the Standing Orders. Along the same lines, the Government of Canada indicates that article 15 deals with the procedure for accepting an amendment but not with the necessary information required for filing the proposed amendment.
41. *In view of the diverging views on this issue, the Working Group may wish to further discuss this proposal during the meeting.*

5.3. Other suggestions

42. Seafarer and Shipowner representatives agreed that proposals for amendments by the social partners could be discussed on a preliminary basis either formally through the Joint Maritime Commission, or through some informal process before being sent to the ILO. It was highlighted, however, that each group should retain the right to initiate proposals separately.
43. The Government of Norway, in a communication transmitted by the Government of France, indicated that two sessions of the STC would be needed for the adoption of amendments. The first meeting would allow initial discussions to see whether a proposed amendment is acceptable, while the second meeting would be dedicated to the adoption (or not) of the proposed amendment. This proposal, supported by the Governments of Canada and Singapore, was firmly opposed by the Shipowner and Seafarer representatives of the Working Group.

6. Conclusions

44. The members of the Working Group recognize the need to improve the process for preparing proposals for amendments to the Code of the MLC, 2006, without hindering the rights to submit such proposals recognized in Article XV of the MLC, 2006.
45. The adoption by the STC of a template intended to explain the purpose and background of the proposal, to be used on a voluntary basis, has gathered general support and is presented as the most appropriate way forward. A draft template developed by the Office is annexed to this document. The Working Group is invited to maintain further discussions as to: (i) the

additional elements to be included in the template; (ii) the role to be played by the Officers of the STC in ensuring that any proposal submitted meets the requirements of the template; and (iii) the incorporation of the use of the template as a recommended practice in the Standing Orders of the STC.

- 46.** The Working Group is also invited to further discuss the possible adoption of a more detailed procedure allowing the STC to establish a subsidiary body for a preliminary examination of proposed amendments, taking into account that this option has not received general support at this stage.

* * *

Appendix



**TEMPLATE FOR
PROPOSAL FOR AMENDMENT TO THE CODE OF THE
MARITIME LABOUR CONVENTION, 2006, AS AMENDED (MLC, 2006)**

Date: *day/month/year*

Name of the person submitting the proposal:

Email address:

Subject:

Entities that support the proposed amendments:

| Organization | Country |
|--------------------------|---------|
| Government | |
| Shipowner representative | |
| Seafarer representative | |

Background:

(Explain the circumstances leading up to the proposed amendment)

Purpose:

(Explain the reasons for which the proposed amendment is needed)

Specify any suggested transitional measure that the Special Tripartite Committee (STC) should adopt with the proposed amendment:

Proposed Amendment

| Standard | Guideline | Current Text | Proposed Text |
|----------|-----------|--------------|---------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Please attach to this template any relevant documentation related to the background and purpose of the proposed amendment.