



ELEVENTH ITEM ON THE AGENDA

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

1. At the Governing Body's 291st Session in November 2004, the Office submitted to the Committee on Legal Issues and International Labour Standards a paper¹ containing an outline of proposed *Arrangements concerning the list of Members which fully meet the minimum requirements concerning processes and procedures for the issue of seafarers' identity documents* pursuant to the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185). In accordance with paragraph 6 of Article 5 of the Convention, this list is to be approved by the Governing Body under arrangements drawn up by it. The list is particularly relevant in the context of paragraph 9 of Article 5, which provides that the recognition of seafarers' identity documents (SIDs) issued by a Member is subject to its compliance with the minimum requirements referred to. Inclusion of a Member on the list would give rise to a strong presumption that the Member is indeed fully meeting the minimum requirements, whereas non-inclusion would lead to the opposite presumption.
2. This outline submitted at the last session took account of certain requirements mentioned by the International Labour Conference at the time of adoption of the Convention, in particular the need for tripartite involvement in the review of the independent evaluation reports to be submitted in accordance with the Convention as well as the importance of technical cooperation. The outline also relied heavily on advice given to the Office in informal tripartite consultations held in September 2004. The present paper proposes – in Appendix I – a draft text for such Arrangements, which is based on the previous outline and takes account of certain comments made during the related discussion in LILS. Appendix II presents these procedures in the form of flowcharts.
3. The draft Arrangements are essentially designed to maintain a balance between different needs, so as to ensure that:

¹ GB.291/LILS/6.

- 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 remove 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. In accordance with the requirements of the Convention, the draft Arrangements consist of a regular procedure and ad hoc procedures. The regular procedure (set out in section III of the draft in Appendix I) seeks to achieve the best blend of reliability and economy and will hopefully cover most of the operations to be carried out under the Arrangements. It is based on the assumption that ratifying Members will properly respect their obligation to periodically carry out independent evaluations of the administration of their systems for issuing SIDs, including quality-control procedures, in accordance with Article 5, paragraph 4, of the Convention. An adequate report of this kind would (as proposed in paragraph 25 of the draft in Appendix I) be a precondition to inclusion on the list of countries fully meeting the Minimum Requirements. With an adequate report, it is expected that most of the cases would lead to a favourable recommendation at the first level of the tripartite review: namely, the Review Group, referred to in paragraphs 7 to 11 of the draft. In order to achieve the maximum economy, the members of this Group would not be required to have in-depth expertise in the subject, would work by electronic correspondence and mainly in English. At the same time, they would benefit from the expertise provided by the Office, as well as the latter's conclusions on the case concerned. If there is consensus among the four members of the Group, its recommendation would be submitted to the Governing Body through the Office, subject to giving the Member concerned an opportunity to state its position before any adverse recommendation is made (see paragraph 10 of the draft).
5. If consensus is not reached at the first level, the case would proceed to the second level of tripartite review: namely, the Special Review Board, referred to in paragraphs 12 to 19 of the draft. The proceedings would then take on the character of a dispute settlement procedure, in accordance with the requirement (paragraph 8 of Article 5) "to have any disagreements fairly and impartially settled in a timely manner". The Board would consist of experts in the subject and hold hearings of the interested parties. There would also be a little more flexibility in the use of languages.
6. The same emphasis on the fair and impartial settlement of disagreements is given in the provisions in section IV of the draft relating to the ad hoc procedures envisaged in the Convention. Requests by Members to have their names included on the list or restored to the list, as well as requests to have a Member removed from the list, would be heard at the second level of the Special Review Board. However, in order to avoid the unnecessary expenditure of resources, there would first be a summary examination at the first level to ensure that those hearings are limited to cases that are sufficiently substantiated (see paragraphs 37 and 44 of the draft).
7. The draft also seeks to give the Governing Body an overall control over the whole procedure, without unduly burdening it. The Governing Body would not simply be free to decide the case before it as it thinks fit after having duly considered the recommendation made by the appropriate tripartite body, but it would also be provided with a report summarizing the procedure of each case, and indicating any differences of opinion (see paragraph 29 of the draft) in the various stages of the procedure. It would also have to be

informed of cases where requests are not proceeded with (see paragraph 44), and would, at its request, have access to all material submitted or generated in the proceedings. In this way, it would be in a position to raise questions relevant, for example, to the quality of the expertise and conclusions provided by the Office and to the efficacy of the actions of the two tripartite review bodies.

- 8. *The Committee on Legal Issues and International Labour Standards may wish to recommend that the Governing Body approve the Arrangements set out in Appendix I to this paper, subject to such comments and amendments as the Committee may make.***

Geneva, 11 February 2005.

Point for decision: Paragraph 8.

Appendix I

Arrangements concerning the list of Members which fully meet the minimum requirements concerning processes and procedures for the issue of seafarers' identity documents

I. Purpose of these Arrangements

1. These Arrangements have been adopted by the Governing Body in accordance with paragraphs 6 to 8 of Article 5 of the Seafarers' Identity Documents Convention (Revised), 2003 (referred to below as "the Convention").
2. Under paragraph 6 of that Article, the Governing Body is to approve a list of Members (referred to below as "the List"), which have ratified the Convention and fully meet the minimum requirements concerning processes and procedures for the issue of seafarers' identity documents, including quality-control procedures (referred to below as the "Minimum Requirements"). These Arrangements (in section III below) set out the procedures to be followed for the initial inclusion and periodic maintenance of Members on the List.
3. These Arrangements also (in section IV below) indicate how a Member may, as envisaged in paragraph 8 of Article 5, make an ad hoc request either to have its name included on the List or restored to the List or to have the name of another Member removed from the List.
4. In these Arrangements, references to Members that have ratified the Convention also cover Members that have made a notification of provisional application in accordance with Article 9 of the Convention.
5. All decisions required under these Arrangements are to be taken by the Governing Body after duly considering the recommendation of the appropriate tripartite review body referred to below as to whether or not the Member concerned fully meets the Minimum Requirements. This recommendation shall itself be made upon the basis of the expert opinion provided to the review body and in full respect for the principles of due process.

II. Tripartite review bodies

6. A tripartite Review Group and a tripartite Special Review Board shall be established to make the necessary recommendations to the Governing Body and to provide the International Labour Office with such advice as it may request with respect to action to be taken in connection with the List, including the action, envisaged in paragraph 7 of Article 5, in the case where inclusion on the list is contested on solid grounds.

The Review Group

7. The Review Group shall consist of four persons appointed (or reappointed) by the Governing Body for the period decided by it. Two members of the Review Group shall be Government representatives of countries that have ratified the Convention; one member shall be nominated by the international organization of shipowners and one by the international organization of seafarers. Each of the members of the Review Group shall be familiar with the requirements of the Convention and have some knowledge of quality-control procedures. They shall act in an individual capacity and impartially. They shall not participate in any case in which they have an interest or might be considered to have an interest. They should have a good working knowledge of the English language and preferably a good working knowledge of French or Spanish.
8. The Governing Body shall also appoint two representatives of ratifying governments and one Shipowner and one Seafarer representative, nominated in the manner set out above, to act as substitutes in any case where the corresponding Member is unable to act.

9. The members shall elect one of the Government representatives to act as chairperson. The chairperson shall be responsible for coordinating the action of the Review Group, requesting information or material from interested parties or the Office on behalf of the Group and communicating its recommendations to the Governing Body and advice to the Office. Any necessary decisions of a procedural nature shall be taken by the chairperson, after consulting the other members of the Group.
10. The Review Group shall act solely through electronic correspondence and may only take decisions on the basis of consensus. Before any decision is taken to recommend that a ratifying Member does not fully meet the Minimum Requirements, the chairperson shall give the government concerned an opportunity to submit (electronically) a statement of its position to the members of the Group.
11. Where, in the opinion of the chairperson, consensus cannot be reached on any recommendation to be made to the Governing Body, the case shall be referred to the Special Review Board described below.

The Special Review Board

12. The Special Review Board shall consist of four persons appointed (or reappointed) by the Governing Body for the period decided by it. Two members of the Special Review Board shall be Government representatives of countries that have ratified the Convention; one member shall be nominated by the international organization of shipowners and one by the international organization of seafarers. The members shall 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. They shall act in an individual, quasi-judicial capacity. They shall not participate in any case in which they have an interest or might be considered to have an interest.
13. The Governing Body shall also appoint two representatives of ratifying governments and one Shipowner and one Seafarer representative, nominated in the manner set out above, to act as substitutes in any case where the corresponding member is unable to act.
14. The members shall elect one of the Government representatives to act as chairperson. The chairperson shall be responsible for directing the discussions of the Special Review Board, requesting information or material from interested parties or the Office on behalf of the Board and communicating its recommendations to the Governing Body and advice to the Office. Any necessary decisions of a procedural nature shall be taken by the chairperson after consulting the other members of the Board.
15. The Special Review Board shall deal with cases referred to it in accordance with paragraph 11 above and with any other case specified in these Arrangements (see, in particular, Section IV below).
16. The members of the Board shall meet to consider the cases referred to it. All interested parties shall be given an opportunity to submit a statement of their position to the Board, and, if they so request, to be heard by the Board. They shall also have the right to receive or hear the statements made by other interested parties. The term "interested party" refers to the government whose inclusion on the List or removal from it is under consideration and any other government or organization, which has, in accordance with the procedures set out below, submitted comments to the Office on such inclusion or removal or requested the Member's removal from the List. The Board may request the Office to make arrangements for the submission of other evidence including the hearing of experts or other persons.
17. Before making any recommendation that the Member concerned does not fully meet the Minimum Requirements, the Special Review Board may, if invited to do so by the government whose case is under consideration, request the Office to make arrangements for further inquiries to clarify the situation in the country concerned, possibly accompanied by measures of assistance. Such arrangements and measures shall be at no cost to the Organization (unless funds have been allocated for that purpose under the Organization's technical cooperation programme).
18. Decisions of the Special Review Board shall, wherever possible, be taken by consensus. Where, in the opinion of the chairperson, consensus cannot be reached, the decision may be taken by a simple majority.

19. The Special Review Board may, if it considers necessary, draw up standing orders governing its procedures that are consistent with the preceding paragraphs as well as with the principles of due process.

Language

20. The Review Group and the Special Review Board may request the author of statements or other submissions made to them to provide them with a translation into a specified language, which may be English, French or Spanish.

III. Regular procedure for initial inclusion and maintenance on the List

A. Inclusion on the List

Documentation required for inclusion

21. In order to be included on the List, the Members that have ratified the Convention (see paragraph 4 above) shall 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):
- (a) 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;
 - (b) a copy, also in electronic form, of the report on the first independent evaluation carried out by the Member in accordance with paragraph 4 of Article 5 of the Convention; and
 - (c) a specimen of the seafarers' identity document issued by the Member.

Examination by the Office

22. The documentation provided by Members shall be examined by the International Labour Office, which shall have recourse to the necessary technical and operational knowledge and expertise, with respect to the requirements of Annex III to the Convention, especially quality controls.

Invitation for comments

23. The Office shall also promptly invite the shipowners' and seafarers' organizations referred to in Article 5, paragraph 4, of the Convention and the other ratifying Members, receiving the reports in accordance with paragraph 5 of that Article, to provide comments to the Office on the evaluation report concerned. Such comments shall be submitted in an electronic form, in the language of the report or, where this is not English, French or Spanish, in the language of the translation accompanying the report, and within a reasonable deadline set by the Office. Any such comments shall be transmitted by the Office to the government of the Member concerned, which shall be given a reasonable opportunity to provide the Office with a statement of its position (in electronic form) on the comments in the language in which the comments were made.

Tripartite review

24. The Office shall then electronically forward to the members of the Review Group, with a copy to the ILO Member concerned:
- (a) the documentation received by it in accordance with paragraph 21 above;
 - (b) a copy of the expert opinion and other relevant material received in the context of paragraph 22;
 - (c) any comments and statements received in accordance with paragraph 23; and
 - (d) the Office's assessment of the adequacy of the independent evaluation report as well as the Office's conclusions as to whether or not the Member concerned fully meets the Minimum Requirements.

25. The Review Group (or the Special Review Board, if the case is referred to it) shall first verify that the documentation provided is sufficient for its deliberations and, in particular, that the evaluation report meets an appropriate standard of independence and reliability. If it finds that this is not the case, it shall so inform the Member concerned, with a clear statement of its reasons, and specify what must be done by the Member to rectify the matter. If the necessary rectification is not made within a reasonable deadline, the recommendation to the Governing Body shall be based on the presumption that the Member concerned does not fully meet the Minimum Requirements.
26. If the Review Group is unable to reach consensus as to whether or not the Member concerned fully meets the Minimum Requirements, its chairperson shall, in accordance with paragraph 11 above, forward the documentation received to the chairperson of the Special Review Board, informing the Office accordingly.
27. The Review Group or the Special Review Board, as the case may be, shall, as soon as possible, electronically transmit to the Office its recommendation as to whether or not the Member concerned fully meets the Minimum Requirements. The recommendation shall be accompanied by copies of all relevant statements and other submissions made to the Review Group or to the Special Review Board. Dissenting opinions of members of the Board shall also be provided, especially where it was not possible to agree upon a recommendation.

Technical cooperation

28. Where the Review Group or the Special Review Board concludes that a Member does not fully meet the Minimum Requirements, it may 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.

Consideration by the Governing Body

29. Upon receipt of the recommendation of the appropriate review body, the Office shall prepare a report for submission to the Governing Body at its next session, where feasible. In addition to transmitting the recommendation, the report shall indicate any significant differences between the recommendation and the expert opinion or the Office's assessment and conclusions referred to under (b) or (d) of paragraph 24 above. The report shall also clearly state the reasons for any recommendation that the Member concerned does not fully meet the Minimum Requirements. A copy of all relevant documentation, including a copy of the independent evaluation and expert opinions 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 shall be made available to the Governing Body at its request.
30. Governments that are not already represented on the Governing Body shall be invited to take part in any discussion in which they are interested parties within the meaning of paragraph 16 above. They shall have the same rights as governments represented in accordance with article 5bis of the Standing Orders of the Governing Body. The chairperson(s) concerned may be invited to assist the Governing Body. Representatives of governments or organizations that had opposed a Member's inclusion on the list shall be given an opportunity to submit further observations, orally or in writing.

Approved list

31. Having duly considered the recommendation, the Governing Body shall decide whether or not the Member, which is the subject of the recommendation, fully meets the Minimum Requirements. Members fully meeting the Minimum Requirements shall thereupon be included on the List and Members that no longer fully meet them shall be removed from the List with immediate effect.

B. Maintenance on the List

3. In order to have their names maintained on the List, Members shall, after each subsequent independent evaluation to be carried out at intervals of not more than five years in accordance with paragraph 4 of Article 5 of the Convention, 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):

- (a) a statement in electronic form updating the outline of the processes and procedures that was previously submitted;
 - (b) a copy, also in electronic form, of a report on the new independent evaluation supplementing the report submitted on the previous independent evaluation; and
 - (c) a specimen of the seafarers' identity document issued by the Member or a statement that the specimen submitted previously has not changed.
33. Upon receipt of the above documentation, the procedures set out in paragraphs 22 to 31 above shall apply.
34. If the above documentation is not received from any Member included on the List within five years from the submission of its report on the last independent evaluation, the Office shall refer the matter to the Governing Body. If a Member fails to heed a reminder by the Governing Body to provide the documentation, the Governing Body shall decide to remove the Member's name from the List, unless it considers that such action would not be appropriate.

IV. *Ad hoc procedures*

A. Requests to be included on the List

Preliminary requirements

35. Any Member whose name has not be included on the List or has been removed from the List may request the inclusion or restoration of its name on the ground that the reasons for non-inclusion do not apply or no longer apply. The request in electronic form shall be transmitted to the Office, in the English language. It shall clearly state the reasons justifying inclusion or restoration and be accompanied by clear evidence in support.
36. The Office shall promptly forward the request, together with the accompanying documentation as well as the Office's comments on the request, to the members of the Review Group, with a copy to the ILO Member making the request.
37. The Review Group shall verify that the information and material provided is sufficient to enable a decision to be taken on the substance of the request. Where this is not the case, the Review Group may (subject to the necessary consensus) require the Member concerned to provide further information or material (such as an independent evaluation report) before the request can be proceeded with.

Examination by the Office

38. Once the request has, where applicable, been completed with the information or material required by the Review Group, the Member concerned may transmit it to the Office. The documentation provided shall be examined by the Office, which shall have recourse to the necessary technical and operational knowledge and expertise, with respect to the requirements of Annex III to the Convention, especially quality controls.

Invitation for comments

39. The Office shall also promptly invite the shipowners' and seafarers' organizations of the Member concerned, as well as the other ratifying Members to provide comments to the Office on the request. Such comments shall be submitted, in an electronic form, in English, French or Spanish, and within a reasonable deadline set by the Office. Any such comments shall be transmitted by the Office to the government of the Member making the request, which shall be given a reasonable opportunity to provide the Office with a statement of its position (in electronic form) on the comments.

Tripartite review

40. The Office shall electronically forward to the Special Review Board, with a copy to the Member making the request:

- (a) the request and accompanying documentation;
- (b) a copy of the expert opinion and other relevant material received in the context of paragraph 38;
- (c) any comments and statements received in accordance with paragraph 39, and the Office's conclusions as to whether or not the Member concerned fully meets the Minimum Requirements.

Further processing

41. The request shall then be dealt with in accordance with the procedures set out in paragraphs 27 to 31 above.

B. Requests to remove a Member from the List

Preliminary requirements

42. Any ratifying Member, (see paragraph 4 above) and any organization referred to in Article 5, paragraph 4, of the Convention may request that the name of a Member be removed from the List on the ground that the Member does not fully meet the Minimum Requirements. The request in electronic form shall be transmitted to the Office, in the English language. It shall clearly state the reasons justifying the removal of the Member's name from the List and be accompanied by clear evidence in support.
43. After giving the Member whose removal from the List is requested a reasonable opportunity to state its position (electronically, in English), the Office shall promptly forward the request, together with the accompanying documentation as well as any statement made by the Member concerned and the Office's comments, to the members of the Review Group. Copies of this material shall be sent to the ILO Member or organization making the request and to the ILO Member whose removal is requested.
44. The Review Group shall ascertain whether or not the request shows a prima facie case justifying removal from the List. If it decides that such a case has not been made out or is unable to agree on its decision, it shall so inform the Office, the Member or organization making the request and the Member whose removal is requested. The Office shall then transmit a copy of the request to the Governing Body for information.

Examination by the Office

45. If the Review Group decides that the request shows a prima facie case justifying removal from the List, it shall inform the Office accordingly. The documentation provided shall be examined by the Office, which shall have recourse to the necessary technical and operational knowledge and expertise, with respect to the requirements of Annex III to the Convention, especially quality controls.

Invitation for comments

46. The Office shall also promptly invite the shipowners' and seafarers' organizations of the Member concerned, as well as the other ratifying Members to provide comments to the Office on the request in the light of any statement received from the Member concerned (see paragraph 43 above). Such comments shall be submitted in an electronic form, in English, French or Spanish, and within a reasonable deadline set by the Office. Any such comments shall be transmitted by the Office to the government of the Member concerned, which shall be given a reasonable opportunity to provide the Office with a further statement of its position (in electronic form, in English, French or Spanish).

Tripartite review

47. The Office shall electronically forward to the Special Review Board, with a copy to the Member or organization making the request and to the Member whose removal is requested:

- (a) the request and accompanying documentation;
- (b) a copy of the expert opinion and other relevant material received in the context of paragraph 45;
- (c) any comments and statements received in accordance with paragraph 46, and the Office's conclusions as to whether or not the Member concerned fully meets the Minimum Requirements.

Further processing

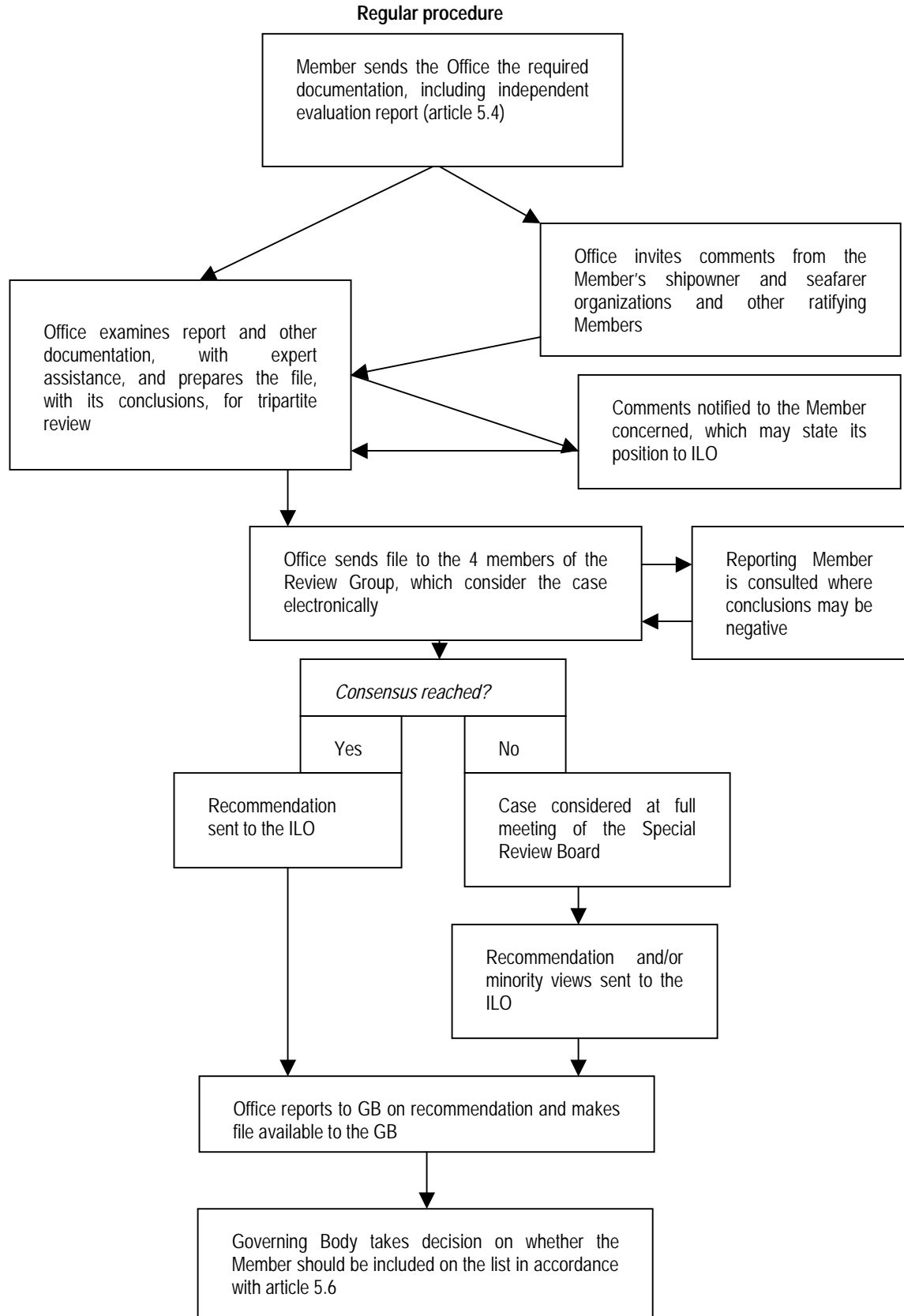
- 48. The request shall then be dealt with in accordance with the procedures set out in paragraphs 27 to 31 above.

V. Review of these Arrangements

- 49. The present Arrangements shall be reviewed by the Governing Body after an interval of not more than five years from the date of their adoption.

Appendix II

Proposed procedure for establishing the list referred to in article 5.6 of Convention No. 185



Ad hoc procedures

Request for inclusion on List

Request for removal from List

