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INTERNATIONAL LABOUR ORGANIZATION

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**Tripartite Intersessional Meeting on the  
Follow-up of the Preparatory Technical  
Maritime Conference**

**Compendium of proposed amendments to the draft consolidated  
maritime labour Convention, 2006**

Geneva, 2005

INTERNATIONAL LABOUR OFFICE GENEVA

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# Compendium of proposed amendments to the draft consolidated maritime labour Convention, 2006

## Introduction

1. A Preparatory Technical Maritime Conference (PTMC) met from 13 to 24 September 2004 to consider a Recommended Draft for a consolidated maritime labour Convention.<sup>1</sup> This Convention is to be submitted to the International Labour Conference for adoption in early 2006. The Recommended Draft had been developed under the guidance of a High-level Tripartite Working Group on Maritime Labour Standards (HLTWG) and its Subgroup, over several meetings since 2001. The PTMC adopted nearly all of the more than 100 pages of text of the Recommended Draft.<sup>2</sup> This is considered an important achievement signalling the very high level of consensus that has been developed with respect to the principles, structure and content of the proposed instrument.
2. A special two-stage procedure, intended to facilitate a thorough discussion and provide a mechanism for resolution of areas of difficulty, had been adopted by the Governing Body for the PTMC Conference. This mechanism focused on ensuring that sufficient time was devoted to areas that either needed more discussion or that had proved to be controversial in the HLTWG. These areas were indicated in the Recommended Draft by either [ ] underlined square brackets or by { ... } broken underlined soft brackets. The second stage of the procedure for the PTMC would then move to consider any proposals for amendment to text that was considered “mature” by the HLTWG. This text was referred to as “unbracketed” text. Despite best efforts, the three technical committees assigned the task of reviewing the various sections of the Draft Convention were unable to move to the second stage. As a result, the proposals submitted for amendments to the unbracketed text were not considered during the PTMC.
3. The Steering Committee for the PTMC noted<sup>3</sup> that there was general agreement that the consideration of these proposals would “contribute to a large extent to the success of the International Labour Conference” for the adoption of the Convention. The Committee took the view that “an innovative mechanism should be devised to permit an analysis and tripartite discussion of the amendments submitted to the PTMC, with a view to taking them into consideration, to the extent possible, in the preparatory stages of the Conference”.
4. The PTMC adopted a number of resolutions regarding the preparatory work to be carried out between the PTMC and the International Labour Conference. In one of them,<sup>4</sup> the PTMC:

<sup>1</sup> PTMC/04/01. 551 delegates attended, representing 88 countries.

<sup>2</sup> PTMC04-RP7(Rev.), Geneva, 13-24 Sep. 2004.

<sup>3</sup> PTMC04-RP2C, Third report of the Steering Committee, paras. 1-3.

<sup>4</sup> Resolution concerning a procedure to deal with amendments submitted to the PTMC on unbracketed text, Preparatory Technical Maritime Conference, *Record of Proceedings* No. 10.

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Requests the Governing Body to instruct the Office to examine all receivable amendments submitted to the PTMC and to prepare a compendium accompanied by an explanatory note;

Establishes a tripartite working group, composed of the Officers of the PTMC and which will be open to the governments of all member States and representatives designated by the international organizations of shipowners and seafarers, to consider the compendium prepared by the Office; the working group shall communicate to the Office any amendment or group of amendments on which there is tripartite consensus for inclusion in the report to be prepared by the Office for the Maritime Session of the Conference in accordance with article 38, paragraph 4(b), of the Standing Orders of the Conference; the working group, taking into consideration the need for these further consultations, shall meet on this occasion at no direct cost to the Office; ...

5. The actions proposed above were endorsed by the ILO Governing Body at its 291st Session in November 2004. The tripartite working group will meet in April 2005, with the terms of reference indicated in the resolution.
6. This paper contains the compendium referred to in the PTMC resolution. It comprises all amendments that were properly submitted in accordance with the procedures governing the PTMC. Under those procedures, before a proposal for amendment could be received for consideration, it had to relate to “unbracketed text” or to propose new provisions. If an amendment was not proposed or supported by a group at the PTMC, it needed the support of at least five other delegates or advisers.<sup>5</sup>
7. The PTMC resolution referred to above also took the view that examination and discussion of these amendments would assist the work of the Maritime Session of the International Labour Conference. In order to facilitate the review of the proposed amendments contained in this compendium, the explanatory note required by the resolution has been broken up into explanations on the context and comments following the corresponding proposals. In addition, the proposed amendments have been placed in the same order as the provisions of the Draft Convention to which they relate; where two or more amendments relate to the same provision, the ones proposing the more radical changes have been placed before the others. This is the order adopted in ILO meetings in the absence of a decision to have a different order. This does not of course mean that they need to be considered in that order.
8. Each amendment in this compendium has been numbered for ease of reference. In addition to the numerical reference, each proposal for an amendment is presented as follows:
  - (a) The first line gives the PTMC reference of the proposal concerned (“C.1”, “C.2” or “C.3” indicates the Committee for which the proposal was made).
  - (b) The second line indicates the particular provision in the Draft Convention to which the amendment refers. The reference to the provision to be amended may in fact differ from that in the original proposal. The proposals were made with respect to the Recommended Draft submitted to the PTMC, whereas the reference in the compendium is to the Draft Convention adopted by the PTMC.<sup>6</sup> It was felt that the tripartite working group would wish to work with the more up-to-date Draft Convention, bearing in mind that the wording of the provisions to which the proposals relate is the same as in the Recommended Draft.

<sup>5</sup> It should be noted that an indication of “support” for a proposed amendment was understood as only indicating support for discussion of the proposal, but did not necessarily imply support for the content of the proposed amendment.

<sup>6</sup> Preparatory Technical Maritime Conference, *Record of Proceedings* No. 7(Rev.).

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- (c) The third line indicates the groups or Governments proposing or supporting an amendment.
  - (d) The fourth line entitled “Proposal” reproduces the proposal itself.
  - (e) The fifth line entitled “Context” tries to show, as concisely as possible, how the proposed amendment would fit into the existing text. Elements that would be added to the current Convention are highlighted in **bold** type; elements that would be deleted or replaced are placed between square brackets [ ]. Minor changes of wording are not indicated so that the gist of the proposal can be seen more clearly.
  - (f) The last part contains a “Comment” by the Office, which seeks to identify the effect and implications of a proposed amendment (when these are not obvious from the wording) as well as factors which may need to be taken into account in considering it. Since none of the amendments was introduced in the technical committee concerned, these comments would benefit from any corrections or clarifications that the authors of the proposals concerned may make.

## **Proposals for amendments to unbracketed text**

### ***The Preamble***

Amendment 1: C.1/D.45

**Preamble, ninth paragraph** (“Recalling that the United Nations ...”)

#### **Submitted by the Shipowners**

**Proposal:** *Replace* the existing ninth preambular paragraph beginning “Recalling the United Nations Law of the Sea Convention, 1982”, with the following new paragraph: “Recalling the United Nations Convention on the Law of the Sea, 1982,”.

**Context:** “Recalling [that] the United Nations Convention on the Law of the Sea, 1982, [sets out a general legal framework within which all activities in the oceans and seas must be carried out and is of strategic importance as the basis for national, regional and global action and cooperation in the marine sector, and that its integrity needs to be maintained,]”.

**Comment:** This proposal is understood as suggesting the replacement of the whole of the paragraph indicated above with simply a reference to the United Nations Convention on the Law of the Sea, 1982, using its correct name. The editorial correction to the name of the Convention was accepted during the PTMC (ref.: PTMC04-RP4(Rev.), paragraph 11) and is reflected in the current Draft Convention.

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Amendment 2: C.1/D.15

**Preamble, ninth paragraph** (“Recalling that the United Nations ...”)

**Submitted by the following Government members: Argentina, Brazil, Chile, Guatemala, Panama, Venezuela**

**Proposal:** After the words “general legal framework”, *insert* the words “which is binding on its States parties and”.

**Context:** “Recalling that the United Nations Convention on the Law of the Sea, 1982, sets out a general legal framework **which is binding on its States parties** within which all activities in the oceans and seas must be carried out.”

**Comment:** Under international law it is a well-accepted legal principle that a convention is binding on the States that are party to it and it is not binding on States that are not party to it, although aspects of a convention may reflect customary international law and in this way bind non-parties on the particular aspects. A reference in the preamble or text of one convention to another convention would not oblige or imply that States must be party to both in order to ratify the former.

**Note:** This proposed amendment would become redundant if Amendment 1 (C.1/D.45) were adopted.

Amendment 3: C.1/D.16

**Preamble, ninth paragraph** (“Recalling that the United Nations ...”)

**Submitted by the following Government members: Argentina, Brazil, Chile, Guatemala, Panama, Venezuela**

**Proposal:** After the word “is”, *insert* the words “for its States parties”.

**Context:** “... general legal framework within which all activities in the oceans and seas must be carried out and is **for its States parties** of strategic importance as the basis for national, regional and global action.”

**Comment:** In principle a convention that is widely endorsed may have strategic and global importance and for this reason affect both parties and non-parties. The United Nations Convention on the Law of the Sea has been described as a “constitution for the oceans”, in that it codifies existing customary and convention-based law regarding the sea. Its importance is recognized in conventions, such as the Convention on Biological Diversity, which have a close to universal ratification level.

**Note:** This proposed amendment would become redundant if Amendment 1 (C.1/D.45) were adopted.

Amendment 4: C.1/D.46

**Preamble, tenth paragraph** (“Recalling that Article 94 ...”)

**Submitted by the Shipowners**

**Proposal:** *Delete* the tenth preambular paragraph beginning “Recalling that Article 94 of the United Nations Law of the Sea Convention, 1982 ...”.

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**Context:** “[Recalling that Article 94 of the United Nations Convention on the Law of the Sea, 1982, establishes the duties and obligations of a flag State with regard to, inter alia, labour conditions, crewing and social matters on ships that fly its flag,]”.

**Comment:** As the preceding paragraph of the Preamble would refer to the same United Nations Convention, the paragraph it is proposed to delete might be considered unnecessary. However, Article 94 has been viewed as a particularly important statement of international law regarding the duty of a flag State to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

Amendment 5: C.1/D.14

**Preamble, tenth paragraph** (“Recalling that Article 94 ...”)

**Submitted by the following Government members:** Argentina, Brazil, Chile, Guatemala, Panama, Venezuela

**Proposal:** After the words “fly its flag”, *add* the clause “and that those duties and obligations are binding on the States parties to that convention”.

**Context:** “... inter alia, labour conditions, crewing and social matters on ships that fly its flag, **and that those duties and obligations are binding on the States parties to that convention**”.

**Comment:** See the Comment for Amendment 2 above (C.1/D.15).

**Note:** This proposed amendment would become redundant if the previous (C.1/D.46) amendment were adopted.

## ***The Articles***

Amendment 6: C.1/D.5

**Article I, paragraph 1**

**Submitted by the following Government members:** Canada, Denmark, Netherlands, Norway, Switzerland, United States

**Proposal:** *Delete* the word “complete”.

**Context:** “Each Member which ratifies this Convention undertakes to give [complete] effect to its provisions in the manner set out in Article VI.”

**Comment:** In principle the concept of “complete” or full effect can be understood as implicit in the words “give effect”. However, the word “complete” may also be seen as useful to emphasize the intention in Article I as to the extent of the obligation involved. It may also be relevant in the context of the new wording proposed in the Draft Convention for paragraph 4 of Article VI.

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Amendment 7: C.1/D.9

**Article I, new paragraph**

**Submitted by the Seafarers**

**Proposal:** *Add* the following new paragraph after paragraph 2: “Members shall ensure that nothing in this Convention shall affect any law, award, custom or any agreement between shipowners and seafarers, or organizations representing them, which are more favourable than the provisions of this Convention.”

**Comment:** This proposal essentially reproduces, *mutatis mutandis*, article 19, paragraph 8, of the Constitution of the ILO, which is recalled in the Preamble (11th paragraph) to the Draft Convention. Since the constitutional provision will already be binding on States that ratify the Convention, the inclusion of the proposed provision would not have any additional legal effect. It might however add a layer of certainty that the term “agreement” in the constitutional provision is to be understood as covering “any agreement between shipowners and seafarers, or organizations representing them”.

Amendment 8: C.1/D.12

**Article II, paragraph 1(c)**

**Submitted by the following Government members: Denmark, Germany, Liberia, Netherlands, Norway, United Kingdom**

**Proposal:** At the end of subparagraph (c), *add* the following: “The gross tonnage for ships covered by the tonnage measurement interim scheme adopted by the IMO will be the gross tonnage which is included in the REMARKS column of the international tonnage certificate (1969)”.

**Context:** “(c) the term *gross tonnage* means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention; **the gross tonnage for ships covered by the tonnage measurement interim scheme adopted by the IMO will be the gross tonnage which is included in the REMARKS column of the international tonnage certificate (1969)**”.

**Comment:** The importance of including a provision along the lines proposed may essentially depend upon whether it is decided to exclude from the scope of the Convention (see Article II, paragraph 4) ships below a certain gross tonnage. This question is still under discussion. The concept of gross tonnage is also used in the various provisions relating to entry into force (such as Article VIII) and in Standard A3.1 relating to accommodation. However, for such matters as entry into force, reliance will have to be placed on the definitions used by the entities providing information on world gross tonnage (such as Lloyds Register – Fairplay). With respect to accommodation, the proposed new sentence would have a limited application as the requirements of ship construction and equipment would not apply to the ships using the older system of measurement (Regulation 3.1, paragraph 2); only one or two of the requirements (such as the maximum number of persons to occupy a sleeping room) might not always depend upon construction constraints. Moreover, with the phase-out, in the passage of time, of the ships to which the proposed amendment would apply, it may in any event be seen as unnecessary to deal with the matter in the Convention unless the Convention contains the proposed general limitation of scope based on gross tonnage referred to above.

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In addition, the definition refers to the Tonnage Convention, 1969, and can be understood to incorporate the official IMO arrangements (under its Resolutions A.494 (XII), A.540 (XIII) and A.791(19)) to address the application of the Convention to ships that are still entitled under the Convention to use the old tonnage measurement system, by means of a comment in the Remarks part of the certificate. If the amendment were adopted, it would be preferable to add words such as “in accordance with arrangements recommended by the IMO” at the end. A legal text should indicate (for the benefit of persons unfamiliar with the subject) the basis on which information “is included in the Remarks column”, as the Remarks section on the certificate itself gives no indication of what may be included in it.

Amendment 9: C.1/D.47

**Article II, paragraph 1(f)**

**Submitted by the Shipowners**

**Proposal:** *Replace* the words “on board a ship” with the words “within the shipboard organization”.

**Context:** “the term *seafarer* means any person who is employed or engaged or works in any capacity **within the shipboard organization** to which this Convention applies;”.

**Comment:** The current definition referring to “on board a ship” is consistent with definitions in other ILO Conventions. The term “shipboard organization” may import a further categorization of personnel and also cause some confusion with the “organization” referred to in Article II, paragraph 1(j). However it may serve to capture a broader range of personnel involved in the ship’s operation but not necessarily on board ship.

Amendment 10: C.1/D.21

**Article II, paragraph 1(i)**

**Submitted by the following Government members: Bulgaria, Denmark, Finland, Germany, Netherlands, United Kingdom**

**Proposal:** Before the second occurrence of “ship”, *insert* the word “seagoing”.

**Context:** “the term *ship* means a **seagoing** ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;”.

**Comment:** The term “seagoing ship” is the one normally used in international labour Conventions, but without the following words quoted above (“other than one ...”). In most cases when this term is used it is coupled with a clause providing that: “National laws or regulations shall determine which ships are to be regarded as seagoing for purposes of this Convention” (e.g. No. 147, No. 178, No. 69). The present definition in the Draft Convention may be considered as meaning what is normally understood to be a “seagoing ship”, namely “a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply”. This is the definition also found in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW, Article II(g)). The question that might be asked is: could the present definition just quoted cover other ships that are not “seagoing”? If the answer is no, it might be preferable to retain the present definition as it would be clearer. If the answer is yes, it might be preferable for the Convention to say simply that “the term *ship* means a seagoing ship” and

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to omit the words that follow and add in the usual clause regarding determination of its meaning by national laws (although such an addition may provide some difficulties in terms of ensuring universal and consistent coverage). Finally, the phrase “seagoing ship other than one which navigates exclusively in inland waters” implies that there could be “seagoing” ships exclusively navigating in inland waters.

Amendment 11: C.1/D.27

**Article II, paragraph 1(j)**

**Submitted by the following Government members: Belgium, Bulgaria, Germany, Netherlands, Philippines, Portugal, United Kingdom**

**Proposal:** *Replace* the existing subparagraph (j) with the following: “(j) the term *shipowner* means the owner of the ship, or any other organization or person who has the final responsibility for the operation of the ship, and who has agreed to have the duties and the responsibilities, including all employer responsibilities, imposed on him by this Convention, irrespective of having (sub)contracted other organizations, agencies or persons to execute or perform certain duties and responsibilities on his behalf.”

**Context:** “the term *shipowner* means the owner of the ship or any other organization or person [such as the manager, agent or bareboat charterer,] who has [assumed] the **final** responsibility for the operation of the ship [from the owner or other organization or person] and who has agreed to [take over] **have** the duties and the responsibilities, **including all employer responsibilities**, imposed on **him** by this Convention, **irrespective of having (sub)contracted other organizations, agencies or persons to execute or perform certain duties and responsibilities on his behalf.**”

**Comment:** The current definition is consistent with the definition of “Company” in the IMO International Safety Management Code (with the exception of the reference to “agent”) and with the definition of “shipowner” in the Recruitment and Placement of Seafarers Convention, 1996 (No. 179). This was seen as helpful for purposes of consistency and intended scope of application. The proposed amendment may however serve to clarify that, irrespective of contractual relationships, the Convention is addressed to persons with the “final responsibility” for the operation of the ship. The amendment, if accepted, would need to be adjusted to reflect inclusive language (covering physical persons of either sex and legal entities).

Amendment 12: C.1/D.19

**Article II, paragraph 4**

**Submitted by the following Government members: China, India, Indonesia, Japan, Liberia, Pakistan, Republic of Korea, Singapore, Thailand**

**Proposal:** At the beginning of the paragraph, *insert* the following: “Except where expressly provided otherwise,”.

**Context:** “**Except where expressly provided otherwise**, this Convention applies to all ships ...”.

**Comment:** This amendment is consistent with the approach adopted in Article II, paragraph 2, and could be considered necessary as a matter of legal drafting, in order to support the scope provisions now found in Title 3 or future provisions that might be adopted under the simplified amendment procedure.

**Article II, paragraph 4**

**Submitted by the following Government members: Canada, Japan, Norway, Russian Federation, United Kingdom, United States**

**Proposal:** After subparagraph (c), *add* the following new subparagraph: “any warship, naval auxiliary, other vessels owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State shall ensure, by the consideration of appropriate measures not impairing operations or operational capabilities of such vessels, that such vessels act in a manner consistent, so far as is reasonable and practicable, with this Convention.”

**Context:** “4. This Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities other than:

...

(d) **any warship** ...” etc.

**Comment:** The proposed amendment implies that the state-owned or operated ships concerned could be “ordinarily engaged in commercial activities” (otherwise they would not in any event be covered by the Convention). It seems to reflect a concern expressed in the Government group in PTMC Committee 1 that Article II, paragraph 4 needed to indicate clearly that it did not cover commercial ships temporarily engaged in military or similar activities (ref.: PTMC04-RP4(Rev.), paragraph 9). The proposed amendment would exclude such ships when used “for the time being” in non-commercial activities. However, these ships would still be expected to act as consistently as practicable with the Convention. If the amendment were adopted, some of its wording would need to be adapted to that of the Convention.

**Article IV**

**Submitted by the Shipowners**

**Proposal:** *Replace* the existing Article with the following new text:

“Each Member shall ensure, within the limits of its jurisdiction, that seafarers’ employment and social rights within this Article are fully implemented in accordance with the requirements of this Convention. Unless otherwise specified, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements, or through other measures or in practice.

Each seafarer has a right to:

- a safe and secure workplace that complies with safety standards;
- fair terms of employment;
- decent working and living conditions on board ship;
- health protection and welfare measures and other forms of social security protection.”

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**Context:** The first paragraph would almost be the same (*mutatis mutandis*) as the current paragraph 5 of Article IV. The second paragraph would combine the current paragraphs 1 to 4 under one section.

**Comment:** The proposed amendment reverses the order of the current paragraphs. It may be viewed as more succinct, without however changing the content of the current Article.

Amendment 15: C.1/D.6

**Article IV, paragraph 5**

**Submitted by the following Government members: Canada, Denmark, Netherlands, Norway, Switzerland, United States**

**Proposal:** *Delete* the word “fully”.

**Context:** “Each Member shall ensure, within the limits of its jurisdiction, that the seafarers’ employment and social rights set out in the preceding paragraphs of this Article are [fully] implemented in accordance with the requirements ...”.

**Comment:** In principle the concept of “fully” implement can be understood as implicit in the word “implement”. However, the word “fully” may also be seen as emphasizing the intention behind Article IV regarding the nature of the obligation.

Amendment 16: C.1/D.4

**Article V, paragraph 5**

**Submitted by the following Government members: Canada, China, Denmark, Norway, United Kingdom, United States**

**Proposal:** After the word “territory”, *add* the words “and under its jurisdiction”.

**Context:** “Each Member shall exercise effective jurisdiction and control over seafarer recruitment and placement services, if these are established, in its territory **and under its jurisdiction**”.

**Comment:** The proposal appears to be linked to a similar amendment proposed for Title 1, Regulation 1.4, paragraph 2 (see Amendment 38, C.2/D.30, below). It would be useful to have more information, from the Governments proposing the amendment, as to the situations in which a recruitment and placement service may be established on the Member’s territory but be outside its jurisdiction. The proposed amendment may envisage the case in which a Member is responsible for the international relations of a territory, but the subject matter of the Convention is within the self-governing powers of the territory. This situation is in principle covered by article 35 of the ILO Constitution. The proposed amendment may also be intended to address the situation of Members that are federal States. This is covered by paragraph 7 of article 19 of the ILO Constitution. Since the Constitution is a higher legal norm, the provisions of Conventions adopted under article 19 would need to be consistent with it.

**Article V, paragraph 6**

**Submitted by the following Government members: China, India, Indonesia, Pakistan, Republic of Korea, Thailand**

**Proposal:** After the second “shall”, *delete* the words “, in accordance with international law,”. After the word “sanctions”, *replace* the words “or require the adoption of” with the words “on ships that fly its flag and adopt”.

**Context:** “Members shall prohibit violations of the requirements of this Convention and shall, [in accordance with international law], establish sanctions [or require the adoption of] **on ships that fly its flag and adopt** corrective measures under their laws that are adequate to discourage such violations.”

**Comment:** The phrase “in accordance with international law”, is used in international agreements to clarify or confirm that a Member would only be expected to implement obligations under this paragraph to the extent that it would have jurisdiction to do so under international law, i.e. with respect to matters that are under its control as a sovereign State – usually matters in its territory or involving its nationals, such as ships flying its flag. This may be seen as implicit, in which case the phrase might be considered unnecessary. However, it may also be seen as helpful to include it to identify the nature of the obligation. The second part of the proposed amendment would serve to clarify that this obligation relates to flag state responsibilities. It would not address the issue of sanctions that might be applied regarding, for example, activities of recruitment and placement services referred to in the preceding paragraph 5 of the Draft Convention.

**Article XIII, paragraph 1**

**Submitted by the Shipowners**

**Proposal:** *Replace* paragraph 1 with the following new paragraph: “The Governing Body of the International Labour Office shall establish a committee with special competence in the area of maritime labour standards to monitor the application of the Convention. Such a committee may, not sooner than three years after the adoption of the Convention, examine the need for amendments to the Convention.”

**Context:** “1. The Governing Body of the International Labour Office shall [keep the working of this Convention under continuous review through a committee established by it] **establish a committee** with special competence in the area of maritime labour standards **to monitor the application of the Convention. Such a committee may, not sooner than three years after the adoption of the Convention, examine the need for amendments to the Convention.**”

**Comment:** As worded, the first sentence of the proposed amendment could be understood in a way that would conflict with the ILO’s constitutional framework in two respects: in particular, the phrase “to monitor the *application* of the Convention” could be understood as conflicting with the Organization’s supervisory functions with regard to the *application* of international labour Conventions. These have since 1926 been entrusted to the Committee of Experts on the *Application* of Conventions and Recommendations and the Conference Committee on the *Application* of Standards. The wording might also be understood as conflicting with the Governing Body’s responsibilities under the

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Constitution. The wording of the current provision has in fact been specially designed to avoid any concerns that may be raised with regard to constitutionality: the formulation that the Governing Body “shall keep the working of this Convention under continuous review” is based on the standard provision in international labour Conventions under which the Governing Body is to present “a report on the working of this Convention”, and the words, “through a committee established by it with special competence in the area of maritime labour standards”, are designed to recognize the overall responsibility of the Governing Body without impeding the work of the special tripartite committee. The second sentence of the proposed amendment gives rise to a question of a mainly practical nature. Although the requirements for entry into force of the Convention under Article VIII have not yet been decided, it is clear that a relatively high level of ratifications will be required. If therefore the idea is to place a certain waiting period for amendments, i.e. “not sooner than three years after the adoption of the Convention”, the sentence would probably be superfluous as the Convention could not be expected to enter into force in three years (12 months after the ratification level has been reached). In such a case, it would be preferable to refer to “three years from when the Convention comes into force in accordance with paragraph 3 of Article VIII”. However, it should be borne in mind that there could be details in Part A of the Code that present unforeseen obstacles to ratification by some countries, in which case there may be a general wish to amend the Code as soon as possible. If, on the other hand, the idea of the proposed sentence is to encourage a review of the need for amendments after three years, this could be the subject of a resolution at the time of adoption of the Convention.

Amendment 19: C.1/D.17

### **Article XIII**

**Submitted by the following Government members: China, India, Indonesia, Philippines, Republic of Korea, Singapore, Thailand**

**Proposal:** *Replace* paragraph 2 with the following new paragraph: “For matters dealt with in accordance with this Convention, the Committee shall consist of two Government representatives, one Shipowner representative and one Seafarer representative nominated by each Member that has ratified this Convention.”

**Context:** “[2. For matters dealt with in accordance with this Convention, the Committee shall consist of two representatives nominated by each Government of a Member which has ratified this Convention and the representatives of Shipowners and Seafarers appointed by the Governing Body.”]

**Comment:** The amendment proposes a committee membership that is fully determined by the ratifying Members, each of which would nominate a national tripartite delegation consisting of four members (two representing the Government, one the Shipowners and one the Seafarers of the country concerned). The existing provision differs in that it allocates part of the determination of committee membership to the Governing Body and does not refer to any particular number of Seafarer and Shipowner representatives (although there would be a system of weighted voting). Having regard to article 13, paragraph 2(a), of the ILO Constitution, the Governments concerned might be expected to cover the travel and subsistence expenses of all four members of their tripartite delegation. A credentials (sub)committee might also be necessary.

Amendment 20: C.1/D.43

### **Article XIII, paragraph 2**

**Submitted by the Shipowners**

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**Proposal:** After the word “Seafarers”, *insert* the words “nominated by the Joint Maritime Commission”.

**Context:** “... the representatives of Shipowners and Seafarers **nominated by the Joint Maritime Commission** appointed by the Governing Body.”

**Comment:** It is in fact envisaged with the present wording of paragraph 2 that, in practice (in order to keep down the cost of the special tripartite committee), the Shipowner and Seafarer members would be appointed by the Governing Body from the Joint Maritime Commission. In practice, this would normally entail a proposal from the JMC as to the selection of the Seafarer and Shipowner representatives, although the formal decision (in accordance with ILO procedures) would be taken by the Governing Body. The word “and” between the words “Commission” and “appointed” seems to be missing.

**Note:** This proposed amendment would become redundant if Amendment 19 (C.1/D.17) were adopted.

#### Amendment 21: C.1/D.33

##### Article XV, paragraph 4(a)

**Submitted by the following Government members: China, India, Indonesia, Pakistan, Republic of Korea, Singapore, Thailand**

**Proposal:** *Replace* the word “half” with “two-thirds”.

**Context:** “... An amendment shall be considered adopted by the (special tripartite) Committee if:

- (a) at least **two-thirds** of the governments of Members that have ratified this Convention are represented in the meeting at which the proposal is considered; and”.

**Comment:** This amendment addresses the voting process for amendments to the Code through the simplified procedure. By ensuring the participation of two-thirds of the ratifying Governments before any amendment could be adopted, the proposal would enhance the credibility of adopted amendments and might have the practical advantage of ensuring that meetings to adopt amendments were not held until their agenda was of sufficient general interest to ratifying Governments for them to undertake the expense of participation. The proposal would, however, increase the chances of encountering the practical problems associated with this kind of quorum requirement (such as the cancellation of meetings when an insufficient number of Governments have indicated their intention to attend, as well as wasted expense for the other Governments if some Governments fail to attend at the last minute).

#### Amendment 22: C.1/D.34

##### Article XV, paragraph 4

**Submitted by the following Government members: Canada, Cyprus, India, Liberia, Norway, United Kingdom**

**Proposal:** At the end of subparagraph (b), *replace* “; and” with a full stop, and *delete* subparagraph (c).

**Context:** “ ... An amendment shall be considered adopted by the (special tripartite) Committee if:

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- (a) at least half the governments of Members that have ratified this Convention are represented in the meeting at which the proposal is considered; and
  - (b) a majority of at least two-thirds of the Committee members vote in favour of the amendment; [and
  - (c) this majority comprises the votes in favour of at least half the Government voting power, half the Shipowner voting power and half the Seafarer voting power of the Committee members registered at the meeting when the proposal is put to the vote.”]

**Comment:** This amendment addresses the voting process for amendment to the Code through the simplified procedure. Subparagraph (c), which it is proposed to delete, was based on the assumption that an amendment through the simplified procedure should have substantial tripartite support for it to be adopted. Depending upon the direction in which it is viewed, the proposed deletion would make it easier for constituents to have adopted amendments which they support and more difficult for them to block an amendment which they oppose. Taking for the purpose of convenience a membership of 50 representatives of 25 ratifying Governments (which would entail a total voting power of 100: 50 votes for the Governments and 25 votes each for the Shipowners’ and Seafarers’ groups on the Committee – see Article XIII, paragraph 4) and bearing in mind the practice of the Shipowners and Seafarers to vote as a group, the adoption of the amendment to delete subparagraph (c) would have the following practical consequences:

- (1) with subparagraph (c), an amendment could not be adopted if it was opposed by either the Shipowners’ or the Seafarers’ group; with the deletion of subparagraph (c), such an amendment could be adopted provided that at least 42 out of the 50 Government representatives voted in favour, thus obtaining (25+42) the 67 votes for the required two-thirds majority;
- (2) with subparagraph (c), an amendment supported by both the Shipowners’ and the Seafarers’ groups could not be adopted unless at least 25 of the 50 Government representatives voted in favour; with subparagraph (c) deleted, such an amendment could be adopted provided that at least 17 of the Government representatives voted in favour, thus obtaining (25+25+17) the 67 votes for the required majority.

### ***The explanatory note***

Amendment 23: C.1/D.44

#### **Submitted by the Shipowners**

**Proposal:** *Replace* paragraph 9 with the following new paragraph: “Flexibility in implementation is also provided by formulating the mandatory requirements of Part A provisions in a more general way, providing greater discretion as to the precise action taken nationally. Guidance on implementation is provided in the non-mandatory Part B of the Code. Thus, ratifying Members can ascertain the kind of action expected under the Part A general obligation, as well as action that would not necessarily be required. Ratifying Members do not have to follow the guidance, and implementation of Part B does not require verification by port state inspectors. However, Part B cannot be ignored, and ratifying Members may need to justify how they have implemented the corresponding mandatory provisions to the competent bodies of the International Labour Organization.”

**Context:** The succinct wording in the proposed amendment covers the substance of *both* paragraph 9 and paragraph 10 of the current explanatory note following the Articles, without the examples illustrating some of the statements made and with wording that closely follows that of the questions and answers which formed the compromise reached in

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the High-level Tripartite Working Group on the status of Part B of the Code (see Commentary to the Recommended Draft, PTMC/04/2, General comments, paragraph 16).

**Comment:** It should be noted that the explanatory note is not part of the Convention and was developed to provide guidance for implementing the Convention provisions. The use of the specific examples omitted in the proposal may or may not be helpful; they were intended to facilitate greater understanding on the part of personnel responsible for implementation and enforcement as well as those reviewing state implementation practices. If the proposal is adopted, it would need an editorial adjustment in paragraph 8 and require the deletion of paragraph 10.

## **Title 1**

Amendment 24: C.2/D.1

### **Standard A1.1, paragraph 3(b)**

#### **Submitted by the Shipowners**

**Proposal:** In paragraph 3, subparagraph (b), *replace* the word “well-being” with the word “safety”.

**Context:** “An exception to strict compliance with the night work restriction may be made by the competent authority when:

...

(b) ... the work will not have a detrimental impact on (the seafarers’) health or **safety**.”

**Comment:** The phrase “health or safety” is referred to in the following paragraph, 4, which deals with the prohibition of hazardous work. The phrase “health or well-being” is used in several places in the Draft Convention, such as in connection with the grant of shore leave (Regulation, 2.4, paragraph 2), in contexts where the general well-being of the seafarers, and not simply their health in a narrow medical sense, is to be taken into account.

Amendment 25: C.2/D.2

### **Regulation 1.2, Purpose clause**

#### **Submitted by the Shipowners**

**Proposal:** At the end of the Purpose clause, *add* the following: “to perform their duties at sea”.

**Context:** “Purpose: To ensure that all seafarers are medically fit **to perform their duties at sea**”.

**Comment:** The proposed amendment delineates the scope of the concern in the Regulation and would be consistent with the first paragraph.

Amendment 26: C.2/D.3

### **Regulation 1.2, paragraph 1**

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### Submitted by the Shipowners

**Proposal:** At the end of paragraph 1, *add* the words “at sea”.

**Context:** “Seafarers shall not work on a ship unless they are certified as medically fit to perform their duties **at sea**”.

**Comment:** The proposed amendment further delineates the scope of the concern in the Regulation and mirrors aspects of paragraph 1 of the Standard.

Amendment 27: C.2/D.4

### Regulation 1.2, paragraph 2

#### Submitted by the Shipowners

**Proposal:** In paragraph 2, *replace* the words “as prescribed in the Code” by the words “by a Member in accordance with national regulations and practice”.

**Context:** “Exceptions (to the prohibition to work on ship if not certified as medically fit) can only be permitted [as prescribed in the Code] **by a Member in accordance with national regulations and practice**”.

**Comment:** The phrase “as prescribed in the Code”, which it is proposed to delete, provides authority for exceptions to the general prohibition to be contained in the Code. The amendment would give each country a certain discretion to allow such exceptions under its national legislation. If this is the intention, the drafting would need to be adjusted if the amendment were adopted (e.g. “Exceptions may be permitted by a Member, but only in accordance with its laws and regulations and practice.”).

Amendment 28: C.2/D.5

### Standard A1.2, paragraph 2

#### Submitted by the Shipowners

**Proposal:** In paragraph 2, *delete* the words “after consultation with the organizations of the shipowners and of the seafarers concerned, and giving due consideration to applicable international guidelines referred to in Part B of this Code”.

**Context:** “In order to ensure that medical certificates genuinely reflect seafarers’ state of health, in light of the duties they are to perform, the competent authority shall [, after consultation with the organizations of the shipowners and of the seafarers concerned, and giving due consideration to applicable international guidelines referred to in Part B of this Code] prescribe the nature of the medical examination and certificate.”

**Comment:** The proposed amendment would favour providing discretion to competent national authorities with respect to the particulars of the medical examination. The need to give “due consideration to applicable international guidelines referred to in Part B of this Code” already follows from the status of Part B under the Convention.

Amendment 29: C.2/D.6

### Standard A1.2, paragraph 3

#### Submitted by the Shipowners

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**Proposal:** *Replace* paragraph 3 by the following: “A medical certificate issued in accordance with the STCW Convention requirements shall be accepted by the competent authority, for the purpose of Regulation 1.2. A medical certificate meeting the substance of these requirements, held by seafarers not covered by this Convention, shall similarly be accepted.”

**Context:** “[This Standard is without prejudice to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (‘the STCW Convention’).] **A medical certificate issued in accordance with the STCW Convention requirements shall be accepted by the competent authority, for the purpose of Regulation 1.2. A medical certificate meeting the substance of these requirements, held by seafarers not covered by this Convention, shall similarly be accepted.**”

**Comment:** The proposed amendment would not seem to change the substance of the present provision. Essentially it proposes the deletion of the first sentence regarding the STCW Convention and involves a minor editorial change to the last sentence. If this amendment is adopted the acronym STCW would need to be corrected to set out the full name of the Convention.

Amendment 30: C.2/D.7

**Standard A1.2, paragraph 9**

**Submitted by the following Government members: Canada, Denmark, France, Liberia, United Kingdom, United States**

**Proposal:** *Replace* paragraph 9 by the following: “If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months.”

**Context:** “If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the [end of that voyage] **next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months.**”

**Comment:** This proposed amendment parallels changes made at the PTMC to bracketed text in paragraph 8. It would ensure consistency between the two paragraphs.

Amendment 31: C.2/D.8

**Standard A1.2, paragraph 9**

**Submitted by the Seafarers**

**Proposal:** In paragraph 9, *replace* the words “end of that voyage” by the words “next port of call where he or she can obtain a medical certificate from a qualified medical practitioner, provided that the period of such permission does not exceed three months”.

**Context:** As in the proposal C.2/D.7 above except: “... provided that the period of **such permission** does not exceed three months”.

**Comment:** Unlike paragraph 8, paragraph 9 does not appear to involve permission but rather refers to the length of the voyage. The formulation suggested in Amendment 30 (C.2/D.7) may therefore be more appropriate.

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Amendment 32: C.2/D.9

**Guideline B1.2.1, paragraph 1**

**Submitted by the Shipowners**

**Proposal:** In paragraph 1, after the words “to follow the” *insert* the word “latest”. *Delete* the words “including any revised versions and any other applicable international guidelines promulgated by the International Labour Organization, the International Maritime Organization and the World Health Organization”.

**Context:** “... examinations of seafarer candidates and serving seafarers should be required to follow the **latest** Guidelines for Conducting Pre-sea and Periodic Medical Fitness Examinations for Seafarers. [, including any revised versions and any other applicable international guidelines promulgated by the International Labour Organization, the International Maritime Organization and the World Health Organization].

**Comment:** With respect to the first part of the proposed amendment, the concept of “latest” may already be implied by the reference to “any revised versions”. The second part of the proposal would limit guidance to the ILO/WHO Guidelines and would not then take into account other IMO or WHO guidance in this matter, even if more recently revised than the “latest” version of the Guidelines.

Amendment 33: C.2/D.23

**Regulation 1.3**

**Submitted by the following Government members: Canada, Denmark, Germany, Liberia, United Kingdom, United States**

**Proposal:** *Replace* Regulation 1.3, Standard A1.3 and Guideline B1.3 by the following: “All seafarers shall be trained, certificated or otherwise appropriately qualified in accordance with instruments of the International Maritime Organization.”

**Comment:** The proposed amendment appears to have been superseded by later developments in the PTMC. The three paragraphs which currently comprise Regulation 1.3 of the Convention resulted from a tripartite working party process, which reported to Technical Committee 2. The text now found in the Convention was adopted by Technical Committee 2 after extensive discussion (see: PTMC04-RP5(Rev.), paragraphs 53-88 and paragraphs 89-116 (Standard and Guideline)). As a result of the recommendations of that Committee, Regulation 1.3 no longer contains any standards or guidelines.

Amendment 34: C.2/D.25

**Regulation 1.3, paragraph 2**

**Submitted by the Shipowners**

**Proposal:** In paragraph 2, after the word “training”, *insert* the words “or familiarization”.

**Context:** “Seafarers shall not be permitted to work on a ship unless they have successfully completed training **or familiarization** for personal safety on board ship.”

**Comment:** This amendment would include the terminology used in the STCW for this training. This term had been found previously in Standard A1.3, paragraph 1.

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Amendment 35: C.2/D.27

**Standard A1.3**

**Submitted by the Shipowners**

**Proposal:** *Delete* Standard A1.3.

**Comment:** The deletion was subsequently made in the PTMC.

Amendment 36: C.2/D.29

**Guideline B1.3**

**Submitted by the Shipowners**

**Proposal:** *Delete* Guideline B1.3.

**Comment:** The deletion was subsequently made in the PTMC.

Amendment 37: C.2/D.31

**Regulation 1.4**

**Submitted by the Seafarers**

**Proposal:** After paragraph 3, *add* the following new paragraph: “Members that operate a free public employment office in their territory for finding employment for seafarers shall continue to do so after the entry into force of this Convention.”

**Comment:** Paragraph 1 of the Regulation provides that “All seafarers shall have access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarer.” Under the proposed new paragraph, a Member that was fulfilling this obligation through a free public employment office would have to continue to do so.

Amendment 38: C.2/D.30

**Regulation 1.4, paragraph 2**

**Submitted by the following Government members: Canada, China, Liberia, United Kingdom, and the Shipowners**

**Proposal:** *Replace* paragraph 2 by the following: “Members shall ensure that recruitment and placement services operating in their territory under their jurisdiction are subject to supervision and control in accordance with the standards set out in the Code.”

**Context:** “**Members shall ensure that** [seafarer] recruitment and placement services operating in their territory **under their jurisdiction** [shall conform to] **are subject to supervision and control in accordance with** the standards set out in the Code.”

**Comment:** With respect to the phrase “under their jurisdiction”, see the Comment for Amendment 16 (C.1/D.4) above. The general obligation to ensure that the recruitment and placement services concerned “are subject to supervision and control in accordance with the standards set out in the Code” appears to be consistent with the more detailed obligations contained in Part A of the Code.

**Standard A1.4, paragraph 2**

**Submitted by the Shipowners**

**Proposal:** *Delete* paragraph 2.

**Context:** [2. “If a Member has private seafarer recruitment and placement services operating in its territory, they shall be operated only in conformity with a standardized system of licensing or certification or other form of regulation. This system shall be established, modified or changed only after consultation with the organizations of shipowners and seafarers concerned. Undue proliferation of private seafarer recruitment and placement services shall not be encouraged.”]

**Comment:** The Recruitment and Placement of Seafarers Convention, 1996 (No. 179) is the Convention that would be revised by this Regulation. It is primarily intended to ensure the regulation of the operation of private recruitment and placement services in order to protect seafarers from potential abuses in the system. If the proposed amendment is adopted, the Regulation would still apply to all services (irrespective of corporate form) operating in a Member’s territory and to the Member’s ships using those services (Regulation 1.4, paragraphs 2 and 3). The Standard, as currently drafted, draws a distinction between public and private services, with the standards focused mainly on the operation of private services, and with guidance for the operation of the public services found in Guideline B1.4, paragraph 1. If the amendment is adopted without further amendment, adjustments might be needed in other provisions, particularly Standard A1.4, paragraph 1, to avoid the impression that the standards were primarily addressing public services. It would also be necessary to make a consequential amendment to paragraph 4, which provides the detailed standards relating to paragraph 2. In line with the wording in paragraph 3(b), the opening words of paragraph 4 might read, “A Member adopting *a system for the operation of private seafarer recruitment or placement services in its territory ...*”, instead of the present “system referred to in paragraph 2”. It is noted that under Article II, paragraph 1(h), the term “seafarer recruitment and placement services” is defined as referring to both public and private agencies.

**Standard A1.4, paragraph 2**

**Submitted by the following Government members: Canada, Denmark, Norway, Philippines, United Kingdom, United States**

**Proposal:** In paragraph 2, *delete* the words “Undue proliferation of private seafarer recruitment and placement services shall not be encouraged.”

**Context:** “If a Member has private seafarer recruitment and placement services operating in its territory, they shall be operated only in conformity with a standardized system of licensing or certification or other form of regulation. This system shall be established, modified or changed only after consultation with the organizations of shipowners and seafarers concerned. [Undue proliferation of private seafarer recruitment and placement services shall not be encouraged.]”

**Comment:** The provision in question reproduces the text of Article 2, paragraph 2, of Convention No. 179, which was adopted in 1996. The sentence regarding proliferation of private services appears as a statement of the policy of the International Labour Conference in 1996 with respect to the issues addressed in Convention No. 179. The

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proposed amendment suggests a possible modification in policy to focus primarily on regulation of the operations without expressing a view as to the desirability of any particular system.

**Note:** This proposed amendment would become redundant if Amendment 39 (C.2/D.32) were adopted.

Amendment 41: C.2/D.37

**Standard A1.4, paragraph 4**

**Submitted by the following Government members: China, India, Indonesia, Pakistan, Netherlands, Republic of Korea, Thailand**

**Proposal:** In paragraph 4, between subparagraphs (b) and (c), *insert* the following new subparagraph: “require that all recruitment and placement services ensure that seafarers’ employment agreements are in accordance with applicable laws, regulations or collective agreements;”.

**Comment:** This proposed amendment is based on Convention No. 179, Article 5, paragraph 2(b). A similar provision is found under (iii) in the present subparagraph (c), which would immediately follow the proposed subparagraph. It may address the concern raised in the proposed amendment. If not, coordination with item (iii) might be necessary.

Amendment 42: C.2/D.39

**Standard A1.4, paragraph 4**

**Submitted by the following Government members: China, India, Indonesia, Pakistan, Republic of Korea, Thailand**

**Proposal:** In paragraph 4, between subparagraphs (b) and (c), *insert* the following new subparagraph: “require that recruitment and placement services adopt measures to ensure, as far as practicable, that the shipowner recruiting seafarers through them has the means to protect seafarers from being stranded in a foreign port;”.

**Comment:** The proposed amendment reflects the wording of a provision found in Convention No. 179, Article 4, paragraph 2(e). A provision with similar requirements is found under (iv) in the present subparagraph (c), which would immediately follow the proposed subparagraph (see Amendment 43 (C.2/D.36)). It may address the concern raised in the proposed amendment. If not, coordination with item (iv) might be necessary.

Amendment 43: C.2/D.36

**Standard A1.4, paragraph 4**

**Submitted by the Seafarers**

**Proposal:** In paragraph 4, *replace* clause (iv) of subparagraph (c) by the following: “make sure that the shipowner has the means to protect seafarers from being stranded”.

**Context:** “make sure [, as far as practicable,] that the shipowner has the means to protect seafarers from being stranded [in a foreign port];”.

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**Comment:** The current terminology containing the level of obligation (“as far as practicable”) is drawn from the similar provision found in Convention No. 179 (Article 4, paragraph 2(e)).

Amendment 44: C.2/D.40

**Standard A1.4, paragraph 9**

**Submitted by the Shipowners**

**Proposal:** *Delete* paragraph 9.

**Context:** “[9. Nothing in this Standard shall be understood as diminishing the obligations and responsibilities of shipowners or of a Member with respect to ships that fly its flag.]”

**Comment:** This proposal may have been superseded by the discussions in the PTMC, during which the current text of paragraph 9 (formerly paragraph 8) was adopted (see: PTMC04-RP5(Rev.), paragraphs 199-203). In any event, if the proposed deletion were accepted, only the reference to shipowners could be deleted as the reference to the Member flag State constituted bracketed text accepted by the PTMC and was therefore not subject to proposals for amendment.

**Title 2**

Amendment 45: C.2/D.35

**Regulation 2.1, paragraph 3**

**Submitted by the following Government members: China, India, Indonesia, Pakistan, Republic of Korea, Thailand**

**Proposal:** After paragraph 3, *add* the following new paragraph: “Members shall ensure that all seafarers enter into seafarers’ employment agreements in accordance with applicable laws, regulations or collective agreements.”

**Comment:** Paragraph 1 of Regulation 2.1 currently requires that the terms and conditions for employment of seafarers must be set out or referred to in a clear, written, legally enforceable agreement which is consistent with the standards in the Code. The Code sets out the minimum standards for seafarers’ employment contracts. Paragraph 1 may already address the concern raised by this proposed amendment. If the proposed amendment is adopted it should be noted that under Regulation 2.1, paragraph 3, and Standard A2.1, paragraphs 2 and 4(j), a collective agreement may form all or part of a seafarers’ employment agreement.

Amendment 46: C.2/D.38

**Regulation 2.1, paragraph 3**

**Submitted by the Seafarers**

**Proposal:** After paragraph 3, *add* the following new paragraph: “Seafarers’ employment agreements shall include an on-board grievance procedure.”

**Comment:** The subjects to be covered, as a minimum, in every seafarers’ employment agreement, other than the requirement that they be understood to incorporate

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applicable collective bargaining agreements, is addressed in Standard A2.1, paragraphs 3 to 6, with additional recognition of matters that national law may require and incorporation by reference of collective bargaining agreements. The proposed amendment appears to require that the Regulations specify a matter of content and that the details of the grievance procedure adopted for a ship be included as an enforceable term of the legal agreement between each seafarer and the shipowner. Since the Regulations in the Draft Convention set out the framework for the specific requirements in the Code, it would be preferable also to include an item on the subject in paragraph 4 of Standard A2.1, if the proposed amendment were adopted. As far as substance is concerned, Regulation 2.1 is intended to update and revise the Seamen's Articles of Agreement Convention, 1926 (No. 22). In its Article 4, Convention No. 22 addressed the question of whether "articles of agreement" can contain provisions regarding disputes about the employment contract. Article 4 deals only with ensuring that the articles of agreement do not contain a stipulation that attempts to contract in advance out-of-the-ordinary rules that would govern legal jurisdiction over the contract. It clarifies that an arbitration clause would be permissible.

#### Amendment 47: C.2/D.41

##### **Standard A2.1, paragraph 1(a)**

##### **Submitted by the Seafarers**

**Proposal:** In subparagraph (a) of paragraph 1, after the words "employment agreement", *insert* the words "signed by both the seafarer and the shipowner or their representative".

**Context:** "Seafarers working on ships that fly their flags must have a signed seafarers' employment agreement **signed by both the seafarer and the shipowner or their representative** (or, where they are not employees, evidence of contractual or similar arrangements) providing them with ...".

**Comment:** The proposed amendment would clarify specifically who can sign the agreement and therefore who is bound by it. This may already be understood from the requirements in paragraphs 1(b) and (c) and 4(a) and (b). However, it may be deemed useful to be more explicit. If the amendment were adopted, the word "signed" before "seafarers' employment agreement", in the current text, might be considered redundant.

#### Amendment 48: C.2/D.42

##### **Standard A2.1, paragraph 1(d)**

##### **Submitted by the Shipowners**

**Proposal:** In paragraph 1, *replace* subparagraph (d) by the following: "measures must be taken to ensure that clear information as to the conditions of their employment can be easily obtained on board by seafarers, including the ship's master, and that such information, including a copy of the seafarers' employment agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited; and".

**Context:** "measures must be taken to ensure that clear information as to the conditions of their employment can be easily obtained on board by seafarers, including the ship's master, and **that such information, including a copy of the seafarers' employment agreement**, is also accessible for review by officers of a competent authority, including those in ports to be visited; and".

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**Comment:** The proposed amendment modifies the order of the words in the existing provision and adds the additional clarifying element that the “clear information as to conditions of employment” accessible for review must include a copy of the seafarers’ employment agreement itself. It is noted that the areas for flag state inspection and certification and port state inspection to be set out in the appendices to Title 5 are not yet agreed and may impact on this requirement.

Amendment 49: C.2/D.43

**Standard A2.1, paragraph 2**

**Submitted by the Shipowners**

**Proposal:** *Delete* paragraph 2.

**Context:** “[Where a collective bargaining agreement forms all or part of a seafarers’ employment agreement a copy of that agreement shall be available on board. Where the language of the seafarers’ employment agreement and of any applicable collective bargaining agreement is not English, the following shall also be available in English (except for ships engaged only in domestic voyages):

- (a) a copy of a standard form of the agreement; and
- (b) the portions of the collective bargaining agreement that are subject to a port state inspection under Regulation 5.2 of this Convention.]”

**Comment:** Paragraph 2 is intended to clarify three situations: seafarers’ employment agreements that reference a collective bargaining agreement; agreements that are not written in English; and the application of the English language requirement for ships engaged in domestic trade. Where a collective agreement applies to seafarers then it must be on board and available for inspection. However, this may be seen as already implied by paragraph 1(d) as it is currently drafted or if the previous Amendment 48 (C.2/D.42) is adopted. Paragraph 2 also clarifies the situation where either the seafarers’ employment agreement or the collective agreement may not be in English. This may perhaps be implied by the phrase “clear information” in paragraph 1(d), which could be interpreted to accommodate the exceptions for domestic trade. If the proposed amendment is adopted, then the Standard will be shorter, however the situation in these three cases may be less clear. This may provide a problem for port state inspection, assuming that these are items for certification and inspection under Title 5.

Amendment 50: C.2/D.44

**Standard A2.1, paragraph 4**

**Submitted by the Shipowners**

**Proposal:** In paragraph 4, *delete* the words “in all cases”.

**Context:** “Seafarers’ employment agreements shall [in all cases] contain the following ...”.

**Comment:** The proposed amendment would not seem to change the substance of the present provision. The phrase “in all cases” may not be necessary since it is implied by the word “shall” and the lack of any exception. However it may be useful as a means of conveying the intention regarding uniformity in requirements.

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Amendment 51: C.2/D.45

**Standard A2.2, paragraph 1**

**Submitted by the Seafarers**

**Proposal:** In paragraph 1, *replace* the words “monthly or at some other regular interval” by the words “at no greater than monthly intervals”.

**Context:** “Members shall require that payments due to seafarers working on ships that fly their flag are made **at no greater than monthly intervals** and in accordance with any applicable collective agreement.”

**Comment:** The proposed amendment would require that seafarers be paid once a month as a minimum standard. This could be seen as consistent with the monthly accounting for payments due under paragraph 2. The existing formulation was originally developed to suggest monthly payment as the appropriate “regular” interval (or whatever is provided for in the relevant employment agreement), but at the same time to seek to provide sufficient flexibility to account for situations where seafarers may be paid under differing contractual arrangements respecting the timing of receipt of payment for services.

Amendment 52: C.2/D.46

**Guideline B2.2.2, paragraphs 1, 2, 3 and 4(k)**

**Submitted by the following Government members: Canada, Denmark, Germany, Japan, United Kingdom, United States**

**Proposal:** *Delete* paragraphs 1, 2 and 3 and subparagraph (k) of paragraph 4.

**Context:** The paragraphs proposed for deletion read as follows:

[“1. For seafarers whose remuneration includes separate compensation for overtime worked:

- (a) for the purpose of calculating wages, the normal hours of work at sea and in port should not exceed eight hours per day;
- (b) for the purpose of calculating overtime, the number of normal hours per week covered by the basic pay or wages should be prescribed by national laws or regulations, if not determined by collective agreements, but should not exceed 48 hours per week; collective agreements may provide for a different but not less favourable treatment;
- (c) the rate or rates of compensation for overtime, which should be not less than one and one-quarter times the basic pay or wages per hour, should be prescribed by national laws or regulations or by collective agreements, if applicable; and
- (d) records of all overtime worked should be maintained by the master, or a person assigned by the master, and endorsed by the seafarer at regular intervals.

2. For seafarers whose wages are fully or partially consolidated:

- (a) the seafarers’ employment agreement should specify clearly, where appropriate, the number of hours of work expected of the seafarer in return for this remuneration, and

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any additional allowances which might be due in addition to the consolidated wage, and in which circumstances;

- (b) where hourly overtime is payable for hours worked in excess of those covered by the consolidated wage, the hourly rate should be not less than one and one-quarter times the basic rate corresponding to the normal hours of work as defined in paragraph 1 above; the same principle should be applied to the overtime hours included in the consolidated wage;
- (c) remuneration for that portion of the fully or partially consolidated wage representing the normal hours of work as defined in paragraph 1 should be no less than the applicable minimum wage; and
- (d) for seafarers whose wages are partially consolidated, records of all overtime worked should be maintained and endorsed as provided for in paragraph 1(d).

3. National laws or regulations or collective agreements may provide for compensation for overtime or for work performed on the weekly day of rest and on public holidays by at least equivalent time off duty and off the ship or additional leave in lieu of remuneration or any other compensation so provided.”]

The Guideline would therefore begin with the present paragraph 4, without subparagraph (k):

“1. National laws and regulations adopted after consulting the representative organizations of shipowners and seafarers or, as appropriate, collective agreements should take into account the following principles:

...

[(k) the competent authority should have the power to inspect stores and services provided on board ship to ensure that fair and reasonable prices are applied for the benefit of the seafarers concerned; and]

...”.

**Comment:** The proposed amendment concerns provisions which are for the guidance of Members covered by paragraph 6 of Standard A2.2. These Guidelines are based on the Seafarers’ Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187). Paragraphs 1 to 3, although currently only found in a Recommendation rather than a Convention, are considered important because they are linked to the global minimum wage setting process carried out by the Joint Maritime Commission of the ILO. Paragraph 4(k) provides guidance regarding the flag state responsibility for employment conditions on its ships and alerts the competent authority to situations where potential abuses may occur. It is based on Paragraph 6(j) of Recommendation No. 187.

Amendment 53: C.2/D.47

**Guideline B2.2.2, paragraph 1(d)**

**Submitted by the Seafarers**

**Proposal:** In subparagraph (d) of paragraph 1, *replace* the words “at regular intervals” by the words “at no greater than monthly intervals”.

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**Context:** “records of all overtime worked should be maintained by the master, or a person assigned by the master, and endorsed by the seafarer at **no greater than monthly intervals.**”

**Comment:** The proposed amendment concerns a provision which is there for the guidance of Members covered by paragraph 6 of Standard A2.2. These Guidelines are based on Recommendation No. 187 and linked to the global minimum wage setting process carried out by the Joint Maritime Commission of the ILO. The proposed amendment appears to be linked to the proposal under C.2/D.45 (Amendment 51 above) and could be regarded as consequential, if the proposal in D.45 were adopted.

Amendment 54: C.2/D.48

**Guideline B2.2.2, paragraph 4(l)**

**Submitted by the Shipowners**

**Proposal:** *Replace* subparagraph (l) of paragraph 4 by the following: “seafarers’ claims for wages and other sums due in respect of their employment should be secured in accordance with the provisions of the International Convention on Maritime Liens and Mortgages, 1993.”

**Context:** “(l) [to the extent that] seafarers’ claims for wages and other sums due in respect of their employment [are not] **should be** secured in accordance with the provisions of the International Convention on Maritime Liens and Mortgages, 1993. [such claims should be protected in accordance with the Protection of Workers’ Claims (Employer’s Insolvency) Convention, 1992 (No. 173), of the International Labour Organization.]”

**Comment:** The current provision reproduces Paragraph 6(k) of Recommendation No. 187, which was adopted in 1996. The current provision gives Members guidance in enacting laws and regulations on this matter and presents an alternative approach to securing claims for seafarers’ wages, where the wages would not be secured “in accordance with the provisions” of the International Convention on Maritime Liens and Mortgages.

Amendment 55: C.2/D.49

**Standard A2.3, paragraph 5**

**Submitted by the Shipowners**

**Proposal:** Between paragraphs 5 and 6, *insert* the following new paragraph: “The requirements for hours of work or rest periods laid down in paragraph 5 need not, in the case of masters and watchkeeping personnel, be maintained in overriding operational conditions.”

**Comment:** The proposed amendment would provide flexibility in the strict application of the hours of work and rest requirement which would otherwise apply. This amendment is similar to the flexibility also provided under paragraph 11 to address situations relating to the immediate safety of personnel, the ship (or another ship) or cargo, but would also appear to take account of other “overriding operational conditions” requiring the attention of the master and other watchkeeping personnel.

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Amendment 56: C.2/D.50

**Regulation 2.5, paragraph 2**

**Submitted by the following Government members: China, India, Indonesia, Pakistan, Republic of Korea, Thailand**

**Proposal:** After paragraph 2, *add* the following new paragraph: “Members shall ensure that the shipowner has the means to protect seafarers from being stranded in a foreign port.”

**Context:** “2. Members shall require ships that fly their flag to provide financial security to ensure that seafarers are duly repatriated in accordance with the Code.

**2bis Members shall ensure that the shipowner has the means to protect seafarers from being stranded in a foreign port.”**

**Comment:** If the proposed amendment were adopted, some adjustment in the wording might be necessary to indicate how it would fit in with paragraph 2, quoted above. This paragraph, initially in brackets, was adopted at the PTMC. In this context there may be some uncertainty as to the nature of the “means”, other than financial security already dealt with, and whether more is involved than providing for repatriation. The proposed amendment is also similar to the requirement found in Standard A1.4, paragraph 4(c)(iv), with respect to recruitment and placement services, and may be intended to complement that obligation.

Amendment 57: C.2/D.51

**Guideline B2.5.2, paragraph 3**

**Submitted by the following Government members: China, Ghana, Indonesia, Liberia, Pakistan, Philippines, Republic of Korea**

**Proposal:** After paragraph 3, *add* the following new paragraph: “Members should require that shipowners take responsibility for providing financial security for the repatriation of seafarers. The financial security system provided by shipowners shall meet Resolution A.930(22), ‘Guidelines on Provision of Financial Security in Cases of Abandonment of Seafarers’, adopted by the IMO on 29 November 2001.”

**Comment:** The amendment is proposed for a Guideline. If adopted it would need to be adjusted to reflect the non-mandatory nature of the Guidelines with “should” replacing “shall”. The proposed amendment could serve to clarify the specific nature of the financial security now required under Regulation 2.5, paragraph 2. However, it may cause uncertainty, given the wording of paragraph 2 of the Regulation, if the first sentence of the amendment is retained. It is noted that work remains ongoing in the IMO-ILO Joint Working Group examining aspects of the issue raised in this proposal and that a meeting is planned for spring 2005 (IMO document LEG 89/6/1, 21 September 2004).

Amendment 58: C.2/D.52

**Standard A2.7, paragraph 2**

**Submitted by the Seafarers**

**Proposal:** After paragraph 2, *add* the following new paragraph: “When determining manning levels, the competent authority shall take into account all the requirements within Regulation 3.2 and Standard A3.2 – Food and catering.”

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**Comment:** The proposed amendment would ensure that staffing requirements of the ship's catering services are taken into account in determining the minimum number of seafarers that Members would require on a ship to ensure that it operates in accordance with Regulation 2.7.

### **Title 3**

Amendment 59: C.2/D.12

#### **Regulation 3.1, paragraph 1**

**Submitted by the following Government member: United Kingdom, and the Seafarers**

**Proposal:** In paragraph 1, after the word “seafarers”, *insert* the words “working and”.

**Context:** “Members shall ensure that ships that fly their flag provide and maintain decent living accommodations and recreational facilities to seafarers **working and** living on board consistent with promoting the seafarers’ health and well-being.”

**Comment:** The proposed amendment would clarify that ships provide both the working and living environment of seafarers. It could be seen as ensuring consistency with the decision at the PTMC to move aspects of occupational health and safety regulations to Title 3. The terminology may also better reflect the terminology adopted in Title 5.

Amendment 60: C.2/D.10

#### **Regulation 3.1, paragraph 1**

**Submitted by the Seafarers**

**Proposal:** At the end of paragraph 1, *add* the following: “and security”.

**Context:** “Members shall ensure that ships that fly their flag provide and maintain decent living accommodations and recreational facilities to seafarers living on board consistent with promoting the seafarers’ health and well-being **and security.**”

**Comment:** The proposed amendment may raise the question as to what is intended by security that is not already covered by health and well-being. Regulation 2.7, and Standard A2.7, paragraph 1, as adopted at the PTMC, refer to and draw a distinction between the safety and security of personnel.

Amendment 61: C.2/D.13

#### **Regulation 3.1, paragraph 2**

**Submitted by the following Government member: United Kingdom, and the Seafarers**

**Proposal:** Between paragraphs 2 and 3, *insert* the following new paragraph: “For ships constructed before (date of entry into force of this Convention) the Member shall ensure that, to the extent compatible with national law and practice, ships comply with Conventions Nos. 92 and 133, as applicable.”

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**Context:**

“2. The requirements in the Code implementing this Regulation which relate to ship construction and equipment apply only to ships constructed on or after the coming into force of this Convention for the Member concerned.

**2bis. For ships constructed before (date of entry into force of this Convention) the Member shall ensure that, to the extent compatible with national law and practice, ships comply with Conventions Nos. 92 and 133, as applicable.**

3. Unless expressly provided otherwise, any requirement under an amendment to the Code relating to the provision of seafarer accommodation and recreational facilities shall apply only to ships constructed on or after the amendment takes effect for the Member concerned.”

**Comment:** The proposed amendment would fill a temporary gap in the protection to be provided by the new Convention caused by paragraph 2, quoted above, of Regulation 3.1, combined with the effect of Article X: as soon as the new Convention comes into force for a Member ratifying it, all the present Conventions that are listed in Article X as being revised by the new Convention would be considered as denounced for that Member. These revised Conventions include the Accommodation of Crews Convention (Revised), 1949 (No. 92), the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), as well as Convention No. 147 and the Protocol to that Convention, requiring at least a “substantially equivalent” application of Conventions Nos. 92 and 133. This would not normally result in any lessening of protection as the consolidated Convention would have provisions corresponding to those of the revised Conventions. However, this would not be the case, under the current text of the Draft Convention, with respect to the provisions on construction and equipment of the older ships. Under paragraph 2 of Regulation 3.1, the requirements of the Code relating to ship construction and equipment would not apply to ships constructed before the coming into force of the new Convention for the Member concerned. However, the Member concerned may have ratified one or more of the Conventions just referred to or it may have embodied their substance in its national law without ratifying them. This lessening of protection under the new Convention would not be in line with the original intentions behind the Convention or with article 19, paragraph 8, of the ILO Constitution (referred to above in connection with Amendment 7 (C.1/D.9 above). If it is the intention of the proposed amendment to fill this temporary gap, it might be useful to review the wording to make sure that this intention comes out sufficiently clearly. It is also presumably intended that all ships benefiting from the exception in paragraph 2 of Regulation 3.1 should be covered by the proposed amendment. However, with the present wording, this would not necessarily be the case: the requirement laid down in the amendment would not apply to ships constructed after the initial entry into force of the Convention, although such ships would still be able to benefit from the exception provided for in paragraph 2 if they were constructed before “the coming into force of this Convention for the Member concerned”. This could happen where the flag State ratifies the Convention after it has come into force.

Amendment 62: C.2/D.11

**Regulation 3.1**

**Submitted by the following Government members: China, India, Indonesia, Japan, Pakistan, Republic of Korea, Singapore, Thailand**

**Proposal:** After paragraph 3, *add* the following new paragraph: “This Title applies to all ships of 1,000 gross tons and above.”

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**Comment:** The PTMC left as unresolved the question of whether, in the Articles of the Convention, there should be a general tonnage limitation on the application of the Convention. If it were decided to have a general limitation of the Convention to ships above 1,000 gross tons (or less), the proposed amendment would be redundant. It should be noted that the proposed amendment refers to “This Title”; it would thus apply to *both* accommodation and recreational facilities *and* food and catering. The proposal should also be considered in light of the detailed accommodation provisions adopted at the PTMC for this Title, which also contain several specific provisions regarding application based on tonnage and/or category of ships. For purposes of comparison and also as an aspect of the consolidation process it is noted that Convention No. 92 applies to ships above 500 tons (pre-1969 Convention tonnage measurement), and Convention No. 133 adopted in 1970 and in force in 1991 does not apply to ships of less than 1,000 tons.

Amendment 63: C.2/D.14

**Standard A3.1, paragraph 1(a)**

**Submitted by the following Government member: United Kingdom, and the Seafarers**

**Proposal:** In paragraph 1, subparagraph (a), after the word “decent”, *insert* the words “working and”.

**Context:** “Each Member shall adopt laws and regulations requiring that ships flying its flag:

- (a) meet minimum standards for safe and decent **working and** living accommodation and recreational facilities for seafarers who are required to live on board; ...”.

**Comment:** The proposed amendment could be understood as consequential on the adoption of C.2/D.12 (Amendment 59 above). Some safety aspects of the working environment on a ship are also regulated by the IMO under, for example, the SOLAS Convention.

Amendment 64: C.2/D.16

**Standard A3.1, paragraph 1**

**Submitted by the following Government member: United Kingdom, and the Seafarers**

**Proposal:** Between paragraphs 1 and 2, *insert* the following new paragraph: “Members shall decide to what extent the provisions of this Title shall apply to ships on which seafarers are not required to sleep on board.”

**Context:**

“1. Each Member shall adopt laws and regulations requiring that ships flying its flag:

- (a) meet minimum standards for safe and decent living accommodation and recreational facilities for seafarers who are required to live on board; and
- (b) be inspected to ensure initial and ongoing compliance with those standards.

**Ibis. Members shall decide to what extent the provisions of this Title shall apply to ships on which seafarers are not required to sleep on board.”**

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**Comment:** As worded, the proposed amendment would allow Members to limit the scope of application of Title 3. However, this might be considered as inconsistent with the governing Regulation 3.1. In addition, the reference to “this Title” would extend the flexibility granted to all aspects of Title 3 including provisions such as those related to noise protection, hospital accommodation and food and catering. One way of dealing with this problem, if the proposed amendment were adopted, would be to reword it as follows, “Members shall decide to what extent **this Standard** is **applicable** to ships on which seafarers are not required to sleep on board” and to have a similar provision (if considered appropriate) in Standard A3.2 on food and catering.

Amendment 65: C.2/D.15

**Standard A3.1, paragraph 1**

**Submitted by the Seafarers**

**Proposal:** In paragraph 1, between subparagraphs (a) and (b), *add* the following new subparagraph: “have no part of the ship’s accommodation situated forward of the collision bulkhead; and”.

**Context:** “Each Member shall adopt laws and regulations requiring that ships flying its flag:

(a) meet minimum standards for safe and decent living accommodation and recreational facilities for seafarers who are required to live on board;

**(abis) have no part of the ship’s accommodation situated forward of the collision bulkhead; and**

(b) be inspected to ensure initial and ongoing compliance with those standards.”

**Comment:** In the current text, a prohibition with respect to locating accommodation forward of the collision bulkhead is set out in Standard A1.3, paragraph 5(k). Paragraph 5(k) addresses the situation of sleeping rooms only. The proposed amendment would establish a general requirement to that effect covering all parts of the ship’s accommodation.

Amendment 66: C.2/D.17

**Standard A3.1, paragraph 2(b)**

**Submitted by the Shipowners**

**Proposal:** In paragraph 2, *delete* subparagraph (b).

**Context:** [(b) “give due consideration to the guidance contained in Part B of this Code;”].

**Comment:** Since the obligation to “give due consideration to the guidance contained in Part B ...” is provided for in Article VI, paragraph 2, the subparagraph which it is proposed to delete serves as a reminder of an obligation, rather than itself establishing an obligation. If the subparagraph were deleted as proposed, the drafting of paragraph 2 would need to be rearranged.

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Amendment 67: C.2/D.18

**Standard A3.1, paragraph 7**

**Submitted by the following Government members: Belgium, Cyprus, Luxembourg, Netherlands, Norway, Portugal**

**Proposal:** In paragraph 7, *replace* the word “frequent” by the word “regular”.

**Context:** “The competent authority shall require **regular** inspections to be carried out on board ships, by or under the authority of the master, to ensure that seafarer accommodation is clean, decently habitable ...”.

**Comment:** The term “frequent” may suggest how often an inspection would occur as well as implying regularity. “Regular” may relate more to consistency in the pattern without implying how often the inspection occurs. Standard A3.2, paragraph 6, also contains a requirement for “frequent inspections”.

Amendment 68: C.2/D.19

**Guideline B3.1.5, paragraph 4**

**Submitted by the Shipowners**

**Proposal:** In paragraph 4, *delete* the words “one or”.

**Context:** “The number of seafarers performing the duty of petty officers occupying sleeping rooms should not exceed [one or] two persons per room.”

**Comment:** This provision is drawn from Convention No. 133, Article 5, paragraph 5. The Title 3 provisions have been the subject of extensive discussion between representatives of the Shipowners and Seafarers preceding and during the PTMC. This proposed amendment reflects what is understood to be their agreed view on the matter.

Amendment 69: C.2/D.21

**Guideline B3.1.5, paragraph 11**

**Submitted by the following Government members: China, India, Indonesia, Japan, Liberia, Pakistan, Philippines, Republic of Korea, Singapore, Thailand**

**Proposal:** *Replace* paragraph 11 by the following: “Each berth should be fitted with a comfortable mattress with cushioning bottom or a combined cushioning mattress. The mattress and cushioning material used should be made of approved material. Stuffing of material likely to harbour vermin should not be used.”

**Context:** “Each berth should be fitted with **a comfortable mattress with cushioning bottom or a combined cushioning mattress** [a spring bottom or a spring mattress]. The mattress **and cushioning material used** should be of approved material. Stuffing of material likely to harbour vermin should not be used.”

**Comment:** The existing paragraph is drawn from Convention No. 92, adopted in 1949, and may not reflect the norm now adopted for mattresses or mattress production.

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Amendment 70: C.2/D.20

**Guideline B3.1.7, paragraph 2**

**Submitted by the Shipowners**

**Proposal:** In paragraph 2, *replace* the words “an ample flush of water” by the words “a suitable flushing system”.

**Context:** “All water closets should be of an approved pattern and provided with a **suitable flushing system**, available at all times and independently controllable.”

**Comment:** The existing provision is from Convention No. 92, adopted in 1949, and may reflect the nature of plumbing at that time.

Amendment 71: C.2/D.22

**Regulation 3.2, paragraph 1**

**Submitted by the Shipowners**

**Proposal:** *Replace* paragraph 1 by the following: “Members shall ensure that ships that fly their flag carry on board and serve food and drinking water of appropriate quality, nutritional value and quantity that adequately covers the requirements of the vessel and takes into account the differing cultural and religious backgrounds of the seafarers on board.”

**Context:** “Members shall ensure that ships that fly their flag **carry on board and serve** [have a supply of] **food and drinking water of appropriate quality, nutritional value and quantity that adequately covers the requirements of the vessel** [sufficient food of good quality, drinking water and catering arrangements] and [that secure the health and well-being of seafarers living on board and] takes into account the differing cultural and religious [and gastronomic] backgrounds of the seafarers on board.”

**Comment:** The proposed amendment changes the focus of the Regulation to one of appropriate quality for the vessel’s requirements. It may subsume the concept of gastronomic background in the terms “appropriate” and “nutritional value” and “adequate”. The current text also refers to catering arrangements. If adopted, the term “vessel” should be changed to “ship” to ensure consistency with the Convention’s terminology.

Amendment 72: C.2/D.24

**Regulation 3.2, paragraph 2**

**Submitted by the Seafarers**

**Proposal:** In paragraph 2, after the word “seafarers” *insert* the words “working or”.

**Context:** “Seafarers **working or** living on board a ship shall be provided with food free of charge during the period of engagement”.

**Comment:** The proposed amendment is consistent with earlier proposals for Regulation 3.1 (Amendments 59 and 63 – C.2/D.12 and C.2/D.14); however, the phrase proposed was “working and living”. It may be preferable, if the amendment is adopted, to use “and” rather than “or”.

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Amendment 73: C.2/D.28

**Regulation 3.2, paragraph 3**

**Submitted by the Shipowners**

**Proposal:** After paragraph 3, *add* the following new paragraph: “Vessels of less than 4,000 gross tonnes, which by virtue of the size of the crew or the trading pattern are not required by the competent authority to carry a full-time cook, should train or instruct anyone processing food in the galley in areas including food and personal hygiene and in the handling and storage of food on board a ship.”

**Comment:** A substantially similar provision (but relating to manning levels rather than tonnage) was jointly proposed for adoption at the PTMC (PTMC04-RP5(Rev.), paragraph 533 ff.) by the Seafarers and Shipowners. After extensive discussion (paragraphs 549-571), it was adopted as Standard A3.2, paragraph 5.

Amendment 74: C.2/D.26

**Standard A3.2, paragraph 2(c)**

**Submitted by the Shipowners**

**Proposal:** In paragraph 2, *delete* subparagraph (c).

**Context:** [(c) “catering staff shall be properly trained or instructed for their positions.”]

**Comment:** Paragraph 2 is directed to flag state responsibility for standards on its ships for all catering staff (cooks and others). More specific provisions for ships’ cooks’ training are also found in the Standard. The proposed amendment may reflect a view that, given these details, subparagraph (c) is unnecessary.

Amendment 75: C.2/D.33

**Guideline B3.2.1, paragraph 2**

**Submitted by the Shipowners**

**Proposal:** In paragraph 2, *delete* the words “or at reasonable cost”.

**Context:** “This information” (to be collected by the competent authority on nutrition and other questions) “should be made available, free of charge [or at reasonable cost], to manufacturers of and traders in ships’ food supplies and equipment ...”.

**Comment:** Although this is in a Guideline, it is important that nutritional and health information and standards for seafarers be available as inexpensively or freely as possible. However, in some countries it may be difficult for administrations to afford to pay for paper, printing and distributions costs or they may not have inexpensive access to internet distribution and may need to recover costs to be able to provide the information at all. This is the case for some international organizations also charged with securing greater awareness.

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## Title 4

### Amendment 76: C.3/D.27

#### Regulation 4.1, paragraph 2

**Submitted by the following Government members: Denmark, Finland, Germany, Malta, Netherlands, Norway, United Kingdom**

**Proposal:** In paragraph 2, *insert* at the beginning of the text “To the extent consistent with national law and practice”, and at the end *insert* “, while seafarers are on board ship or landed in a foreign port”.

**Context:** “**To the extent consistent with national law and practice**, the (health) protection and (medical) care under paragraph 1 shall, in principle, be provided at no cost to the seafarers **while seafarers are on board ship or landed in a foreign port.**”

**Comment:** This Regulation revises the Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164), which was adopted in 1987. Paragraph 2 as currently worded allows a degree of flexibility with the term “in principle”. The substance of the proposed amendment is now provided for in Standard A4.1, paragraph 1(d). The amendment, taken together with Amendment 80 (C.3/D.28 below), is thus essentially a proposal to transfer the provision from the Standard to the Regulation. Under the structure of the consolidated Convention, the Regulations set out the basic obligations of ratifying Members, leaving to the Standards the details of the way in which those obligations are to be implemented. They also determine the scope of what is included in the Standard or may later be included (through the simplified amendment procedure). Thus, in order not to inhibit the adaptability of the Convention to future developments, care should be taken before specific wording, such as “while seafarers are on board ship or landed in a foreign port”, is transferred to the Regulations: constituents must be sure either that there will most probably never be another kind of situation in which health protection and medical care should, in principle, be provided at no cost to the seafarers or that, if such a situation should arise, it should not be included in the Standard without the consent of national parliaments under the express ratification procedure for amendments.

**Note:** In order to ensure consistency, it would seem advisable to consider the above proposal in conjunction with the proposals in Amendments 80 and 81 (C.3/D.28 and C.3/D.17) below.

### Amendment 77: C.3/D.29

#### Regulation 4.1, paragraph 4

**Submitted by the Shipowners**

**Proposal:** *Delete* the paragraph.

**Context:** [“4. The requirements for on-board health protection and medical care set out in the Code include standards for measures aimed at providing seafarers with health protection and medical care as comparable as possible to that which is generally available to workers ashore.”]

**Comment:** Paragraph 4 is based on Article 4(b) of Convention No. 164. If the amendment is adopted it may be necessary to replace it with another provision indicating the content of the Standards to be included in the Code.

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Amendment 78: C.3/D.32

**Standard A4.1, paragraph 1**

**Submitted by the Shipowners**

**Proposal:** *Replace* “essential” with “emergency”.

**Context:** “... ensure that measures providing for health protection and medical care (including **emergency** dental care) for seafarers working ...”.

**Comment:** The phrase “emergency” versus “essential” was debated at length at the fourth HLTWG meeting and the term “essential” was recommended. The proposed amendment to “emergency” may cover the same situations, however there may be some dental problems that could be regarded as essential but would not constitute an emergency.

Amendment 79: C.3/D.34

**Standard A4.1, paragraph 1(b)**

**Submitted by the Shipowners**

**Proposal:** *Replace* the subparagraph with the following: “aim at providing seafarers with health protection and medical care as comparable as possible to that which is generally available to workers ashore.”

**Context:** “**aim at providing seafarers with** [ensure that seafarers are given] health protection and medical care as comparable as possible to that which is generally available to workers ashore. [including prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatment and to medical information and expertise]”.

**Comment:** The proposed amendment may be linked to the proposal under C.3/D.29 (Amendment 77 below). The current provision is the supporting provision for the Guidelines in B4.1.1 and is also currently referred to as the example in the explanatory note. If this proposal is adopted a new provision may be needed to support the Guidelines and the explanatory note would need to be amended to use another example if the proposal (C.1/D.44) in Amendment 23 above (which would remove any examples) is not adopted.

Amendment 80: C.3/D.28

**Standard A4.1, paragraph 1(d)**

**Submitted by the following Government members: Denmark, Finland, Germany, Malta, Netherlands, Norway, United Kingdom**

**Proposal:** *Delete* the subparagraph.

**Comment:** The amendment is essentially a proposal to transfer this provision from a Standard to a Regulation and is linked to the adoption of Amendment 76 (C.3/D.27 above) proposed for Regulation 4.1, paragraph 2.

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Amendment 81: C.3/D.17

**Standard A4.1, paragraph 1(d)**

**Submitted by the Shipowners**

**Proposal:** *Replace* “on board ship or landed in a foreign port” with “serving under his contract of employment”.

**Context:** “ensure that, to the extent consistent with the Member’s national law and practice, medical care and health protection services while a seafarer is **serving under his contract of employment** are provided free of charge to seafarers;”.

**Comment:** Aspects of the extent of shipowner liability under Regulation 4.2 are as yet unresolved text. However, the phrase “serving under a seafarers’ employment agreement” in paragraph 1 of Regulation 4.2 was adopted at the PTMC. It may be useful to consider whether the phrase suggested in this proposal (if adjusted for consistency with Standard A4.2 and gender) should also apply to the description of coverage under Regulation 4.1 and Standard A4.1.

**Note:** If Amendment 80 (C.3/D.28) were adopted, the present proposal would be redundant, however the substance of the proposal may be of relevance to Amendment 76, if accepted.

Amendment 82: C.3/D.9

**Standard A4.1, paragraph 4(a)**

**Submitted by the following Government members: Canada, Denmark, Netherlands, Norway, United Kingdom, United States**

**Proposal:** *Move* the subparagraph to Title 3, Standard A3.1, paragraph 5.

**Context:** “ships carrying 15 or more seafarers and engaged in a voyage of more than three days’ duration shall provide separate hospital accommodation to be used exclusively for medical purposes. The competent authority may relax this requirement in respect of ships engaged in coastal trade. In approving on-board hospital accommodation, the competent authority shall ensure that the accommodation will, in all weathers, be easy of access, provide comfortable housing for the occupants and be conducive to their receiving prompt and proper attention.”

**Comment:** This is the Standard that supports the hospital accommodation Guidelines also transferred to Title 3. This proposal to transfer it to Title 3 could be seen as a consequential amendment. Changes to this provision were also discussed in Technical Committee 3 (PTMC04-RP6(Rev.), paragraphs 11-22) and in Technical Committee 2 (PTMC04-RP5(Rev.), paragraphs 405-420).

Amendment 83: C.3/D.24

**Standard A4.1, paragraph 4(a)**

**Submitted by the following Government members: Denmark, Egypt, France, Georgia, Germany**

**Proposal:** *Move* the subparagraph to Title 3, Standard A3.1, paragraph 5.

**Comment:** Same proposal as Amendment 82 (C.3/D.9) above.

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Amendment 84: C.3/D.8

**Standard A4.1, paragraph 4(e)**

**Submitted by the following Government members: Greece, Liberia, Luxembourg, Malta, Namibia, Poland, United Kingdom**

**Proposal:** *Delete* the words “including the onward transmission of medical messages by radio or satellite communication between a ship and those ashore giving the advice”.

**Context:** “the competent authority shall ensure by a prearranged system that medical advice by radio or satellite communication to ships at sea, including specialist advice, is available at any hour of the day or night. Medical advice, [including the onward transmission of medical messages by radio or satellite communication between a ship and those ashore giving the advice], shall be available free of charge to all ships irrespective of the flag that they fly.”

**Comment:** This provision is based on Convention No. 164, Article 7, paragraph 2. The proposed amendment, if accepted, might mean that a Member could charge a ship for the communication costs incurred when providing medical advice from shore to a ship.

Amendment 85: C.3/D.11

**Guideline B4.1.1, paragraphs 1-4**

**Submitted by the following Government members: Canada, Denmark, Netherlands, Norway, United Kingdom, United States**

**Proposal:** *Move* paragraphs 1-4 to new Guideline B3.1.8.

**Comment:** This proposal is not receivable as it does not relate to unbracketed text. It corresponds, however, to a decision already adopted at the PTMC.

Amendment 86: C.3/D.26

**Guideline B4.1.1, paragraphs 1-4**

**Submitted by the following Government members: Denmark, Egypt, France, Georgia, Germany**

**Proposal:** *Move* paragraphs 1-4 to a new Guideline in B3.1.

**Comment:** Same proposal as the preceding one.

Amendment 87: C.3/D.19

**Guideline B4.1.1, paragraph 2**

**Submitted by the Shipowners**

**Proposal:** *Delete* the paragraph.

**Context:** [“2. The courses should be based on the contents of the most recent edition of the *International Medical Guide for Ships*, the *Medical First Aid Guide for Use in Accidents Involving Dangerous Goods*, the *Document for Guidance – An International*

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*Maritime Training Guide* published by the International Maritime Organization, and the medical section of the *International Code of Signals* as well as similar national guides.”]

**Comment:** This Guideline is based on Convention No. 164, Article 9, paragraph 3. It suggests the content of medical training courses for personnel on ships not carrying a medical doctor. The preceding paragraphs also refer to the STCW Code provision. Adoption of the proposed amendment would not affect the training expectations other than removing an element that may help ensure consistency in coverage and scope.

Amendment 88: C.3/D.20

#### **Guideline B4.1.1, paragraph 5**

##### **Submitted by the Shipowners**

**Proposal:** *Replace* the words “Where a cargo which is classified ... International Maritime Organization” with the words “Where a cargo is classified dangerous”.

**Context:** “Where a cargo [which] is classified dangerous [has not been included in the most recent edition of the *Medical First Aid Guide for Use in Accidents Involving Dangerous Goods* published by the International Maritime Organization,] the necessary information on the nature ...”.

**Comment:** The proposed amendment to the Guidelines appears to be aimed at simplification of the text by removal of reference to an IMO text. Convention No. 164, from which the existing provision is taken, was adopted in 1987. The intention was to address obligations where cargo may be classed dangerous but is not dealt with in applicable reference texts. The proposed amendment could perhaps be seen as encouraging administrations to provide information for all goods classed as dangerous; an administration could still choose to provide this through the IMO text to the extent it covers the goods. It may be that it is assumed that seafarers will have all this information through IMO requirements.

Amendment 89: C.3/D.22

#### **Guideline B4.1.1, paragraph 6**

##### **Submitted by the Shipowners**

**Proposal:** *Replace* “instructed in the use of ... as well as the advice received” with “familiarized with the latest guidance materials”.

**Context:** “... Seafarers with responsibility for medical care or medical first aid on board should be **familiarized with the latest guidance materials**. [instructed in the use of the ship’s medical guide and the medical section of the most recent edition of the *International Code of Signals* published by the International Maritime Organization so as to enable them to understand the type of information needed by the advising doctor as well as the advice received]”.

**Comment:** The current provision in the Guideline draws upon requirements in Convention No. 164, Article 7, paragraph 4, and is intended to convey the purpose, nature and content of the instruction to be given. It may be that the proposed more concise wording also captures these elements.

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Amendment 90: C.3/D.25

**Guideline B4.1.3, paragraph 2(c)**

**Submitted by the Shipowners**

**Proposal:** *Delete* “especially”.

**Context:** “facilities for dental treatment, [especially] in cases of emergency.”

**Comment:** These provisions provide guidance to Members regarding access to medical and other care ashore. The proposed amendment may be linked to the proposal in Amendment 78 (C.3/D.32 above) that dental care on board be limited to emergency care.

Amendment 91: C.3/D.30

**Guideline B4.1.4, paragraph 1(a)**

**Submitted by the Shipowners**

**Proposal:** *Delete* the words “in conformity with ... International Civil Aviation Organization”.

**Context:** “developing and coordinating search and rescue efforts and arranging prompt medical help and evacuation at sea for the seriously ill or injured on board a ship through such means as periodic ship position reporting systems, rescue coordination centres and emergency helicopter services, [in conformity with the provisions of the International Convention on Maritime Search and Rescue, 1979, as amended and the *International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual* developed by the International Maritime Organization and the International Civil Aviation Organization];”.

**Comment:** The current provision draws on Article 13, paragraph 2(a), of Convention No. 164.

Amendment 92: C.3/D.10

**Guideline B4.1.4, paragraph 1(c)**

**Submitted by the following Government members: Germany, Ireland, Luxembourg, Russian Federation, United Kingdom, United States**

**Proposal:** *Delete* the words “doctors and”.

**Context:** “compiling and maintaining an international list of [doctors and] medical care facilities available worldwide to provide emergency medical care to seafarers”.

**Comment:** The current provision draws on Article 13, paragraph 2(c), of Convention No. 164.

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Amendment 93: C.3/D.4

**Guideline B4.1.5**

**Submitted by the following Government members: China, India, Indonesia, Pakistan, Singapore, Thailand**

**Proposal:** *Delete* the Guideline.

**Context:** “[*Guideline B4.1.5 – Dependants of seafarers*”

1. Members should adopt measures to secure proper and sufficient medical care for the dependants of seafarers domiciled in their territory pending the development of a medical care service which would include within its scope workers generally and their dependants where such services do not exist and should inform the International Labour Office concerning the measures taken for this purpose.]”

**Comment:** This provision, provided as guidance to Members, draws on aspects of the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), which extends protection to dependants of seafarers.

Amendment 94: C.3/D.31

**Guideline B4.1.5, paragraph 1**

**Submitted by the Shipowners**

**Proposal:** *Delete* the paragraph.

**Comment:** The same in effect as the proposal in Amendment 93 (C.3/D.4) above.

Amendment 95: C.3/D.33

**Regulation 4.2, paragraph 1**

**Submitted by the Shipowners**

**Proposal:** *Replace* the paragraph with the following text: “Members shall ensure that measures in accordance with the Code are in place on ships that fly their flag for shipowners to take financial responsibility for consequences of sickness, occupational injury and death occurring during the period the seafarer is serving on board including during their shore leave and from the period when travelling to and from the ship. This should be provided for in all cases except where sickness and injury have resulted from wilful misconduct on the part of the seafarer.”

**Context:** “Members shall ensure that measures in accordance with the Code are in place on ships that fly their flag **for shipowners to take financial responsibility for consequences** [to provide seafarers employed on the ships with a right to material assistance and support from the shipowner with respect to] of sickness, **occupational injury and death occurring during the period the seafarer is serving on board including during their shore leave and from the period when travelling to and from the ship** [under a seafarers’ employment agreement or arising from their employment under such agreement]. **This should be provided for in all cases except where sickness and injury have resulted from wilful misconduct on the part of the seafarer.**”

**Comment:** This paragraph was the subject of extensive discussion and drafting committee advice in Technical Committee 3 at the PTMC (see PTMC04-RP6(Rev.),

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paragraphs 72-94). The proposed amendment is not receivable in so far as it omits the words “or arising from their employment under such agreement”, which were submitted to the PTMC inside brackets. It is noted that aspects of the proposal may affect an area under Standard A4.2 that is currently regarded as unresolved text. With regard to the last sentence of the proposed amendment (in which the auxiliary “should” would need to be “shall”), a provision regarding wilful misconduct is currently found in Standard A4.2, paragraph 5 (see Amendment 101 below). The proposal is discussed in the separate paper on unresolved issues to the extent relevant to the issues concerned.

Amendment 96: C.3/D.36

**Standard A4.2, paragraph 1(a)**

**Submitted by the Shipowners**

**Proposal:** *Replace* the subparagraph with the following text: “shipowners shall be liable to bear the costs for seafarers working on their ships in respect of sickness and injury of the seafarers occurring during the period of engagement on board as defined by national laws and regulations or collective agreements.”

**Comment:** The provision to which this proposal relates was in bracketed text not resolved at the PTMC. The proposed amendment is therefore not receivable in the context of the present paper, but is discussed in the separate paper on unresolved issues.

Amendment 97: C.3/D.37

**Standard A4.2, paragraph 1(d)**

**Submitted by the following Government members: Denmark, Finland, Germany, Malta, Netherlands, Norway, United Kingdom**

**Proposal:** *Delete* the subparagraph.

**Context:** “[Shipowners shall be liable to pay the cost of burial expenses in the case of death occurring on board or ashore during the period of engagement.”]

**Comment:** The current provision is based on the Shipowners’ Liability (Sick and Injured Seamen) Convention, 1936 (No. 55). It may be that this is no longer considered an appropriate employment-related expense.

Amendment 98: C.3/D.35

**Standard A4.2, paragraph 1(d)**

**Submitted by the Shipowners**

**Proposal:** *Replace* the words “the cost of burial expenses” with “for a body or ashes to be brought home in accordance with the wishes of the next of kin”.

**Context:** “shipowners shall be liable to pay **for a body or ashes to be brought home in accordance with the wishes of the next of kin** in the case of death occurring on board or ashore during the period of engagement”.

**Comment:** The current provision is based on Convention No. 55, referred to above. The proposed amendment may reflect a view or a contemporary practice whereby families

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prefer to have bodies or ashes brought home without necessarily wanting the deceased seafarer buried.

**Note:** This proposed amendment would become redundant if Amendment 97 (C.3/D.37) were adopted.

Amendment 99: C.3/D.1

**Standard A4.2, paragraph 3(a)**

**Submitted by the following Government members: Canada, Finland, France, Netherlands, Switzerland, United States**

**Proposal:** *Insert* after “wages” the following text: “as provided for in national laws or regulations or in collective agreements”.

**Context:** “Where the sickness or injury results in incapacity for work the shipowner shall be liable:

- (a) to pay full wages **as provided for in national laws or regulations or in collective agreements** as long as the sick or injured seafarers remain on board or are left behind in the territory of a State other than the Member;”.

**Comment:** This provision is intended to establish a minimum standard for an entitlement to wages when sick on board. The proposal would provide for some discretion in the application of the provision, either through a national law or regulation or a collective bargaining agreement.

Amendment 100: C.3/D.2

**Standard A4.2, paragraph 3(b)**

**Submitted by the following Government members: Canada, Finland, France, Netherlands, Switzerland, United States**

**Proposal:** After “regulations”, *insert* the following text: “or as provided for in collective agreements”.

**Context:** “to pay wages in whole or in part as prescribed by national laws or regulations **or as provided for in collective agreements** from the time when the seafarers are repatriated or landed until their recovery or (if earlier) until they are entitled to cash benefits under the legislation of the Member concerned”.

**Comment:** This proposed amendment, as with Amendment 99 (C.3/D.1) above, would allow for regulation of the extent of the entitlement through a collective agreement as well as through legislation.

Amendment 101: C.3/D.6

**Standard A4.2, paragraph 5(b)**

**Submitted by the Seafarers**

**Proposal:** *Replace* “act, default or misbehaviour” by “misconduct”.

**Context:** “National laws or regulations may exclude the shipowner from liability in respect of:

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...

- (b) injury or sickness due to the wilful [act, default or misbehaviour] **misconduct** of the sick, injured or deceased seafarer”.

**Comment:** The current provision is based on the text of Convention No. 55 (Article 2, paragraph 2(b)), which came into force in 1939. The amendment would prevent any exclusion of liability in the case of wilful acts or wilful default that did not amount to misconduct. For example, a refusal to take medicine knowing that one’s health condition might suffer as a consequence could be considered a “wilful default”. On the other hand, jumping overboard to save someone from drowning could be considered as a “wilful act” in the sense that the seafarer intentionally performed an act knowing that it might result in his or her injury.

Amendment 102: C.3/D.7

**Standard A4.2, paragraph 5(b)**

**Submitted by the following Government members: Bahamas, Canada, Liberia, Netherlands, Norway, Spain, United Kingdom, United States**

**Proposal:** *Replace* “act, default or misbehaviour” by “misconduct”.

**Comment:** Same proposal as Amendment 101 (C.3/D.6) above.

Amendment 103: C.3/D.14

**Standard A4.2, paragraph 6**

**Submitted by the Shipowners**

**Proposal:** *Delete* “and burial”.

**Context:** “In so far as such liability is assumed by the public authorities, national laws or regulations may exempt the shipowner from liability to defray the expense of medical care and board and lodging [and burial] expenses.”

**Comment:** This proposal seems to be related to C.3/D.35 (see Amendment 98 above) and could possibly be considered a consequential amendment if D.35 were adopted.

Amendment 104: C.3/D.16

**Guideline B4.2**

**Submitted by the Shipowners**

**Proposal:** *Move* the entire section to Standard A4.2.

**Context:**

“1. The payment of full wages required by paragraph 3(a) of Standard A4.2 may be exclusive of bonuses.

2. National laws or regulations may also provide that a shipowner shall cease to be liable to bear the costs of a sick or injured seafarer from the time at which that seafarer can

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claim medical benefits under a scheme of compulsory sickness insurance, compulsory accident insurance or workers' compensation for accidents.

3. National laws or regulations may provide that burial expenses paid by the shipowner shall be reimbursed by an insurance institution in cases in which funeral benefit is payable in respect of the deceased seafarer under laws or regulations relating to social insurance or workers' compensation."

**Comment:** The three paragraphs indicate certain qualifications or reductions of the liability of shipowners under paragraph 3(a) of Standard A4.2 which "may" be decided in ratifying Members. If these qualifications or reductions are clearly justified or permitted by the terms of the mandatory Standard, they are simply clarifications of the Standard and are properly placed in a Guideline. On the other hand, while a Guideline provides guidance as to how a Standard should or may be implemented, it cannot purport to reduce the obligations provided for in the Standard. If therefore the paragraphs concerned are considered as actually permitting modifications of the obligations laid down in Standard A4.2, they should be transferred to the Standard itself, as proposed.

Amendment 105: C.3/D.18

**Guideline B4.2, paragraph 3**

**Submitted by the Shipowners**

**Proposal:** *Replace* "burial expenses" by "costs of repatriation of a body or ashes".  
*Delete* "in cases in which funeral benefit is payable in respect of the deceased seafarer".

**Context:** "National laws or regulations may provide that **costs of repatriation of a body or ashes** paid by the shipowner shall be reimbursed by an insurance institution [in cases in which funeral benefit is payable in respect of the deceased seafarer] under laws or regulations relating to social insurance or workers' compensation."

**Comment:** The proposed amendment could be considered consequential to Amendment 98 above (C.3/D.35) if adopted and could be consistent with Amendment 97 (C.3/D.37) in cases where the shipowner voluntarily pays this expense.

Amendment 106: C.3/D.21

**Standard A4.3, paragraph 2(b)**

**Submitted by the Shipowners**

**Proposal:** *Delete* the subparagraph.

**Comment:** This proposed amendment is not receivable as it relates to text that was submitted inside brackets to the PTMC.

Amendment 107: C.3/D.23

**Guideline B4.3.4, paragraph 2**

**Submitted by the Shipowners**

**Proposal:** *Replace* the paragraph with the following: "2. Shipowners should ensure that machinery in use is properly guarded, and its use without appropriate guards prevented. Workers should not use machinery without the guards being in position or make the guards provided inoperative."

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**Context:** “[Account should also be taken of Articles 7 and 11 of the Guarding of Machinery Convention, 1963 (No. 119) – and the corresponding provisions of the Guarding of Machinery Recommendation, 1963 (No. 118) – under which the obligation to ensure compliance with the requirement] **Shipowners should ensure** that machinery in use is properly guarded, and its use without appropriate guards prevented. [rests on the employer, while there is an obligation on the worker not to ...] Workers should not use machinery without the guards being in position or make the guards provided inoperative.”

**Comment:** The current provision is drawn from the Prevention of Accidents (Seafarers) Recommendation, 1970, Paragraph 5. The more concise wording proposed may need to be viewed in the light of the perceived usefulness of the guidance given in the 1963 provisions which would no longer be referred to if the amendment were adopted.

Amendment 108: C.3/D.12

**Guideline B4.3.5, paragraph 1**

**Submitted by the following Government members: Cyprus, Germany, Ireland, Luxembourg, United Kingdom, United States**

**Proposal:** *Replace* “diseases” by “all diseases within the scope of the International Maritime Health Regulations”.

**Context:** “All occupational accidents and occupational injuries and **all diseases within the scope of the International Maritime Health Regulations** should be reported so that they can be investigated and comprehensive statistics of such accidents can be kept, analysed and published, taking into account protection of the personal data of the seafarers concerned. Reports should not be limited to fatalities or to accidents involving the ship.”

**Comment:** Maritime health regulations exist at the national level, but it is not clear what is meant by the International Maritime Health Regulations. This proposal may be referring to the regulations of the World Health Organization called the International Health Regulations. The Regulations are essentially concerned with measures to prevent the spread of serious, communicable diseases to other countries. Under the 1969 Regulations as last amended in 1981, the “diseases subject to the Regulations” (quarantinable diseases) are, at present (the Regulations are in the process of revision), “cholera, including cholera due to the *el tor* vibrio, plague, and yellow fever”. Ships usually have to file a Maritime Declaration of Health on entering a foreign port to address these quarantine-related issues. It may be that the diseases that are of concern in the context of workplace health and safety concerns, while possibly communicable, may also be of a different nature, e.g. respiratory ailments, allergies, etc.

Amendment 109: C.3/D.15

**Standard A4.4, paragraph 2**

**Submitted by the following Government members: Bahamas, Canada, Liberia, Netherlands, United Kingdom, United States**

**Proposal:** *Delete* paragraph 2 of Standard A4.4 and paragraph 3 of Guideline B4.4.1. *Replace* paragraph 3 of Standard A4.4 by “Members shall promote the development of welfare facilities and encourage the establishment of welfare boards, which shall regularly review the location and provision of welfare facilities and services to ensure that they are appropriate in the light of changes in the needs of seafarers resulting from technical, operational or other developments in the shipping industry.” *Insert* a new paragraph after

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paragraph 3 of Standard A4.4 that reads as follows: “In the absence of welfare boards, Members shall encourage consultations between representatives of organizations of shipowners and seafarers and, where they exist, voluntary organizations and social bodies, with the objective of ensuring that appropriate shore-based welfare facilities and services are provided.”

**Context:** Standard “2. Members shall promote the development of welfare facilities and encourage the establishment of welfare boards, which shall regularly review **the location and provision of** welfare facilities and services to ensure that they are appropriate in the light of changes in the needs of seafarers resulting from technical, operational or other developments in the shipping industry [in appropriate ports of the country and determine, after consultation with the organizations of shipowners and seafarers concerned, which ports are to be regarded as appropriate].

**3. In the absence of welfare boards, Members shall encourage consultations between representatives of organizations of shipowners and seafarers and, where they exist, voluntary organizations and social bodies, with the objective of ensuring that appropriate shore-based welfare facilities and services are provided.”**

Guideline [“3. Arrangements for the supervision of welfare facilities and services should include participation by representative organizations of seafarers and shipowners concerned, where such exist.”]

**Comment:** The current text, drawn from the Seafarers’ Welfare Convention, 1987 (No. 163), and Recommendation (No. 173), was modified in the HLTWG to reflect concern as to the level of obligation to be assumed by Members. The proposed amendments would remove the obligation to determine appropriate ports or to encourage the establishment of welfare boards. However, they would provide for consultation with the representative and other organizations to ensure that appropriate facilities are provided.

Amendment 110: C.3/D.13

**Guideline B4.4.1, paragraph 1**

**Submitted by the following Government members: Bahamas, Canada, Liberia, Netherlands, Spain, United Kingdom, United States**

**Proposal:** *Replace* “designated” by “appropriate”.

**Context:** “Measures should be taken by Members to ensure that adequate welfare facilities and services are provided for seafarers in **appropriate** ports of call and that adequate protection is provided to seafarers in the exercise of their calling.”

**Comment:** The use of the term “appropriate”, as proposed, could be consistent with the text of Standard A4.4, paragraph 2, which appears to refer to the idea of appropriate ports (which are designated). The word “appropriate” appears to refer to the criteria for determining which port can be used and are therefore designated as appropriate. It may not make a difference at a substantive level whether “appropriate” or “designated” is the term used to describe the ports which have been chosen for welfare facilities.

Amendment 111: C.3/D.5

**Guideline B4.4.4, paragraph 1**

**Submitted by the following Government members: China, India, Indonesia, Japan, Liberia, Pakistan, Philippines, Republic of Korea, Singapore, Thailand**

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**Proposal:** Add the following sentence at the end of the paragraph: “However financial support or any other form of support for port welfare facilities by a Member is encouraged.”

**Comment:** The proposal is not receivable as it relates to text that was submitted inside brackets to the PTMC.

Amendment 112: C.3/D.3

**Standard A4.6 (New)**

**Submitted by the Seafarers**

**Proposal:** Add a new Standard A4.6 and Guideline B4.6 to read as follows:

“Standard A4.6 – Pensions

1. Each Member of the ILO for which this Convention is in force shall, in accordance with national laws or regulations, establish or secure the establishment of a scheme for the payment of pensions to seafarers on retirement from sea service.

Guideline B4.6 – Pensions

1. The pensions provided by the scheme:

- (a) should be payable to seafarers having completed a prescribed period of sea service on attaining the age of 55 or 60 years as may be prescribed by the scheme; and
- (b) should, together with any other social security pension payable simultaneously to the pensioner, be at a rate not less than the total obtained by computing for each year of his sea service 1.5 per cent of the remuneration on the basis of which contributions were paid in respect of him/her for that year if the scheme provides pensions on attaining the age of 55 years or 2 per cent of such remuneration if the scheme provides pensions at the age of 60 years.”

**Comment:** There is no Regulation 4.6, which would be required in order to support the Standard and Guideline. It may be that this proposal is intended to be included under Regulation 4.5 as another Standard, in which case the provisions would need to be renumbered and the text adjusted on one point to account for gender. The text for the proposal is drawn from the Seafarers’ Pension Convention, 1946 (No. 71), in force in 1962. It may be important to consider the relationship between this proposal, which is a contribution-based system, and the provisions in Standard A4.5.

**Title 5**

Amendment 113: C.1/D.65

**Title 5, paragraph 1**

**Submitted by the Shipowners**

**Proposal:** In the introductory paragraph 1, *replace* the word “delineate” with “specify”.

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**Context:** “The Regulations in this Title **specify** each Member’s responsibility to fully implement and enforce the principles and rights set out in the Articles as well as the particular obligations provided for under Titles 1, 2, 3 and 4”.

**Comment:** The proposed amendment would not seem to change the substance of the present provision. The word “delineate” means to outline, to portray, to express and may convey the idea of drawing a picture of the subject matter. It may suggest a degree of breadth in the provisions in the Title. The word “specify” means to name or mention expressly.

Amendment 114: C.1/D.32

**Title 5, paragraph 1**

**Submitted by the following Government members: China, India, Indonesia, Pakistan, Republic of Korea, Singapore, Thailand**

**Proposal:** After paragraph 1, *add* the following new paragraph: “This Title applies to all ships of 1,000 gross tons and above.”

**Comment:** The proposed amendment would raise similar considerations as those raised by Amendment 62 (C.2/D.11), which proposes the same limitation for Title 3 provisions. In the PTMC, a number of Governments indicated that they might have problems if they were required to inspect small ships. The Labour Inspection (Seafarers) Convention, 1996 (No. 178) does not apply to ships of less than 500 gross tons (Article 1, paragraph 4) and the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), does not apply to “small vessels” (Article 1, paragraph 4(c)). As worded, the limitation to ships of 1,000 gross tons and above would apply not only to flag state inspection and certification and port state inspection, but also to any on-board and on-shore complaints procedures that may be developed in connection with the paper addressing unresolved areas of the Convention, as well as to the marine casualty and labour-supply responsibilities in the Title.

Amendment 115: C.1/D.22

**Title 5, paragraph 2**

**Submitted by the following Government members: Bulgaria, Denmark, Finland, Germany, Netherlands, United Kingdom**

**Proposal:** At the end of paragraph 2, after the word “Title”, *add* the following: “except Standard A5.1.5 and A5.2.2”.

**Context:** “Paragraphs 3 and 4 of Article VI, permitting the implementation of Part A of the Code through substantially equivalent provisions, do not apply to Part A of the Code in this Title **except Standards A5.1.5 and A5.2.2.**”

**Comment:** In the Recommended Draft, Standard A5.1.5 dealt with on-board complaint procedures and Standard A5.2.2 with on-shore complaint-handling procedures. Both provisions relate to issues that were not resolved at the PTMC and are to be discussed further in connection with another paper.

Amendment 116: C.1/D.10

**Regulation 5.1.1, paragraph 2**

**Submitted by the Seafarers**

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**Proposal:** Between the words “the working and living conditions” and “for seafarers on ships that fly its flag meet”, *insert* the words “and social security protection”.

**Context:** “Members shall establish an effective system for the inspection and certification of maritime labour conditions, in accordance with Regulations 5.1.3 and 5.1.4 ensuring that the working and living conditions **and social security protection** for seafarers on ships that fly its flag meet, and continue to meet, the standards in this Convention.”

**Comment:** The proposed amendment would require that flag States inspect and certify the social security protection for seafarers working on their ships. In accordance with Standard A5.1.3, a list of matters that must be inspected will be contained in Appendix A5-I to the Convention. The Recommended Draft contained such an appendix, but its content is one of the unresolved issues that still need to be discussed. To the extent that social security protection forms part of seafarers’ working and living conditions, the adoption of the proposed amendment would depend upon a decision to include social security protection on the list of matters to be inspected. With respect to social security matters that may be provided under the responsibility of States other than the flag State in accordance with Regulation 4.5 and the associated Code provisions, if the proposed amendment is adopted then it may be important to consider inclusion of guidance in Part B. This could be guidance as to the scope of the inspection by the flag State; to the extent that other States were responsible for providing the protection, the flag State could only, at best, give a “second-hand” certification that the social security measures concerned “meet, and continue to meet, the standards in this Convention”.

Amendment 117: C.1/D.31

**Regulation 5.1.1, paragraph 4**

**Submitted by the following Government members: China, India, Indonesia, Pakistan, Republic of Korea, Singapore, Thailand**

**Proposal:** After the words “declaration of”, *insert* the word “maritime”.

**Comment:** The Draft Convention adopted by the PTMC uses the term “declaration of *maritime* labour compliance”.

Amendment 118: C.1/D.11

**Regulation 5.1.1, new paragraph**

**Submitted by the Seafarers**

**Proposal:** After paragraph 5, *add* the following new paragraph: “Seafarers, like shipowners and all other persons, are equal before the law and are entitled to the equal protection of the law and shall not be subject to discrimination in their access to courts, tribunals or other dispute resolution mechanisms.”

**Comment:** The proposed amendment reflects an important principle which is relevant to certain parts of the Regulations and Code under Regulation 5.1 and also Regulation 5.2. It is noted that some aspects of this proposal are already set out in the Preamble, which provides that seafarers “have other rights which are established as fundamental rights and freedoms applicable to all persons”. It is particularly relevant to the provisions relating to on-board and on-shore complaints or grievance procedures, which are among the unresolved issues to be further discussed, as well as to the right of redress of shipowners in the case of unjustified detention of their ships. However, as pointed out in

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the proposal itself, the principle also applies to “all other persons”. It would be difficult to see it as relating to a right having specific characteristics, or subject to particular problems, in the context of shipowners and seafarers or even of employers and workers in general. It is a universal right set out in the Universal Declaration of Human Rights (Articles 7 and 8) and in the International Covenant on Civil and Political Rights (Article 14 read with Article 2) and is therefore subject to the reporting obligations as well as to the settlement procedures and right of individual petition under the Covenant and its Optional Protocol. If the proposal is accepted, consideration might be given to inserting wording along the following lines at the start of the paragraph in order to avoid duplication between the Convention and the fundamental human rights Conventions and procedures just referred to: “The provisions of this Title shall be implemented bearing in mind that [seafarers, like shipowners and all other persons, ...]”.

Amendment 119: C.1/D.64

**Regulation 5.1.3**

**Submitted by the Shipowners**

**Proposal:** In the title, before the word “labour”, *insert* “maritime”.

Amendment 120: C.1/D.63

**Regulation 5.1.3, paragraph 2**

**Submitted by the Shipowners**

**Proposal:** After “declaration of”, *insert* “maritime”.

Amendment 121: C.1/D.62

**Regulation 5.1.3, paragraph 3**

**Submitted by the Shipowners**

**Proposal:** After “declaration of”, *insert* the word “maritime”.

**Comment:** The Draft Convention adopted by the PTMC uses the term “declaration of *maritime* labour compliance”.

Amendment 122: C.1/D.61

**Regulation 5.1.3, paragraph 5**

**Submitted by the Shipowners**

**Proposal:** *Delete* this paragraph.

**Context:** [“Detailed requirements for the maritime labour certificate and the declaration of maritime labour compliance, including a list of the matters that must be inspected and approved, are set out in Part A of the Code.”]

**Comment:** Under the structure of the consolidated Convention, the purpose of the Code is to provide mandatory requirements and non-mandatory guidance on the implementation of the general obligations in the Regulations. The Regulations thus provide the authority (confirmed by national parliaments at the time of ratification) for the present and future content of the Code. In addition, the Regulations are intended to be as concise

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as possible, bearing in mind, however, the need to ensure that they provide a sufficient basis for each requirement of the Code. If, therefore, paragraph 5 is deleted, as proposed, it should be confirmed that there is already sufficient authority in Regulation 5.1.3 (or elsewhere in the Regulations or in the Articles) for the Code to: (a) set out detailed requirements for the maritime labour certificate and the declaration of maritime labour compliance; and (b) specify a list of matters that must be inspected and approved.

Amendment 123: C.1/D.58

**Standard A5.1.3**

**Submitted by the Shipowners**

**Proposal:** In the title, *replace* “labour compliance” with “maritime labour compliance”.

Amendment 124: C.1/D.59

**Guideline B5.1.3**

**Submitted by the Shipowners**

**Proposal:** In the title, before the word “labour”, *insert* the word “maritime”.

Amendment 125: C.1/D.60

**Guideline B5.1.3, paragraph 1**

**Submitted by the Shipowners**

**Proposal:** Before “labour”, *insert* “maritime”.

Amendment 126: C.1/D.73

**Guideline B5.1.3, paragraph 2**

**Submitted by the Shipowners**

**Proposal:** Before the word “labour”, *insert* the word “maritime”.

Amendment 127: C.1/D.72

**Guideline B5.1.3, paragraph 4**

**Submitted by the Shipowners**

**Proposal:** After “declaration of”, *insert* the word “maritime”.

Amendment 128: C.1/D.74

**Guideline B5.1.3, paragraph 5**

**Submitted by the Shipowners**

**Proposal:** *Insert* the word “maritime” before the word “labour”.

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**Comment:** The Draft Convention adopted by the PTMC uses the term “declaration of *maritime* labour compliance”.

Amendment 129: C.1/D.75

**Regulation 5.1.4, paragraph 1**

**Submitted by the Shipowners**

**Proposal:** *Replace* the existing paragraph 1 with the following new text: “Each Member shall verify, through an effective and coordinated system of regular inspections, monitoring and other control measures, that ships flying its flag comply with national requirements that implement the Convention.”

**Context:** “Each Member shall verify, through an effective and coordinated system of regular inspections, monitoring and other control measures, that ships flying its flag comply with **national requirements that implement the Convention** [the requirements of this Convention as implemented in national laws and regulations.]”

**Comment:** The proposed amendment appears to reflect the substance of the present provision. However its adoption could have a legal impact. In particular, the phrase “requirements of this Convention” used in paragraph 1 as currently worded has a specific meaning in the Convention, as defined in Article II(e), which is also relevant to the understanding reached on the status of Part B of the Code.

Amendment 130: C.1/D.76

**Regulation 5.1.4, paragraph 2**

**Submitted by the Shipowners**

**Proposal:** *Delete* this paragraph.

**Context:** [“Detailed requirements regarding the inspection and enforcement system referred to in paragraph 1 are set out in Part A of the Code.”]

**Comment:** For the same reasons as those given in the Comment on Amendment 122 (C.1/D.61 above), if paragraph 2 is deleted, as proposed, it should be confirmed that there is already sufficient authority in Regulation 5.1.4 (or elsewhere in the Regulations or in the Articles) for the Code to set out detailed requirements regarding the inspection and enforcement system.

Amendment 131: C.1/D.18

**Standard A5.1.4, paragraph 4**

**Submitted by the following Government members: China, India, Indonesia, Japan, Liberia, Pakistan, Philippines, Republic of Korea, Singapore, Thailand**

**Proposal:** In paragraph 4, *delete* the sentence “The interval shall in no case exceed three years.”

**Context:** “Such inspections shall take place at the intervals required by Standard A5.1.3. [The interval shall in no case exceed three years.]”

**Comment:** Paragraph 4 cross-references Standard A5.1.3, which requires (paragraph 2) at least one intermediate inspection to maintain a certificate in effect. The

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maximum period of validity is five years. If there is only one intermediate inspection, it is to “take place between the second and third anniversary dates of the maritime labour certificate” – which means that the period would be at most three years before the end of the five-year period of validity or three years after the start of that period. In normal cases, the paragraph it is proposed to delete would therefore not be necessary. It may however be useful as a safeguard to cover other possible cases. The interval would be longer than three years where, for example, there were two intermediate inspections, one during the first year of validity and the other during the last.

Amendment 132: C.1/D.77

**Standard A5.1.4, paragraph 5**

**Submitted by the Shipowners**

**Proposal:** Before the word “labour”, *insert* the word “maritime”.

**Comment:** The Draft Convention adopted by the PTMC uses the term “declaration of *maritime* labour compliance”.

Amendment 133: C.1/D.23

**Standard A5.1.4, paragraph 9**

**Submitted by the following Government members: China, India, Japan, Namibia, Pakistan, Republic of Korea, Singapore, United Kingdom, United States**

**Proposal:** In paragraph 9, *delete* the words “and where there is no prior history of similar violations”.

**Context:** “Inspectors shall have the discretion to give warnings and advice instead of instituting or recommending proceedings when the breach of the standard does not endanger the safety or health or security of the seafarers concerned [and where there is no prior history of similar violations]. A record shall be kept of such exercises of discretion.”

**Comment:** The proposed amendment provides inspectors with greater discretion to give warning where the breach falls within the description in paragraph 9. This means that the discretion would only be conditioned on the absence of danger to the seafarers’ safety or health or security. If the amendment were adopted, it would be left to the inspectors to decide whether to give warning in cases where the same violation has been committed on one or more previous occasions.

Amendment 134: C.1/D.35

**Standard A5.1.4, paragraph 9**

**Submitted by the following Government members: Denmark, Germany, Japan, Liberia, Netherlands, Norway, United Kingdom**

**Proposal:** *Delete* the second sentence “A record shall be kept of such exercises of discretion.”

**Context:** “Inspectors shall have the discretion to give warnings and advice instead of instituting or recommending proceedings when the breach of the standard does not endanger the safety or health or security of the seafarers concerned and where there is no prior history of similar violations. [A record shall be kept of such exercises of discretion.]”

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**Comment:** A record could be useful to help prevent abuses and unevenness in the exercise of administrative discretion and could provide useful statistical data for administrations. However it could also perhaps be seen as adding to already heavy administrative burdens and may also be seen as impinging on the discretion that is granted.

Amendment 135: C.1/D.42

**Standard A5.1.4, paragraph 10**

**Submitted by the following Government members: Canada, Cyprus, France, Germany, Liberia, United Kingdom**

**Proposal:** After the second “and”, *insert* the words “as far as is reasonable and practicable”.

**Context:** “Inspectors shall treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers’ working and living conditions or a violation of laws and regulations and **as far as is reasonable and practicable** give no intimation to the shipowner, the shipowner’s representative or ...”.

**Comment:** The proposed amendment appears to provide for the circumstances where, despite best efforts by an inspector, it would not be possible to be assured that the shipowner or representative has “no intimation”. For example, the nature of the issue investigated may be such that the shipowner and/or representative may be able to ascertain the source of the complaint.

Amendment 136: C.1/D.71

**Guideline B5.1.4, paragraph 3(b)**

**Submitted by the Shipowners**

**Proposal:** After the word “Convention”, *delete* the rest of the subparagraph.

**Context:** “The competent authority should establish simple procedures to enable it to receive information in confidence ... including:

...

- (b) supplying technical information and advice to shipowners and seafarers and organizations concerned as to the most effective means of complying with the requirements of this Convention [and of bringing about a continual improvement in seafarers’ on-board conditions].”

**Comment:** The subparagraph concerned draws on Paragraph 6(c) of the Labour Inspection (Seafarers) Recommendation, 1996 (No. 185). The proposed amended provision would require the administration to provide information as to compliance with the Convention but not information and advice as to how to achieve improvement in seafarers’ working and living conditions. Recommendation No. 185 refers to “improving seafarers’ working and living conditions”, rather than “bringing about a continual improvement”.

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Amendment 137: C.1/D.38

**Guideline B5.1.4, paragraph 10(a)**

**Submitted by the following Government members: Bulgaria, Canada, Liberia, Netherlands, Norway, United Kingdom**

**Proposal:** *Delete* subparagraph (a).

**Context:**

“10. The annual report published by the competent authority should also contain:

[(a) a list of laws and regulations in force relevant to seafarers’ working and living conditions and any amendments which have come into operation during the year;]”.

**Comment:** The subparagraph concerned reproduces the text of Recommendation No. 185, Paragraph 16(a). The list concerned, if not the texts themselves, would be required for the periodic reports under article 22 of the ILO Constitution.

Amendment 138: C.1/D.39

**Guideline B5.1.4, paragraph 10(c)**

**Submitted by the following Government members: Bulgaria, Canada, Liberia, Netherlands, Norway, United Kingdom**

**Proposal:** In subparagraph (c), *delete* the words “or other premises” and “and other premises”.

**Context:** “10. The annual report published by the competent authority should also contain:

...

(c) statistics of ships [or other premises] liable to inspection and of ships [and other premises] actually inspected;”.

**Comment:** The subparagraph concerned reproduces the text of Recommendation No. 185, Paragraph 16(c). The “other premises” may refer, for example, to recruitment and placement services or shipowner offices or seafarer welfare facilities.

Amendment 139: C.1/D.40

**Guideline B5.1.4, paragraph 10(d)**

**Submitted by the following Government members: Bulgaria, Canada, Liberia, Netherlands, Norway, United Kingdom**

**Proposal:** *Delete* subparagraph (d).

**Context:** “10. The annual report published by the competent authority should also contain:

...

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[(d) statistics on all seafarers subject to its national laws and regulations;]”

**Comment:** The subparagraph concerned is based on Recommendation No. 185, Paragraph 16(d), adopted in 1996.

Amendment 140: C.1/D.41

**Guideline B5.1.4, paragraph 10(f)**

**Submitted by the following Government members: Cyprus, Germany, Ireland, Luxembourg, United Kingdom, United States**

**Proposal:** In subparagraph (f), after “diseases”, *insert* the words “within the scope of the International Maritime Health Regulations”.

**Context:** “10. The annual report published by the competent authority should also contain:

...

(f) statistics on reported occupational injuries and diseases **within the scope of the International Maritime Health Regulations** affecting seafarers.”

**Comment:** See the Comment on Amendment 108 (C.3/D.12) above.

Amendment 141: C.1/D.67

**Regulation 5.1.5, paragraph 2/3**

**Submitted by the Shipowners**

**Proposal:** After the existing text, *add* the following: “The term ‘victimization’ covers action taken by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made”.

Amendment 142: C.1/D.66

**Standard A5.1.5, paragraph 3**

**Submitted by the Shipowners**

**Proposal:** *Delete* the second sentence.

Amendment 143: C.1/D.70

**Standard A5.1.5, paragraph 4**

**Submitted by the Shipowners**

**Proposal:** *Replace* paragraph 4 with the following: “A copy of the complaints procedure shall be available on board the ship.”

**Comment:** Regulation 5.1.5 and Standard A5.1.5, to which the above proposals relate, dealt with on-board complaint procedures and was text left unresolved at the PTMC. Accordingly, the proposals are taken into account in the Office’s paper relating to the unresolved issues.

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Amendment 144: C.1/D.69

**Regulation 5.2**

**Submitted by the Shipowners**

**Proposal:** *Replace* the existing text from “Purpose:” to “ships” inclusive with the following: “Purpose: International cooperation in the control of the Convention standards on foreign ships”.

**Context:** “Purpose: [To enable each Member to implement its responsibilities under this Convention regarding] International cooperation in the **control** [implementation and enforcement] of the Convention standards on foreign ships”.

**Comment:** In order not to be out of line with all the other purpose clauses in the Convention, the proposed clause would need to begin with a verb such as “To promote” or “To achieve”. The HLTWG supported the development of purpose clauses that were written in as “plain language” as possible so that they would clearly indicate to readers what the Regulation seeks to achieve. The merits of the proposed amendment as compared with the present wording might therefore be judged from that point of view.

Amendment 145: C.1/D.68

**Regulation 5.2.1, paragraph 2**

**Submitted by the Shipowners**

**Proposal:** Before “labour”, *insert* the word “maritime”.

**Comment:** The Draft Convention adopted by the PTMC uses the term “declaration of *maritime* labour compliance”.

Amendment 146: C.1/D.78

**Regulation 5.2.1, paragraph 3**

**Submitted by the Shipowners**

**Proposal:** Before the word “requirements”, *insert* the words “working and living”.

**Context:** “Inspections in a port shall be carried out by authorized officers in accordance with the provisions of the Code and other applicable international arrangements governing port state control inspections in the Member. Any such inspection shall be limited to verifying that the matter inspected is in conformity with the relevant **working and living** requirements set out in the Articles and Regulations of this Convention and in Part A only of the Code.”

**Comment:** The expression “working and living requirements” is not used in the Convention. The term “relevant requirements” in paragraph 3 is intended to refer to the requirements specified in paragraphs 1 and 4 of the Regulation, namely, those relating to the “working and living conditions of seafarers”. If this is not sufficiently clear, it might be preferable to replace the existing words “relevant requirements” by “the requirements relating to the working and living conditions of seafarers that are” (set out in the Articles and Regulations, etc.).

**Regulation 5.2.1**

**Submitted by the following Government members: China, India, Indonesia, Pakistan, Republic of Korea, Thailand**

**Proposal:** After paragraph 5, *insert* the following new paragraph: “Members shall not unreasonably detain or delay ships for conducting inspections.”

**Comment:** The concern reflected in the proposed amendment is dealt with in the Standard corresponding to the Regulation. Paragraph 8 of Standard A5.2.1 provides that: “When implementing their responsibilities under this Regulation, Members shall make all possible efforts to avoid a ship being unduly detained or delayed. If a ship is found to be unduly detained or delayed, compensation shall be paid for any loss or damage suffered. The burden of proof shall lie with the complainant.” The inclusion of the proposed amendment in the Regulation would therefore not be necessary unless it is intended to ensure that the express ratification procedure should always be followed for any possible future amendment of the principle concerned and it is not decided to include a provision making any amendment to Part A of the Code in Title 5 subject to the express ratification procedure (such a provision in the introductory paragraphs to Title 5 is one of the unresolved issues still to be discussed). If the proposed amendment were adopted, it would be preferable to replace the words “... delay ships for conducting inspections” (which could be misunderstood) by “... delay ships for *the purpose of* conducting inspections”.

**Standard A5.2.1, paragraph 1**

**Submitted by the Shipowners**

**Proposal:** After the words “declaration of”, *insert* the word “maritime”.

**Comment:** The Draft Convention adopted by the PTMC uses the term “declaration of *maritime* labour compliance”.

**Standard A5.2.1, paragraph 1**

**Submitted by the following Government members: Canada, Germany, Liberia, Norway, United Kingdom, United States**

**Proposal:** In subparagraphs (b) and (d) of paragraph 1, *insert* the word “substantially” before “conform”.

**Context:** “1. Where an authorized officer, having come on board to carry out an inspection and requested the maritime labour certificate and the declaration of maritime labour compliance, finds that:

...

(b) there are clear grounds for believing that the working and living conditions on the ship do not **substantially** conform to the requirements of this Convention; or

...

- 
- (d) there is a complaint alleging that specific working and living conditions on the ship do not **substantially** conform to the requirements of this Convention;

a more detailed inspection may be carried out to ascertain the working and living conditions on board the ship.”

**Comment:** The above provision specifies circumstances in which a “more detailed inspection *may* be carried out”. Whenever any kind of non-conformity is found the inspector therefore has (with the current wording) a complete discretion to carry out a more detailed inspection or not to do so. The proposed amendment would limit this discretion: the inspector would first have to decide whether the non-conformity was “substantial” and then could be held accountable if he or she unreasonably concluded that a non-conformity was substantial and, as a consequence, carried out the inspection.

Amendment 150: C.1/D.20

**Standard A5.2.1, paragraph 1**

**Submitted by the following Government members: China, Denmark, Georgia, Republic of Korea, Russian Federation, United Kingdom, United States**

**Proposal:** In paragraph 1, after subparagraph (d) after the words “a more detailed inspection may be carried out”, *add* the following: “, in accordance with guidance to be adopted by resolution of the International Labour Conference,”.

**Context:** “... a more detailed inspection may be carried out, **in accordance with guidance to be adopted by resolution of the International Labour Conference**, to ascertain the working and living conditions on board the ship. Such inspection shall in any case be carried out where the deficiency concerned could constitute ...”.

**Comment:** The “guidance” provided for in the proposed amendment might serve to promote uniformity in port state inspections and enhance their quality, in line with one of the main objectives of the Convention, which is to ensure “a level playing field”. The actual wording would need further consideration. In the first place, it would be unusual for an international labour Convention to specify how the International Labour Conference is to carry out a particular task (in this case, by resolution). In addition, the words “in accordance with”, which imply a mandatory requirement, do not fit in with the following word “guidance”, which (at least in the concepts of the Convention) is non-mandatory. Moreover, in the ILO’s practice, Conventions may refer to guidelines adopted by the “International Labour Organization”. It would be left to the ILO’s own procedures and practices to decide which of its organs would be responsible. Normally it would be the Governing Body. It may also cause some confusion to refer to guidance that is not in the guidelines. If the proposal is adopted it may be helpful to consider a term other than “guidance”.

Amendment 151: C.1/D.13

**Standard A5.2.1, paragraph 3**

**Submitted by the following Government members: Canada, Denmark, Finland, Germany, Netherlands, Sweden**

**Proposal:** At the end of the existing text, *add* the following: “If the inspector observes any non-compliance with the requirements of the Convention and such observation is given in writing to the master, there shall be a reference to the Regulation which stipulates the requirement.”

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**Context:** “3. ... For the purpose of subparagraph 1(d) above, “complaint” means information submitted by a seafarer, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board. **If the inspector observes any non-compliance ...”.**

**Comment:** The proposed amendment would explicitly require that inspectors identify the relevant provision that has been breached when a non-compliance is the subject of a written notice. As the proposal is worded, such a requirement would apply only in the case where a complaint is made, and not in any other case; if this restriction was not intended, the amendment should be considered for paragraph 4 of the Standard, rather than paragraph 3. From the point of view of drafting, it should be noted that the detailed requirements in the Convention are not set out in the Regulations, but rather in the Standards. If the proposal were adopted, the reference to “the Regulation which stipulates the requirement” should be replaced by a reference either to “the *Standard* which stipulates the requirement” or to “the Regulation *on which the requirement is based*”.

Amendment 152: C.1/D.55

**Standard A5.2.1, paragraph 4(d)**

**Submitted by the Shipowners**

**Proposal:** *Delete* this subparagraph.

**Context:** “Where, following a more detailed inspection the working and living conditions on the ship are found not to conform to the requirements of this Convention, the authorized officer shall:

...

[(d) bring the deficiencies and the measures needed to rectify them to the attention of the appropriate seafarers’ and shipowners’ organizations in the Member in which the inspection is carried out].”

**Comment:** This provision was developed as recommended text through the HLTWG process. It would require an inspector to notify relevant organizations in the port State of the deficiencies detected through a detailed inspection.

Amendment 153: C.1/D.25

**Standard A5.2.1, paragraph 4**

**Submitted by the following Government members: Canada, China, Denmark, India, Japan, Norway, Pakistan, Republic of Korea, Singapore, United Kingdom, United States**

**Proposal:** After the existing subparagraph (d), *add* the following new subparagraph:

“in addition to subparagraph (d), make the deficiencies and the measures needed to rectify them available to the extent necessary, to any person or organization with an interest in the safety of the ship, including an interest in the safety or health of seafarers on board.”

**Context:** “4. Where, following a more detailed inspection the working and living conditions on the ship are found not to conform to the requirements of this Convention, the authorized officer shall:

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...

- (d) bring the deficiencies and the measures needed to rectify them to the attention of the appropriate seafarers' and shipowners' organizations in the Member in which the inspection is carried out; and
- (e) **make the deficiencies and the measures needed to rectify them available to the extent necessary, to any person or organization with an interest in the safety of the ship, including an interest in the safety or health of seafarers on board.**

**Comment:** The proposed amendment could extend the notification obligations beyond the next port of call, the flag state representative, the ship's master and the representative organizations to "any person or organization with an interest ...". This may be difficult for an administration to ascertain for purposes of notification. However, the words "make ... available" could be understood as meaning that the authorized officer need only provide the information when a request is received from the interested person or organization concerned.

**Note:** This proposal would be considered without the opening words, "in addition to subparagraph (d)", if the previous proposal, Amendment 152 (C.1/D.55), were adopted.

Amendment 154: C.1/D.8

**Guideline B5.2.1, paragraph 2(b)**

**Submitted by the Seafarers**

**Proposal:** *Delete* the words "more than six months".

**Context:** "When developing a policy with respect to the circumstances warranting a detention of the ship under ... Standard A5.2.1, the competent authority should consider the following:

...

- (b) ... The employment of a person who is [more than six months] under age, for example, should be considered as a serious violation even if there is only one such person on board."

**Comment:** The proposed amendment deals with a provision intended to provide an example for purposes of guidance as to the meaning of a violation serious enough to detain a ship. Adoption of this amendment would indicate the importance of strict compliance with the requirements in the Convention: a ship would be detained if any seafarer is under the minimum age.

Amendment 155: C.1/D.37

**Guideline B5.2.1, paragraph 2(b)**

**Submitted by the following Government members: Bulgaria, Canada, Germany, Norway, United Kingdom, United States**

**Proposal:** *Delete* the words "more than six months".

**Comment:** Same proposal as in Amendment 154 (C.1/D.8).

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Amendment 156: C.1/D.53

**Regulation 5.3 Purpose clause**

**Submitted by the Shipowners**

**Proposal:** *Replace* the phrase “its seafarers” with “seafarers resident in its territory”.

**Context:** “Purpose: To ensure that each Member implements its responsibilities under this Convention as they pertain to seafarer recruitment and placement and the social protection of **seafarers resident in its territory**”.

**Comment:** The implications of this proposal would need to be considered as it could relate to the scope of obligations under Regulation 4.5 regarding social protection and the more extended description in Regulation 5.3, paragraph 1.

Amendment 157: C.1/D.52

**Regulation 5.3, paragraph 1**

**Submitted by the Shipowners**

**Proposal:** At the beginning of the paragraph, *replace* the words “Without prejudice ... also” with “Each member”. *Delete* the words “are its nationals or” and “or are otherwise domiciled”. After the word “seafarers”, *add* a comma.

**Context:** “[Without prejudice to the principle of a Member’s responsibility for the working and living conditions of seafarers on ships that fly its flag, the] **Each** Member also has a responsibility to ensure the implementation of the requirements of this Convention regarding the recruitment and placement of seafarers, as well as the social security protection of seafarers that [are its nationals or] are resident [or are otherwise domiciled] in its territory, to the extent that such responsibility is provided for in this Convention.”

**Comment:** Paragraph 1 is intended to clarify that the Member’s labour-supplying obligations with respect to its nationals or residents do not reduce or affect the obligations that it has as a flag State for seafarers. This may be implicit in the word “also” after “Member”; however it was viewed by the HLTWG as useful for purposes of clarification of the relationship between the various kinds of state responsibility on its ships. The second and third proposed amendment would limit Members’ responsibilities regarding implementation of social security protection to seafarers resident in the territory of the Member. The proposed amendments should be considered carefully in light of the provisions now adopted by the PTMC for Regulation 4.5.

Amendment 158: C.1/D.51

**Regulation 5.3, paragraph 2**

**Submitted by the Shipowners**

**Proposal:** *Delete* this paragraph.

**Context:** [“Detailed requirements for the implementation of paragraph 1 are found in the Code.”]

**Comment:** For the same reasons as those given in the Comments on Amendments 122 (C.1/D.61) and 130 (C.1/D.76) above, if paragraph 2 is deleted, as proposed, it should be confirmed that there is already sufficient authority in Regulation 5.3 (or elsewhere in

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the Regulations or in the Articles) for the Code to set out detailed requirements regarding labour-supply responsibilities.

Amendment 159: C.1/D.57

**Guideline B5.3, paragraph 1**

**Submitted by the Shipowners**

**Proposal:** *Delete* this paragraph.

**Context:** [“Private seafarer recruitment and placement services established in the Member’s territory and procuring the services of a seafarer for a shipowner, wherever located, should be required to assume obligations to ensure the proper fulfilment by the shipowner of the terms of the employment agreements concluded between them and the seafarers.”]

**Comment:** The paragraph it is proposed to delete was intended to reflect, in a flexible way, the practice in at least one labour-supply country, which is reflected in paragraph 10 of the “Consensual statement”, adopted by an ILO Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers, which took place in May 2002. Paragraph 10 reads: “In States where manning agencies are legally established, the manning agencies shall be made jointly and severally liable with shipowners, regardless of their domicile, for breach of the contract of employment and/or articles of agreement.”