



## SIXTH ITEM ON THE AGENDA

**Establishment of arrangements and procedures under Article 5, paragraphs 6-8, of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)**

1. In accordance with the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), adopted by the International Labour Conference in June 2003, the Governing Body is to make arrangements for its approval of a list of ratifying Members which fully meet the minimum requirements concerning processes and procedures for the issue of seafarers' identity documents (SIDs), including quality control procedures (Article 5, paragraph 6, of the Convention). Those Members are required to carry out independent evaluations of the administration of their system for issuing SIDs and provide the Director-General with reports on them (without prejudice to their normal reporting obligations under article 22 of the ILO Constitution) (Article 5, paragraph 4). Those reports are to be made available to the other ratifying Members (Article 5, paragraph 5) and the Governing Body is requested (Article 5, paragraph 8) to establish procedures allowing for Members which have been or may be excluded from the approved list, as well as interested Governments of ratifying Members and representative shipowners' and seafarers' organizations, "to make their views known to the Governing Body, in accordance with the arrangements referred to above and to have any disagreements fairly and impartially settled in a timely manner". This provision is particularly important as "the recognition of seafarers' identity documents issued by a Member is subject to its compliance with the minimum requirements" (Article 5, paragraph 9), and non-recognition could have serious economic consequences for the Member concerned, its shipowners and seafarers.
2. A tentative outline of arrangements and procedures of the kind referred to in the Convention is set out below. It has been prepared by the Office after informal consultations with representatives of interested governments and of the shipowners' and seafarers' organizations which took place on 27 and 28 September 2004. In the light of the comments and suggestions provided at the present session of the Governing Body, it is proposed to submit a draft text of arrangements and procedures for adoption by the Governing Body at its 292nd Session in March 2005.
3. It is suggested that the arrangements should essentially be designed to maintain a balance between various different needs, so as to ensure that:

- a reliable list of Members meeting the minimum requirements is available and up to date;
  - flaws in a Member's system for the issue of SIDs are promptly identified;
  - the position of Members which are not on the approved list or which it is proposed to exclude from that list should be considered fairly, impartially and promptly; and
  - this international overview does not involve significant costs for the Organization and for ratifying Members.
4. The arrangements will also need to reflect the request made by the Conference to the Governing Body in a resolution adopted at the same time as the Convention "to consider making arrangements for representatives of Governments which have ratified the Convention as well as shipowners' and seafarers' organizations to be involved in the review of the reports submitted by Members concerning the independent evaluations of the administration of their system for the issuance of seafarers' identity documents and to provide advice to the Governing Body so that it can maintain a list of Members which fully meet the minimum requirements referred to in the Convention".
5. As pointed out in paragraph 1 above, the arrangements will need to take into account the reports filed by member States in accordance with article 22 of the ILO Constitution. In this connection, there may well be ways of facilitating the task of ratifying Members with respect to their reporting obligations. The Governing Body might, in particular, like to consider the appropriateness of allowing governments to include the particular information required for the technical reports referred to in the preceding paragraph in their general report on implementation of the Convention under article 22 of the Constitution (especially their first report after ratification). The conclusions reached on the technical information during the review process referred to below, which might be more useful to the Committee of Experts than the information itself, could later be made available to the Committee by the Office.
6. In addition, the arrangements should take account of the importance given by the Conference, in its resolution concerning technical cooperation relating to seafarers' identity documents, to assisting countries with respect to the necessary technology, expertise and processes.
7. *Arrangements concerning the list of Members which fully meet the minimum requirements concerning processes and procedures for the issue of seafarers' identity documents* could be on the following lines:
- (a) *General approach.* In the informal consultations referred to above, two major points became clear: the first was that the success of the Convention depended upon the complete reliability of the list to be approved under Article 5, paragraph 6, of the Convention; in particular, in order to protect the credibility of the list, the name of a Member should be included only where the Organization was sure that the Member's processes and procedures fully met the minimum requirements of the Convention. A system for the provisional inclusion of Members on the list in certain cases was therefore not recommended. In order to be sure that the requirements were being met – and this was the second major point – the Organization's review would necessarily have to be based on the reports that Members are to provide on the independent evaluations of the administration of their system for issuing seafarers' identity documents, to be carried out at least once every five years. Provided that the evaluation had been performed by an independent and reliable authority or enterprise and had shown that the minimum requirements were being met, the Member concerned could normally be included on the list without further inquiries. Such an

approach, based on the independent evaluation report, would be in the interest of both the Organization and ratifying Members. It would lighten the Organization's task of assessing compliance with the minimum requirements. It would, at the same time, give Members a large measure of certainty that the result of the international oversight would be positive, especially as they would have an opportunity (possibly with the assistance of the evaluating authority or enterprise) to correct any defects found in their system before the report was submitted to the ILO.

- (b) *Documentation required for inclusion on the list.* In order to be included on the list, the Members that had ratified the Convention (or had made a notification of provisional application in accordance with its Article 9) would, under the proposed arrangements, provide the International Labour Office with the following three items (in English, French or Spanish or accompanied by any necessary translation into one of those languages):
- (i) a statement in electronic form outlining the processes and procedures that are in place to achieve the mandatory results referred to in Part A of Annex III of the Convention;
  - (ii) a copy of the report on the first independent evaluation, also in electronic form;
  - (iii) a specimen of the seafarers' identity document issued by the Member.<sup>1</sup>
- (c) *Action required for a Member's maintenance on the list.* The items referred to above would need to be resubmitted after each subsequent independent evaluation (carried out at intervals of not more than five years). The report on such evaluations would normally be much shorter than the first one, and the information required under (i) and (iii) of (b) above would only need to be updated where necessary. If a new report was not submitted within the prescribed five years, the Office would inform the Governing Body accordingly. The name of a Member would normally be removed from the list by the Governing Body if it failed to heed a reminder from the Governing Body to submit a report.
- (d) *Examination by the Office.* The documentation provided by Members would be examined by the International Labour Office, which would have recourse to the necessary technical and operational knowledge and expertise, with respect to the requirements of Annex III of the Convention, especially quality controls. At the same time, the shipowners' and seafarers' organizations referred to in Article 5, paragraph 4, of the Convention and the other ratifying Members, referred to in paragraph 5 of that Article, would be given a reasonable opportunity to provide (electronically) comments to the Office on the evaluation reports. Any such comments would be transmitted by the Office to the government of the Member concerned, which would be given a reasonable opportunity to state its position. The Office would then electronically forward the documentation for tripartite review, together with its opinion concerning inclusion of the Member concerned on the list.
- (e) *Tripartite review mechanism.* Having regard to the International Labour Conference's resolution referred to in paragraph 4 above, the Governing Body would establish a two-level mechanism for the review of the independent evaluation reports and for making recommendations to the Governing Body and advising the Office on any action that they may be required to take with respect to the list of Members referred to in Article 5 of the Convention. Most of the work would be performed at the first level

<sup>1</sup> The usefulness has been pointed out of making a copy of these specimens available to national immigration authorities.

by a “review group”, consisting of four persons appointed by the Governing Body. Two of the members would be Government representatives of countries that had ratified the Convention; one member would be nominated by the international organization of shipowners and one by the international organization of seafarers. The members of the review group would have to be familiar with the requirements of the Convention and have some knowledge of quality control procedures. They would not be required to have more specialized qualifications, as they would benefit from the expertise made available by the Office. For any case that reached the second level (see below), a “special review board” would be established by the Governing Body with the same configuration as the review group – i.e. two Government representatives, one Shipowner representative and one Seafarer representative. The members would be chosen on account of their specialized technical or operational knowledge of the processes and procedures referred to in Article 5 of the Convention and Annex III, including quality control procedures. In the case of both the group and the board, substitute members would be appointed to act in the absence of the corresponding member.

- (f) *Procedure at the first level.* The review group would act solely through electronic correspondence and could only take decisions on the basis of consensus. Before any decision was taken to recommend that the name of a ratifying Member not be included on the list, or that it be removed from the list, the government concerned would be given an opportunity to submit (electronically) a statement of its position to the members of the group.
- (g) *Procedure at the second level.* Whenever consensus was not reached at the first level, and in any other case that might be specified in the arrangements (see (j) below), the matter would be dealt with by the special review board. The board would always hold a meeting and provide interested parties with an opportunity to submit a statement of their positions. It would be able to take decisions by a majority if consensus could not be reached. Before making a recommendation for non-inclusion or removal from the list, the special review board could, if invited to do so by the Member concerned, request the Office to make arrangements for further inquiries to clarify the situation in the country concerned, possibly accompanied by measures of assistance. The Member would have to cover the cost of such arrangements and measures (unless they could be made available under the Organization’s technical cooperation programme).
- (h) *Preparation of a report for the Governing Body.* The recommendations or advice provided at the first or second level of the tripartite review would be communicated electronically to the Office, which would include them in a report for submission to the Governing Body at its next session, where feasible. The report would clearly state the reasons for any recommendation not to include the name of a Member on the list or to remove its name. A copy of all relevant documentation, including a copy of the independent evaluation and any related expert opinion, as well as of submissions made during the tripartite review of the evaluation reports or in the context of the ad hoc procedures referred to below, would be made available to the Governing Body at its request.
- (i) *Ad hoc procedures.* As envisaged in Article 5, paragraph 8, of the Convention, ratifying Members and representatives of shipowners’ and seafarers’ organizations could make a request for a Member’s exclusion from the list. Similarly, a Member could make a request for its name to be restored to the list on the ground that the reasons for its non-inclusion did not apply or no longer applied. In both cases, the reasons for the request concerned would need to be clearly stated and accompanied by clear evidence in support.

- (j) *Procedure for dealing with the requests.* In order to make sure that the Organization's resources were used only for cases that had a sufficient basis, the requests (in English, French or Spanish) would be promptly transmitted by the Office to the first-level review group for a preliminary decision. *Where removal from the list was being requested*, the Office would invite the Member concerned to comment on the request and would then forward the request and the comments to the review group for a decision as to whether there was a prima facie case in favour of removal. In the absence of a decision to that effect, the request would simply be communicated to the Governing Body for information. *In the case of requests to be included on the list*, the purpose of the preliminary review would be to verify that there was sufficient information to enable a decision to be taken on the substance of the request. The review group could decide that the Member should provide the Office with further material (such as an independent evaluation report) before the request was proceeded with. Requests for removal from the list which appeared prima facie to be founded and requests for inclusion, when completed where necessary, would then follow (*mutatis mutandis*) the procedure set out for the consideration of evaluation reports under (d) to (h) above, except that the tripartite review under (e) would proceed directly to the second level of the special review board.
- (k) *Technical cooperation.* Where the review group or the special review board concluded that a Member did not fully meet the minimum requirements concerning processes and procedures for the issue of seafarers' identity documents, it would have to recommend non-inclusion or removal from the list. In such a case, it would have a discretion to request the Office to inform the Governing Body of appropriate measures of technical cooperation that might be available to redress the defects in the Member's processes and procedures.
- (l) *Governing Body procedures.* For the consideration of the advice emanating from the tripartite review mechanism, including the approval of the list (see (h) above), governments that were not already represented on the Governing Body would be invited to take part in any discussion concerning their own evaluation reports and their requests to be included on the list as well as requests to remove their names from the list. They would have the same rights as governments represented in accordance with article 5bis of the Standing Orders of the Governing Body. The chairperson(s) concerned would be invited to assist the Governing Body. Representatives of governments or organizations that had opposed a Member's inclusion on the list would be given an opportunity to submit further observations, orally or in writing.
- (m) *Review of the arrangements.* Because of their pioneering nature, the arrangements adopted by the Governing Body under Article 5 of the Convention would need to be reviewed after an interval of not more than five years.

**8. *The Committee on Legal Issues and International Labour Standards may wish to recommend, subject to such comments and suggestions as the Committee may make, that the Governing Body approve the general lines of the preceding paragraphs, with a view to their development into a set of proposed arrangements to be submitted to the Governing Body at its next session.***

Geneva, 7 October 2004.

*Point for decision:* Paragraph 8.

## Annex

### Proposed procedure for establishing the list referred to in Article 5(6) of Convention No. 185

