

Shipowners Group

Version 4
17 October 2002

Informal proposal on Enforcement and Control

- 1- It has been agreed that the Convention will have to be enforceable and must also be flexible.
- 2- Enforceability will be achieved through two channels; through the provisions of the Convention by the Member States and by Port State Control.
- 3- Port State Control will only be able to inspect and control the living and working conditions on board ship.
- 4- Flexibility is necessary to allow Member States the possibility of ratification within the confines of domestic legislation and practice and would be achieved by the principle of substantial equivalence, optional 'families' or a combination of both and by the Member State's choice of standard where the Convention so permits.
- 5- The challenge therefore becomes the effective enforcement and control of different versions of the same Convention, a Convention that will have differing determinations of its flexible provisions. As pointed out by the office (2002/1 para. 42) substantial equivalence makes port state control of certain aspects of Convention 147 subjective, a situation that should be avoided.
- ✕✕ 6- One proposal is to combine certification of compliance with a separate document, which would be maintained on board each ship under the flag of a ratifying State. It is envisaged that the document would contain the living and working conditions provisions of the convention as well as, in the appropriate places, the relevant Member State's determination of the flexible provisions of those articles of the convention together with simple references to domestic law.
- 7- Certification of Compliance will be made by the flag State, with the primary purpose of providing the ship with prima facie evidence that the provisions of the Convention applicable to the living and working conditions on board are complied with. Port State Control would only make further inspections of the ship if there were clear grounds to justify further inspection.
- ✕ 8- The document would be issued under the authority of the flag State, for the reason that all ships registered under one flag State will be subject to the same

interpretation of the Convention. The document would therefore be the same for every ship registered under a certain flag, with any minor differences where domestic legislation allows for differing requirements on ships in different trades.

9- The document would, furthermore, form a part of the ratifying member state's follow-up procedure under Art. 22 of the ILO Constitution (described in Appendix II of 2002/1) and would therefore be indirectly approved by the ILO as meeting the provisions and intention of the Convention.

10- In addition, the Convention should provide at the third level that each flag State should adopt a mechanism that will ensure that shipboard living and working conditions are continuously complied with on each ship to which the Convention applies. The precise mechanism to be adopted will be determined by each flag State.

11- The document would have the following uses:

- It would describe the conditions under which the Certificate of Compliance had been issued,
- It would be used by the Port State Control inspector to check living and working conditions on board against the flag State's interpretation of the flexible provisions of the Convention,
- It would be a reference document for the seafarers serving on board the ship. It is envisaged that the initial handling of on-board complaints could be assisted by reference to such a document.
- It would be a document providing objective standards, easily used by inspectors who might not be experts in labour issues. This would remove subjectivity and, with it, the necessity to train labour inspectors for both flag State and port State inspections.
- It would be used by the member State as evidence of application of the Convention under the ILO Article 22 reporting procedures.