



## Report of the Committee of the Whole

1. The Committee of the Whole held its first sitting on 7 February 2006. It was originally composed of 100 Members (60 Government members, 8 Employer members and 33 Worker members). To achieve equality of voting strength, each Government member entitled to vote was allotted 264 votes, each Employer member 1,947 votes and each Worker member 472 votes. The composition of the Committee was modified 9 times during the session and the number of votes attributed to each member adjusted accordingly.<sup>1</sup>
2. The Committee elected its Officers as follows:

*Chairperson:* Mr. B. Carlton (Government member, United States) at its first sitting

*Vice-Chairpersons:* Mr. D. Lindemann (Employer member, Germany) and Mr. B. Orrell (Worker member, United Kingdom) at its first sitting

<sup>1</sup> The modifications were as follows:

- (a) 7 February: 100 members (59 Government members entitled to vote with 264 votes each, 8 Employer members with 1,947 votes each and 33 Worker members with 472 votes each);
- (b) 8 February: 120 members (62 Government members entitled to vote with 100. votes each, 8 Employer members with 775 votes each and 50 Worker members with 124 votes each);
- (c) 9 February: 114 members (69 Government members entitled to vote with 296 votes each, 8 Employer members with 2,553 votes each and 37 Worker members with 552 votes each);
- (d) 10 February: 95 members (70 Government members entitled to vote with 68 votes each, 8 Employer members with 595 votes each and 17 Worker members with 280 votes each);
- (e) 11 February: 91 members (70 Government members entitled to vote with 1 vote each, 7 Employer members with 10 votes each and 14 Worker members with 5 votes each);
- (f) 13 February (noon): 96 members (75 Government members entitled to vote with 14 votes each, 7 Employer members with 150 votes each and 14 Worker members with 75 votes each);
- (g) 13 February (afternoon): 102 members (79 Government members entitled to vote with 120 votes each, 8 Employer members with 1,185 votes each and 15 Worker members with 632 votes each);
- (h) 14 February: 103 members (80 Government members entitled to vote with 3 votes each, 8 Employer members with 30 votes each and 15 Worker members with 16 votes each);
- (i) 17 February: 104 members (81 Government members entitled to vote with 40 votes each, 8 Employer members with 405 votes each and 15 Worker members with 216 votes each).

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*Reporters:* Mrs. F. Abdel Hamid Elsayed (Government member, Egypt),  
Mr. D. Bell (Government member, Bahamas) and  
Mr. G. Boumpopoulos (Government member, Greece) at its first  
sitting

3. The Committee appointed a Drafting Committee composed of the following members: Mr. D. Roussel (Government member, Canada), Ms. N. Msomi (Government member, South Africa), Ms. M. Martyn (Government member, United Kingdom); Mr. D. Dearsley (Employer member, United Kingdom); and Mr. P. McEwen (Worker member, United Kingdom).
4. At its second sitting, the Committee appointed a Working Party to consider the Entry into Force provisions and certain aspects of the amendment procedures. The Working Party was chaired by Mr. John Blanck (Government member, United States). It was composed of the Government members of Bahamas, China, Egypt, Ireland, Japan, Republic of Korea, Liberia, Netherlands, Nigeria, Panama, United Arab Emirates, United Kingdom and the Bolivarian Republic of Venezuela; the following Employer members: Mr. R. Aglieta (Italy), Mr. J. Bebiano (Portugal), Mr. T. Marking (International Shipping Federation), Mr. Y. Tsujimoto (Japan) and Mr. A. Vidigal (Brazil); and the following Worker members: Mr. J. Bainbridge (International Transport Workers' Federation), Mr. M. Castro (Argentina), Mr. P. Crumlin (Australia) and Mr. G. Lackey (United States).
5. At its third sitting, the Committee appointed a Working Party on ships navigating exclusively in internal or other similar or related waters to consider Article II, paragraph 1(i). The Chairperson of the Working Party was Mr. G. Smefjell (Government member, Norway). The Working Party was composed of: the Government members of Algeria, Angola, Canada, Chile, China, Denmark, France, Germany, India, Japan, Liberia, Philippines and United States; the following Employer members: Mr. A. Bowring (Hong Kong, China), Mr. J. Greenway (Canada), Mr. A. Pomorski (Poland), Mr. C. Salinas (Philippines), Mr. H. Van Ketel (Netherlands); and the following Worker members: Mr. D. Benze (Germany), Mr. E. Martins Areias (Brazil), Mr. B. Mordt (Norway), Mr. H. Rustandi (Indonesia), Mr. S. Zitting (Finland) and Ms. K. Higginbottom (International Transport Workers' Federation).
6. The Committee held 18 sittings. The Committee had before it Reports I(1A) and I(1B), prepared by the Office on the agenda item of the Conference.

## Introduction

7. The Chairperson thanked the Committee for giving him the privilege of serving as its Chairperson. He recalled the honour of serving as the Chairperson of Committee One at the Preparatory Technical Maritime Conference (PTMC) in 2004 and at the Tripartite Intersessional Meeting on the follow-up to the Preparatory Technical Maritime Conference in 2005 and pledged to be fair, candid and fully respectful of all the delegates' views. He asked in return that the delegates show a willingness to cooperate and compromise, to listen carefully to each other and to work diligently toward the common objective of a new, comprehensive, consolidated maritime labour Convention that would be broadly ratifiable. The Committee had an immense volume of work to complete within only nine days and proposed therefore to set to work immediately.
8. The representative of the Secretary-General said that the proposed consolidated maritime Convention was the product of more than four years of concentrated work and effort. The outcome of the Committee's deliberations would be recorded in history and would also become an important part of the larger body of international law. The Committee's

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objective was an international instrument that would be as close to universally ratified as possible, fully implemented and effectively enforced, for the benefit of the world's seafarers. The proposed Convention was very close to a text that would meet this objective. To complete this immense project would require the constructive input of all delegates. The speaker called for their continued interest and sustained enthusiasm, openness, cooperation, expertise, patience, good humour and, above all, stamina. On a personal note, she expressed her special thanks to the many delegates from all three groups who had accompanied the proposed Convention from start to finish, and without whom its discussion at this 94th (Maritime) Session of the International Labour Conference would not have been possible.

9. The representative of the Secretary-General then introduced the documents prepared by the Office to serve as a basis for the Committee's discussion on the proposed consolidated maritime labour Convention. Report I(1A) provided an overview of the background to the proposed consolidated maritime labour Convention and its expected impact and contained an Office commentary. If delegates considered some of the suggestions contained within the commentary to be helpful, they would need to propose amendments along those lines since the Office was not in a position to do so. Report I(1B) contained the text of the proposed consolidated maritime labour Convention. The Overview of Reports served as a quick reference guide to the provisions of the draft text and the relevant notes in the commentary. The booklet on frequently asked questions was intended to capture the essence and highlight the novel provisions of the proposed instrument. The representative of the Secretary-General concluded by announcing the following additional ratifications of maritime labour Conventions registered since 30 September 2005:

Croatia – Recruitment and Placement of Seafarers Convention, 1996 (No. 179);

Latvia – Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180);

Luxembourg – Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), Seafarers' Annual Leave with Pay Convention, 1976 (No. 146), Labour Inspection (Seafarers) Convention, 1996 (No. 178), Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976;

Republic of Moldova – Accommodation of Crews Convention (Revised), 1949 (No. 92), Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133);

Seychelles – Seamen's Articles of Agreement Convention, 1926 (No. 22), Medical Examination (Seafarers) Convention, 1946 (No. 73), Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180).

## General discussion

10. The Employer Vice-Chairperson emphasized that the adoption of the consolidated maritime labour Convention would bring to fruition five hard years of endeavour, during which Governments and those in the Employers' and Workers' groups, as well as the Office, had worked together with an almost unparalleled degree of commitment to achieve an outcome of which they could all be proud. The shipping industry was uniquely international in nature. It was also different from other industries, with a workforce that

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was by definition on the move and away from home for many months at a time. From its inception, the ILO had recognized the unique nature of the industry by developing Conventions and Recommendations tailored specifically to the needs of the maritime sector. However, it was a matter of concern that not all ILO instruments had achieved widespread acceptance. In today's shipping industry, not only were ships and services international, but the entire workforce was as well. The need for a common set of internationally accepted maritime labour standards was as critically important for the industry as a common set of internationally accepted technical standards, such as those provided by the International Convention for the Safety of Life at Sea, 1974 (SOLAS), or environmental standards, such as those of the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL). The initial concept of consolidating the entire package of ILO maritime labour standards into a single consolidated Convention had been a joint initiative of the shipowners and seafarers. Moreover, it had coincided with the ILO's campaign to promote decent work, which had struck a chord with both groups. While shipping was an intensely competitive industry, the Employers' group had made it clear that they wished to compete on the basis of the efficiency of their operations, and not on the basis of labour and social conditions. It was in the interest of shipowners, as much as that of their social partners, that seafarers worldwide should benefit from decent working and living conditions, irrespective of their nationality, the ownership of their vessel or the flag it flew.

- 11.** The Employers' group was engaged in a ground-breaking process with an ambitious objective, namely the consolidation of 30 Conventions and a similar number of Recommendations into a single, all-embracing Convention. The group was aware that it was promoting a form of certification of labour standards that had not previously been seen in the ILO, and a structure of articles, mandatory regulations and a recommendatory code which was unique in the ILO system. Furthermore, an amendment procedure was being incorporated which would allow the Convention to be updated rapidly if need be. The maritime community could be proud of these achievements, which were due in no small part to the degree of cohesion that had developed between governments and the two social partners as the process had unfolded. The speaker hoped that a model had been established which could be followed by the ILO more widely in future.
- 12.** Much work remained to be done. While the original aim of largely agreeing upon the text of the instrument before the present Conference had not been achieved, it was encouraging that most of the text was acceptable in its present form. In that regard, the Employers' group would continue to be guided by the principle that the highest achievable common standards should be sought, consistent with ensuring that the Convention received universal acceptance and was widely ratified and effectively enforced worldwide. The group's prime test during the present Conference would therefore be to determine whether provisions would encourage or discourage ratification. If the inclusion of a particular provision would discourage widespread ratification, the Employers' group would support its removal. However, agreements reached at previous meetings on packages of provisions would be honoured. The speaker urged all groups to adopt a disciplined approach and to focus debate on critical matters which might affect adoption and ratification of the new instrument. In conclusion, the Employer Vice-Chairperson paid tribute to the quality of the work undertaken by the small team headed by the representative of the Secretary-General and pledged his support to achieving a successful outcome to the work of the Conference.
- 13.** The Worker Vice-Chairperson observed that over 90 per cent of world trade went by sea every year. Just as shipping was an essential industry, seafarers were an essential workforce. Unfortunately, far too many seafarers were denied decent working conditions. Therefore, the present maritime Conference was of the utmost importance, not just for the world's 1.2 million seafarers, but also for the wider world of work in today's globalized culture. The task of the Conference was to consolidate and update over 60 existing

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maritime instruments into a single, easily understood, readily ratifiable and readily enforceable super-Convention, which would constitute the fourth international regulatory pillar for the shipping industry. Seafarers considered it to be a seafarers' bill of rights. The meetings leading to the present Conference had resulted in the adoption of a text which reflected a broad and delicate consensus. It was vital to respect this consensus and to exercise restraint by not seeking to reopen debate on issues which had already been agreed upon. Not respecting previous agreements raised the very real possibility that the work of the past four years might be lost.

14. In addition to areas of consensus however, there remained areas of disagreement. The Workers' group was disappointed that the proposed Convention might allow member States to avoid their international obligations in terms of the provision of social security protection for all seafarers serving on vessels flying their flag. Concerns relating to administrative burdens did not justify the abrogation of treaty obligations under the United Nations Convention on the Law of the Sea, 1982 (UNCLOS). Social security protection was one of the key tenets of the Declaration of Philadelphia and was fundamental to decent work. The Workers' group was also disappointed that the principles contained in the Continuity of Employment (Seafarers) Convention, 1976 (No. 145) had been set aside, particularly since continuous or regular employment and the preservation of income were fundamental for decent work. It should also be recalled that the Conference was seeking to consolidate existing standards, which were still in force. Many seafarers currently enjoyed the rights and principles set out in those mandatory instruments. During the process of consolidation, therefore, great care must be taken not to deprive seafarers of those rights.
15. The purpose of the new Convention was to improve the current situation, not to make legitimate the status quo. The Convention should provide a bill of rights for seafarers, not an opportunity for further deregulation through the removal of long-established mandatory standards. Nor was it an opportunity to discriminate against groups of seafarers. If the Convention did not set minimum standards which were enforceable and which provided meaningful rights for seafarers, it would be a failure and it would be preferable to retain the existing standards with all their faults. Governments should therefore be prepared to bring their national law and practice into conformity with a meaningful new Convention, which would be widely ratified and vigorously enforced. The goal was to secure decent living and working conditions for seafarers, and in so doing, further the ILO's Decent Work Agenda.
16. The Government member of France underlined the significance of this Conference, which sought to take into account the social dimension of globalization in a sector at the heart of international trade. Her Government had strongly supported the ILO programme on decent work in the maritime sector and welcomed the holding of this Conference, which should lead to the adoption of a consolidated maritime labour Convention. Five years of combined work on the part of Employers, Workers and Governments had resulted in a comprehensive and well-balanced proposed text that illustrated what could be achieved through tripartism. Although this Conference would certainly introduce certain refinements to the proposed text, it seemed unreasonable to reopen discussion on issues which had already been agreed upon. The speaker pledged the full support of her delegation in the work that lay ahead.
17. The Government member of the Bahamas stated that if the Conference was successful in its work, the shipping industry would have taken a step forward in the protection of seafarers' well-being. The challenge was to achieve a Convention that was satisfactory to the social partners as well as widely ratifiable. The speaker raised two major issues of concern related to the safety and welfare of seafarers. The first was piracy, with two Bahamian ships having been attacked recently. The second was the tendency to criminalize seafarers involved in maritime accidents. Citing a proposed European Directive on the

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subject, he noted that lowering the bar which divided criminal acts from accidents would badly affect those involved in accidents, lower the morale of other seafarers and possibly deter persons contemplating a career at sea. Although the proposed Convention would probably not resolve these problems, it would improve the quality of life at sea, attract new entrants to the shipping industry and persuade governments to view seafarers as responsible workers who wanted to work in peace and security.

- 18.** The Government member of Japan said that the proposed Convention was important for the maritime sector, as it would improve working and living conditions and provide for fair competition in the industry. His Government had attached great importance to this work for the past four years and had strived, together with the other Members, to make this Convention as widely ratifiable as possible by eliminating obstacles to ratification.
- 19.** The Government member of the Republic of Korea said that the goal of developing a single concise, uniformly applicable and widely ratifiable maritime labour Convention was an achievable one. With the exception of certain issues that would be raised later, the proposed text was found to be acceptable. As a general comment, the Geneva Accord and the eight principles of the consolidation exercise should be used as guidance during difficult negotiations. Also, when deliberating on unresolved issues, the proposed text should be considered from a global viewpoint and not from the perspective of individual countries.
- 20.** The Government member of Italy stated that this Conference represented the final phase of a consolidation and updating exercise that had begun in 2001 and would end with the adoption of a historic Convention. Although everyone involved could be proud of this outcome, it was not enough to have the Convention. It needed to be widely ratified and applied. The overall goal of ensuring decent work also meant respecting the fundamental rights of seafarers and taking into account issues of occupational safety and health. His Government considered the text of the proposed Convention to be satisfactory.
- 21.** The Government member of Greece stated that the maritime labour Convention would become the fourth pillar in the regulatory maritime system and should be guided by several principles. It should formulate realistic standards on working and living conditions of seafarers, and while recognizing the pre-eminent role of the flag State, strive for uniform implementation and enforcement on ships regardless of their flag. The exercise of consolidating existing standards should take into account that some standards were out of date or would constitute obstacles to ratification. The concerns of major flag States, port States and labour-supplying States, as well as of the social partners should be considered in order to achieve the widest possible ratification. Provisions on terms of employment should reflect the consensus and understanding of the social partners since these issues were regulated by collective bargaining agreements in accordance with national legislation.
- 22.** The Government member of Turkey indicated that his Government largely supported the text of the proposed Convention. His delegation would do its utmost to enable the timely completion of the work and the adoption of the Convention without substantial amendments that would decrease its impact.
- 23.** The Government member of Nigeria stated that compromise and consensus should guide the discussions. One way of achieving consensus could be through the adoption of a simplified amendment procedure, so that issues which could not be agreed upon at this time could perhaps be dealt with later through amendments. The Committee should not reopen discussion unnecessarily on agreed-upon provisions since consensus had been reached in the many preceding discussions of the draft text. Finally, his Government found the proposed text generally acceptable.

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24. The Government member of Denmark stated that although the consolidation process had been a long one, it had been worthwhile. The Committee had before it a proposed Convention that promised to modernize a number of ILO Conventions and ensure decent working and living conditions. It also included a strong enforcement mechanism. The proposed Convention was a response to the globalization of a changing industry and the need for global regulation. The Committee needed to ensure that the efforts that had gone into the creation of the draft had not been in vain. Compromises would need to be found to shape a final text.
25. The Government member of China, speaking on behalf of the Government group, stated that overall, the Government group supported the proposed text. Nonetheless, there were certain areas of concern. There remained questions relating to the application of parts of the Convention, particularly in connection with small ships. Within the Articles, it was possible that the addition of a definition of passenger ships would be suggested. Other concerns related to the provisions on entry into force and amendments to fill perceived gaps in Articles VII, XIV and XV. Governments were interested in finding the right balance that would ensure that the Convention would have a real effect at the flag and port state levels, without preventing entry into force or hindering future amendments. Mindful of the previous discussions, Governments were working together to find solutions that would allow for the widest possible ratification. The Government group was committed to working with the social partners to complete the Convention in a way that would ensure its success.
26. The representative of the World Health Organization (WHO) stated that the provision of work-related health advice and assistance was essential for seafarers, since health was likely to be at risk when people's living and working environments were one and the same. In collaboration with the International Labour Organization and the International Maritime Organization, the WHO had developed the *International Medical Guide for Ships*. An updated edition of this volume was being finalized and had been harmonized with other international medical standards, such as the *WHO Model List of Essential Medicines* and the *International Health Regulations*. He hoped that this Conference would encourage ships to carry on board the *International Medical Guide for Ships*, which would be useful not only when countries did not have a national medical guide for ships, but also when the national guide was only available in a language that not all crew members were able to understand.
27. The Government member of the Philippines expressed her country's pride in being the number one maritime labour-supplying country. The qualities of Filipino seafarers represented the best of the Philippines. Several factors had contributed to this success in the field of manning, among them the long-standing partnerships with shipowners' and seafarers' organizations. The social partners were fully involved in policy-making covering a range of issues from training, recruitment and placement to the rights and welfare of seafarers. They enjoyed representation with full voting rights in the highest bodies and took part in defining policies and standards of employment. Her Government believed in tripartism and social dialogue, and supported shared policy-making standard setting and implementation at national, regional and international levels. It was for this reason that the Philippines had been involved in all the preparatory meetings during the last four years. It was interested in preserving the fundamental rights at work of seafarers, enhancing their welfare and benefits, and finding an appropriate balance between the interests of shipowners and seafarers, including those in the domestic shipping industry. Her delegation would, therefore, contribute meaningfully to create a Convention that would be easy to understand, update and enforce.
28. The Government member of China commended the new approach taken in the preparation of the proposed Convention and noted that it had attracted the attention of the shipping

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sector. An up-to-date, universally applicable, single instrument would replace the sometimes contradictory and obsolete existing maritime Conventions. Also, by improving provisions on inspection and amendment procedures, it would improve the working and living conditions of seafarers. Along with the MARPOL and SOLAS Conventions and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention), the maritime labour Convention would form the fourth pillar of an international regulatory regime for quality shipping. His delegation hoped that this maritime session would adopt a universally recognized and applied Convention that would ensure decent working and living conditions and protect the legitimate rights of seafarers.

- 29.** The Government member of Ghana expressed her delegation's support for the proposed Convention, which would move the maritime industry forward. Some issues of concern remained, but the level of support and commitment demonstrated by Governments and the social partners showed that these issues would likely be resolved, paving the way for the adoption of the Convention. The instrument would provide seafarers with protection and create a level playing field, regardless of seafarers' nationalities or ships' flags.
- 30.** The Government member of Benin recalled his Government's participation in the previous preparatory work. Benin strongly supported the creation of the Convention and sincerely hoped that the Committee's efforts would lead to success. The tripartite approach used in the consultations was original and had made it possible for all stakeholders to participate and contribute to the proposed Convention. The work of seafarers deserved particular attention. Although not all the problems of the maritime sector could be solved by the proposed Convention, it was hoped that suggestions would arise during the Committee's work that would provide some solutions.
- 31.** The Government member of Egypt said that an enormous effort had gone into ensuring decent working and living conditions for seafarers, the main objective of the proposed instrument. She noted that since seafaring was a very specific occupation, it was important to create a sufficiently flexible Convention that would guarantee the best possible working conditions. The proposed Convention was a great achievement by the ILO.
- 32.** The Employer Vice-Chairperson was very encouraged by the comments made by Governments. The commitment expressed would prove essential in allowing the Convention to enter into force. As no Government had expressed objections to the proposed Convention, this seemed to indicate that the Convention would be widely ratifiable.
- 33.** The Worker Vice-Chairperson agreed that the positive statements of Government delegates were very encouraging. It was after all the Governments that held the real power in their hands, since they were the ones that would ratify the Convention and deliver the rights provided for therein. There would certainly be difficulties, particularly around issues such as entry into force and coastal States, but with discipline and pragmatism, the Conference would undoubtedly be successful.
- 34.** The Chairperson then suggested holding an open discussion on any matters that were thought to be unclear or confusing. No ILO conference committee had ever had to handle such a volume of work. It would therefore be useful to identify early on issues that could be easily addressed and quickly dispatched. In the case of more difficult issues, a general discussion could help in determining the appropriate action to be taken.
- 35.** The Government member of Greece requested clarification on an issue related to Regulation 1.2, paragraph 3, which excluded persons not ordinarily employed at sea, such as "pilots, travelling dockers and portworkers" from the provisions of that Regulation. He



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asked whether those categories of workers were assumed to be covered by all other Regulations, since they were not explicitly excluded. This question was not intended to be provocative; his delegation had not proposed or supported any amendment to the definition of “seafarer”. It was important, however, that delegates’ understanding of this provision be recorded in the Committee’s report in order to guide future interpretation of the Convention. In this light, there were two issues to consider: how the provision came to be in the Convention and what the consequences would be of such a provision.

- 36.** The Employer Vice-Chairperson stated that the exclusionary text in Regulation 1.2, paragraph 3, had been inserted as a result of an amendment proposed by the Employers’ group. The idea had been to provide a broad definition for “seafarers” and then narrow the scope within specific regulations, as necessary. Regulation 1.2, paragraph 3, was the only place where such an amendment had been accepted; proposals to introduce similar exclusionary language into other provisions had not been accepted. Separate committees were working in parallel and some decisions were reached without full knowledge of how certain issues were being dealt with in other committees. Among those issues was the definition of “seafarers”. Now that the entire Convention was being examined together, it would be well for the Committee to address what could prove to be a weakness in the text.
- 37.** The Worker Vice-Chairperson observed that the query from the Government member of Greece seemed to be intended for Governments. The Workers’ group considered that all persons on board a ship for any length of time were seafarers and should be medically certified to be fit for work. He noted that the text had been taken from the Medical Examination (Seafarers) Convention, 1946 (No. 73).
- 38.** The Government member of Chile observed that a reference to pilots would include not only port pilots, who might be working for only half an hour at a time, but also canal pilots, who might be on board for one week or more. There had been instances where the lack of a medical certificate for a canal pilot had resulted in serious accidents. It was therefore a mistake to exclude canal pilots from the provisions of this Regulation. In addition, paragraph 8 of Standard A1.2 was redundant, since its provisions were covered by paragraph 9. Paragraph 8 could therefore be deleted. Also, referring to Regulation 1.3, paragraph 2, it was not clear what was meant by “personal safety”. Did this refer to the training requirements of the STCW Convention or did it refer to a simple familiarization course? A reference should be made to the STCW Convention to avoid any confusion. Finally, the speaker noted that the Spanish version of the proposed Convention used the word “formación” in Regulation 1.3 and not “entrenamiento”. Although both these words referred to training, there were certain differences and in this context “entrenamiento” was the better term.
- 39.** The Government member of the Republic of Korea noted that the definition of seafarers covered persons who were employed or engaged or worked in any capacity on board a ship. In Regulation 1.2, paragraph 3, the exemption referred only to persons not ordinarily “employed”, but did not include the words “engaged” or “worked”. This point required further discussion.
- 40.** The Government member of Norway, speaking as the Vice-Chairperson of the Government group and as the Chairperson of a Government group Working Party on definitions, said the Working Party had engaged in a broad discussion of the definition of “seafarers” in Article II, paragraph 1(f). Alternatives to the present wording had been proposed, such as the addition of the words “ordinarily” or “on board a specific ship”, but these had been found unsatisfactory. Paragraph 3 of that Article stipulated that in the event of doubt, the question would be determined by the competent authority, after consultation with the shipowners’ and seafarers’ organizations concerned. In light of this provision and

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the fact that the issue could be revisited at a later time, it was decided to leave the definition unchanged.

41. The Government member of Benin thanked the Government member of Greece for raising what seemed to be a genuine problem. It was important that the definition of “seafarer” be consistent throughout the Convention.
42. The Worker Vice-Chairperson was pleased that the Government member of Norway had recalled the consensus reached in previous meetings to leave the definition of the term “seafarer” unchanged. The question of who should and should not be considered a seafarer was a serious one. Persons working on board ships, whether they were cabin stewards, cooks or entertainers, were seafarers. In this light, he thanked the Government member of Chile for his comment concerning pilots. There was, however, a need to be pragmatic. Common sense dictated that under the provisions of this Convention, pilots were not seafarers, as it would be impossible to apply provisions such as those on accommodation and payment to those persons. “Persons who navigated the ship” as well as “persons engaged in the safe operation of the ship” were clearly seafarers but these formulations were too narrow. For example, cabin stewards, beauticians or other persons working on board passenger ships for extended periods were part of the crew, even if they were not engaged in the safe operation of the ship. These persons belonged to an often exploited group that needed to be identified as seafarers and protected as such. The riding repair gangs that were nowadays subcontracted to work on board ships should also be regarded as seafarers and, in spite of being subcontractors, their terms and conditions of work should be at least equivalent to those provided for in the Convention. On the issue of medical certificates, common sense dictated that those provisions were applicable to persons on board ships for extended periods of time and that pilots and port workers did not fall into this category. The Workers’ group wished to protect seafarers and firmly supported the view that persons who were employed, engaged or working on board for a considerable period of time were seafarers.
43. The Government member of Malaysia indicated, with reference to paragraph 1 of Regulation 1.2, that the medical examination of seafarers differed from that of other workers. It was a question of medical fitness for service on board ships. He shared the view of the Worker Vice-Chairperson that pilots, travelling dockers and portworkers were not seafarers in this context, since they were not engaged through a seafarers’ work agreement or a collective bargaining agreement, had different employers and were not engaged to go to sea.
44. The Government member of the Bahamas noted that in stating that Regulation 1.2, paragraph 3, did not apply to pilots, the wording implied that pilots were seafarers but were excluded from these particular provisions. If pilots were not considered to be seafarers, they should not be referred to at all in the Convention, since the Convention only applied to seafarers.
45. The Government member of the Republic of Korea shared the view of the Government member of the Bahamas. In addition, further clarification was needed on the interpretation of the phrase “any categories of persons” in Article II, paragraph 3. This provision provided the competent authority with flexibility in determining who was a seafarer. However, given the varying opinions that had been expressed on the definition of “seafarer”, greater clarity was needed with regard to possible exemptions. He therefore tentatively recommended that exemptions be included, inter alia, for the following: (1) the family of the shipowner; (2) travelling dockers, repair workers and harbour pilots that were not members of the ship’s crew; and (3) any persons not ordinarily working on board such as visiting singers and musicians on passenger ships, etc., provided that this question was determined after consultation with the relevant shipowners’ and seafarers’ organizations. It

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was also recommended that the words “working definition” at the end of paragraph 1(f) be deleted.

46. The Government member of Singapore stated that no amendments were needed to the definition of “seafarer”. It was sufficiently clear who was a seafarer, and in the event of any doubt, Article II, paragraph 3, provided the competent authority with sufficient flexibility. He enquired whether all those persons on board a ship who had signed articles of agreement could be considered seafarers.
47. The Government member of Denmark underlined the importance of a common understanding of the term “seafarer”. Regulation 1.2, paragraph 3, could not be read *a contrario* to the definition of seafarers. The way forward was not to add wording to the definition contained in Article II, paragraph 1(f), but rather to record the common understanding that had been expressed by the Committee.
48. The Government member of Chile recalled that the proposed Convention was supposed to become the fourth pillar in the regulatory maritime system. Consistency with the IMO Conventions on the issue of scope of application was essential. His delegation would, therefore, be submitting an amendment to Article II, paragraph 4, proposing to exclude war ships and auxiliary ships from the scope of the Convention.
49. The Government member of Australia stated that the purpose of Regulation 1.2 was to ensure that all seafarers were medically fit. The agreed text of the definition of the term “seafarer” would suffice for this purpose, and paragraph 3 of Regulation 1.2 was thus superfluous.
50. The Employer Vice-Chairperson considered that the wording of Regulation 1.2, paragraph 3, was indeed problematic since it implied that pilots were seafarers. This was the unfortunate result of some earlier discussions when different committees had been dealing with the same issues separately. However, this inconsistency ought to be addressed, since it would affect future legal interpretation of the Convention. He suggested that this question be referred to the Drafting Committee. The Employers’ and Workers’ groups were examining a possible resolution that might provide guidance on this issue.
51. The Worker Vice-Chairperson concurred with the views expressed by the Government member of Australia. He noted that the terms “pilots, travelling dockers and port workers” were not novel but had been simply taken from the original 1946 instruments. The term “ordinarily” was also unclear. The definition of “seafarer” in Article II, paragraph 1(f), was clear and provision was made for cases of doubt in Article II, paragraph 3, of the Convention. He felt that there was an emerging consensus on the need to delete Regulation 1.2, paragraph 3, and suggested that a resolution might be needed to provide additional clarification.
52. The Government member of South Africa supported deletion of Regulation 1.2, paragraph 3.
53. The representative of the Secretary-General indicated that should the members of the Committee wish to retain the idea of possibly deleting Regulation 1.2, paragraph 3, submitting an amendment to this effect would appear to be the best method.
54. The Government member of Canada reaffirmed his country’s commitment to work towards a good Convention which was widely acceptable and could be ratified by many countries. However, the draft instrument in its current reading still raised concerns for his country with regard to its application to the domestic fleet. Although the provisions concerning “no more favourable treatment” and “substantial equivalence” allowed for a

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certain degree of flexibility, the Convention was generally drawn up in rigid, “black-or-white” terms and its application to the domestic fleet would give rise to great difficulties. The speaker observed that Note 3 of the Office commentary had included the statement that “the Convention should not place unacceptable administrative and financial burdens on shipowners and governments by requiring all of its provisions to be applied with respect to ships of any size and any kind”. Article II did not offer sufficient flexibility in terms of applying relaxed requirements to the domestic fleet where necessary, for example with regard to annual leave.

- 55.** The Government member of Australia expressed concern that the Convention did not seem to take sufficiently into account national circumstances. By way of example, he referred to two specific provisions which would prevent his Government from ratifying the Convention unless they were modified. The first was Regulation 2.8, which required Members to establish national policies to promote employment in the maritime sector. As the maritime sector was not a major employer in his country, his Government could not see the need for such a policy at the national level. Similarly, Standard A1.4 required the regulation of private seafarer recruitment and placement services. As such services barely existed in his country, such a regulatory burden was undesirable. Flexibility was necessary to adapt the application of the requirements of the Convention to national circumstances in non-core areas.
- 56.** The Government member of the United States supported the views expressed by the Government member of Canada. Although her country would like to ratify the Convention, some further flexibility was needed, either through an overall flexibility clause, or by relaxing the wording of individual provisions. The intention was not to weaken the Convention, but to provide the necessary flexibility so that the instrument could be widely ratified and provide coverage to as many seafarers as possible.
- 57.** The Worker Vice-Chairperson requested further clarification as to the points raised by the Government member of Canada. He assumed that, despite the provisions excluding from the application of the Convention ships navigating exclusively in inland waters or sheltered waters, any voyage between the United States and Canada would be counted as an international voyage. He also doubted whether the provisions on annual leave might represent an obstacle to ratification, since the Convention provided, in fact, for a low level of annual leave as compared to existing standards in most developed countries. He reiterated the position of the Workers’ group that, if confronted by any systematic attempt to exclude entire categories of seafarers, classes of ships or sectors of the industry, it would be preferable to retain the protection afforded by existing maritime Conventions. Certain governments were unlikely ever to ratify the Convention, while many others considered that the Convention was sufficiently flexible to meet their needs.
- 58.** The Government member of Canada responded by expressing the hope that a solution satisfactory to all parties would be found, for example, one based on language such as “near-coastal voyages” which existed in other international instruments, and was well understood in the context of the IMO. Article II offered no flexibility with regard to a domestic fleet engaged in near-coastal voyages, and those vessels would not meet the requirements of the Convention. Hence, a provision was needed to make it possible for Governments to apply certain exemptions at the national level. Clearly, it would be very difficult to add the necessary flexibility to each and every provision. The best way would therefore be an overall flexibility provision, which he felt would be supported by many countries. He also recalled that, although Canada was not particularly significant in terms of tonnage, it was a major port State. He therefore called on the Committee to engage in dialogue with a view to agreeing upon an instrument that was attractive to all the various parties.

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59. The Worker Vice-Chairperson recalled that the definition of “near-coastal voyages” was “voyages in the vicinity of a Party as defined by that Party”. If the flexibility sought by Canada were to be given to all ratifying countries, the actual coverage of the Convention would be very different from that intended. Since the Workers were interested in finding a positive way to address this problem, he asked the Government member of Canada to provide a more detailed written explanation of his country’s concerns and called on the Steering Committee to provide the Working Party set up to examine the issue with relevant background papers.
60. The Government member of Australia supported the concerns expressed by the Government member of Canada. Previously, his delegation had raised some doubt as to whether the “substantial equivalence” clause was in itself sufficient to ensure that national circumstances were duly taken into account. In this connection, he recalled that the ILO Committee of Experts on the Application of Conventions and Recommendations had not always been amenable to accepting the notion of substantial equivalence when examining reports submitted under article 22 of the ILO Constitution on the application of ratified Conventions.
61. The representative of the Secretary-General responded that the proposed Convention was unprecedented in terms of the detailed explanatory information available as to the evolution of each provision over the four years of preparatory work. Hence, the real intention of the drafters should be clear. Also, unlike the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), the proposed maritime labour Convention contained a clear definition of “substantial equivalence” in Article VI. The Committee of Experts would be relieved to have so many elements on which to evaluate compliance. She concluded by recalling that a Special Tripartite Committee was provided for by the Convention and would provide useful inputs to the Committee of Experts with regard to the practical application of the Convention.
62. The Government member of China, speaking on behalf of the Government group, reported that during the discussions of his group, opportunity had been given to countries to highlight specific issues that were of concern to them. A number of Governments raised concern, for instance, in relation to provisions that appeared to impose costs on Governments, such as Standard A4.1, paragraph 4(d), regarding costs of telecommunications and medical advice, and Standard A2.5, paragraphs 5(a) and (b), regarding costs of seafarers’ repatriation. Other Governments felt there was need for clarification in connection with seafarers’ employment agreements in the context of collective bargaining agreements on board smaller ships, as referred to in Regulation 2.1 and Standard A2.1. Questions had also been raised with respect to medical certificates on board smaller ships under Regulation 1.2, as well as with respect to hours of work and rest under Standard A2.3, in particular for masters and chief engineers. Several Governments indicated the importance of developing guidelines for port state control and the need to decide whether these should be globally developed through the ILO or developed at the national level. Attention was also drawn to the interpretation of Regulation 3.1 regarding existing ships and the re-registration provisions, as well as to the need for clarification in the text on the date of construction perhaps along the lines of provisions found in the SOLAS Convention. Similarly, some concern was voiced about the application of Regulation 3.1 and the related Code provisions to workers who did not live on board ship. Some Governments made reference to Standard A5.1.3, paragraph 12, and the need to clarify whether a copy of the declaration, rather than the original, should be posted on board the ship and the need to ensure that any exemption relating to ships below 3,000 gross tonnage should also be indicated on the certificate. Others considered that they could comply with the outcome required, but might face difficulties in terms of the precise process outlined in the Convention, for example, Regulation 2.8 regarding national policies for the sector. Finally, several wording corrections were suggested, for instance, with

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regard to the reference to family names in Standard A2.1, paragraph 4(a), since the concept of family names did not exist in certain countries.

- 63.** The Chairperson, prior to proceeding to the consideration of amendments, indicated the method that he intended to follow in the hope of dealing with the amendments proposed as efficiently as possible. In the first place, he proposed to open the floor to a general discussion of the provision in question, without formally taking up any particular amendment. As a result of such a discussion, certain situations might arise: there might be general agreement on the amendments; there might be general agreement subject to some slight modification; or the proposers might decide not to press the amendment concerned. Only at that stage did he propose to take up an amendment formally, in the hope of achieving a rapid decision. Where there was general agreement on the substance of the amendment within the Committee, any problems with wording could be referred to the Drafting Committee, with instructions as to the consensus reached in the Committee of the Whole. However, if rapid agreement did not appear possible, a number of options would remain available. If the amendment or group of amendments concerned a core issue which could affect the acceptability of the Convention as a whole, the Chairperson would without delay suggest the establishment of a working party to propose a compromise text in the light of the general discussions of the Committee of the Whole. Alternatively, it might be possible to turn to the Steering Committee to use the great experience of its members to find some other way of seeking a generally acceptable solution.

## Preamble

- 64.** The Chairperson opened a general discussion on the issues raised in amendment D.9, submitted by the Government members of Argentina, Chile, Cuba, Panama and the Bolivarian Republic of Venezuela, which sought to insert in the paragraph of the Preamble beginning “Recalling that the United Nations Convention”, after the words “general legal framework”, the words “for the States parties”.
- 65.** The Government member of the Bolivarian Republic of Venezuela stated that the proposed amendment was of strategic importance and had been submitted on previous occasions. The wording of the relevant paragraph in the Preamble gave the impression that all countries that would ratify the proposed Convention were signatories of UNCLOS. However, that was not the case and some provisions of UNCLOS concerning sea boundaries made it difficult to become a signatory. Although the Preamble had no legally binding force, it reflected a certain intent and could be invoked in the future to refer to specific cases in the context of sea boundary delimitation. The amendment would enable countries that were not signatories of UNCLOS to ratify the maritime labour Convention.
- 66.** The Employer Vice-Chairperson recalled that, when the same amendment was last discussed at the PTMC, it had been seen as legalistic and unnecessary. The Employers’ group was not in favour of the amendment.
- 67.** The Worker Vice-Chairperson took a similar view. If the amendment were adopted, the paragraph would only refer to States that had ratified UNCLOS. This would, however, be incompatible with recent resolutions of the General Assembly as regards UNCLOS, which referred not only to the responsibilities of ratifying member States but of member States in general. The amendment would narrow that interpretation and therefore the Workers’ group opposed it.
- 68.** The Government member of Argentina clarified that, although a co-sponsor of the amendment, her country was a State party to UNCLOS. The fact that the social partners

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found the proposal unnecessary or restrictive justified the doubts of the Government member of the Bolivarian Republic of Venezuela. The amendment would lend clarity.

69. The Government members of Cyprus, Egypt, Ghana, Greece and Norway supported the views expressed by the Employer and Worker Vice-Chairpersons.
70. The representative of the Secretary-General, in response to the concern expressed by the Government member of the Bolivarian Republic of Venezuela, stated that the proposed Convention did not address the issue of maritime boundaries. She recalled the legal opinion provided by the Legal Adviser at the PTMC that a Preamble did not, and could not, create legal obligations. Nor could a member State be indirectly bound. The Convention could not have that effect. The wording used in the Preamble clearly demonstrated that the only intention was to recall the spirit of the instruments mentioned.
71. The Government member of Argentina thanked the representative of the Secretary-General for her explanation. She hoped that the statement reflected the authentic interpretation of the text and would adequately address the concerns of the Government member of the Bolivarian Republic of Venezuela.
72. The Government member of the Bolivarian Republic of Venezuela respected the positions expressed by other speakers, but did not fully agree with the interpretation. His delegation might wish to make a written submission regarding its position. He asked for the views of the other co-sponsors of the amendment.
73. The Government members of Chile, Cuba and Panama would support withdrawal of the amendment.
74. The Government member of the Bolivarian Republic of Venezuela agreed to withdraw the amendment with the understanding that his position as well as the explanations of the representative of the Secretary-General would be clearly recorded in the Committee's report.
75. The Preamble was adopted without amendment.

## Article I

76. Paragraph 1 of Article 1 was adopted without amendment.
77. The Chairperson opened a general discussion on the issues raised in amendment D.18, submitted by the Government member of the Russian Federation, which sought to insert the words "which ratify this Convention" after the word "Members" in Article 1, paragraph 2.
78. The Employer Vice-Chairperson asked for some clarification from the Secretariat regarding standard terminology in ILO Conventions, since this amendment and the following two referred to terms which were employed in practically all ILO instruments such as "Members" or "authorities".
79. The Worker Vice-Chairperson expressed reluctance to re-open a discussion on matters that had already been extensively debated. The Office commentary on the proposed Convention specified that the phrase "Each Member which ratifies this Convention" was used only once and thereafter the term "each Member" or simply "Member" used in the text meant member States which had ratified the instrument. As to Members which had not ratified a Convention, he understood that it was ILO practice, in their case, for the

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Convention to have the status of a Recommendation. Amendment D.18 would therefore appear to be unnecessary.

80. The representative of the Secretary-General referred to the Office commentary in Report I(1A), in particular Note 2 on Article I, and read out the relevant extracts. Subject to any formal legal opinion of the Legal Adviser, it seemed clear from the commentary that, in accordance with ILO practice, references in the text to “Member” or to “each Member” should be taken to mean a ratifying Member. If it was intended in any instance to refer to Members of the Organization in general, the wording would make that clear and normally the plural “Members” would be used. She went on to confirm the Worker Vice-Chairperson’s understanding that, for non-ratifying Members, ILO Conventions had the status of Recommendations.
81. The amendment was not seconded and therefore fell.
82. Article I, paragraph 2, was adopted without amendment.
83. Article I was adopted without amendment.

## Article II

84. The Chairperson opened a general discussion on the issues raised in amendment D.17, submitted by the Government members of the Netherlands and the Russian Federation, which sought to replace, at the end of the first line of subparagraph 1(a), the word “authority” by the word “authorities”.
85. The Employer Vice-Chairperson asked the Office to comment on whether this was standard language, as there were many potential authorities to call on.
86. The Worker Vice-Chairperson believed that the proposed amendment was a drafting issue that did not go to the core of the Convention and should be referred to the Drafting Committee.
87. The representative of the Secretary-General stated that the objective of the amendment was to ensure that the reference to “other authority” included one or more authorities. As a matter of ILO practice, the singular also included the plural and referred therefore to one or many as the case might be. The point addressed by the amendment could be sent to the Drafting Committee.
88. The Government member of the Russian Federation agreed that the issue was of an editorial nature which could give rise, however, to interpretation problems and linguistic difficulties. It would therefore be helpful if the explanations provided by the representative of the Secretary-General were reflected in the record and the Drafting Committee further considered this matter.
89. Subparagraph 1(a) was thus adopted and referred to the Drafting Committee.
90. Subparagraphs 1(b), (c) and (d) were adopted without amendment.
91. The Chairperson opened a general discussion on the issues raised in amendment D.11, submitted by the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain,



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Sweden and United Kingdom, which sought to insert the following subparagraph after subparagraph (d):

*passenger ship* means a ship as defined in this Convention, which is certified to carry more than twelve passengers. A passenger is every person other than:

- (i) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship in the business of that ship; and
- (ii) a child under one year of age;

- 92.** The Government member of the United Kingdom felt that a definition of the term “passenger ship” was necessary, as this term was used in the Convention, in particular in Title 3.
- 93.** The Employer Vice-Chairperson expressed the view that, in principle, if a definition appeared in an existing instrument, or “mother” Convention as one might call it, there was no need to devise a new definition. This practice had been followed from the beginning. In this case, the mother Convention was the SOLAS Convention. However, the proposed definition, which referred to “crew”, collided with the definition of the term “seafarer” and introduced the notion of children. There was a clear need to define the term “passenger ship” and the definition found in the SOLAS Convention should be used. However, this should only be done in Title 3, where the term “passenger ship” was used.
- 94.** The Worker Vice-Chairperson observed that the proposed amendment seemed to define “passenger” rather than “passenger ship” and used a terminology (especially the reference to “members of the crew” and the “business of that ship”) that departed from the Convention’s definition of the term “seafarer”. While mindful of the reference to passenger ships in Title 3, he felt that the likelihood was great that the SOLAS definition would interfere with the current text in a number of places. Moreover, not all ships with more than 12 persons on board were passenger ships. One need only think of research vessels and training ships. If the amendment were to be discussed, it would clearly require subamendment. The proposed amendment should be withdrawn.
- 95.** The Government member of Namibia saw the need to include a definition of “passenger ship”, but felt there was a danger in lifting text unchanged from another source.
- 96.** The Government member of the United Kingdom stated that the sponsors wished to provide clarity and user-friendliness for those using the Convention on a daily basis. “Passenger ship” was an established legal term in international maritime law. It would be preferable if the proposed Convention were a stand-alone document so that users would not have to consult another Convention for the definition of a term. It should be acceptable if the proposed definition were slightly reworded to conform to ILO language.
- 97.** The Government member of France supported the views expressed by the Government member of the United Kingdom.
- 98.** The Government member of the Bahamas suggested that the term “passenger” could be defined as “every person other than a seafarer”.
- 99.** The Government members of Egypt, the Republic of Korea and Singapore concurred with the view of the Government member of the Bahamas which would result in the removal of points (i) and (ii).
- 100.** The Worker Vice-Chairperson questioned the appropriateness of a definition that referred to the certification of passenger ships. The Workers’ group saw no need for a definition of

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the term “passenger” and queried the implications it might have with regard to the definition of the term “seafarer”.

- 101.** The Employer Vice-Chairperson observed that when a term had been used throughout the Convention, a definition had been included in the general provisions. However, the term “passenger ship” was only used in Title 3 of the Convention, so it would be appropriate for a reference to the definition of “passenger ship” contained in the SOLAS Convention to appear there. Such an approach had been adopted in respect of the term “special purpose ships” in Standard A3.1, paragraph 6(d), which contained a reference to another IMO instrument. The definition of the term “passenger ship” should not deviate from the one contained in the SOLAS Convention.
- 102.** The Government member of the United Kingdom said that if the Employers’ and Workers’ groups did not mind referring to other instruments, his delegation would not oppose including a direct reference to SOLAS rather than a self-contained text that defined this important term. His delegation would accept placement of the reference in Title 3 provided that the term “passenger ship” did not occur in any other part of the Convention.
- 103.** The representative of the Secretary-General assured the Committee that the term “passenger ship” was only used in Title 3 of the proposed Convention. She noted that when a term appeared only in one title, it was defined there. The Government members who had sponsored the amendment might wish to submit their proposal as an amendment to Title 3.
- 104.** The Government member of the United Kingdom withdrew the amendment on the understanding that an amendment to Title 3 could be submitted at a later time.
- 105.** Subparagraph 1(e) was adopted without amendment.
- 106.** The Chairperson opened a general discussion on the issues raised in amendment D.14, submitted by the Employer members, which sought in the first line of subparagraph 1(f) to insert the word “ordinarily” before “employed”, to replace “or” after the word “employed” by a comma and to insert a comma after “engaged”.
- 107.** The Employer Vice-Chairperson observed that the initial general discussion had revealed a certain confusion in relation to the definition of the term “seafarer”. The Workers and Employers had set up a small group to consider a possible resolution that would remove any remaining doubt as to who was and who was not a seafarer. The speaker proposed to defer discussions in the Committee until the informal group had reported back.
- 108.** The Worker Vice-Chairperson noted that the informal consultations between the two groups were very encouraging and supported postponing the discussion of subparagraph 1(f).
- 109.** The Chairperson decided to suspend consideration of D.14.
- 110.** Following consultations, the Employer Vice-Chairperson withdrew the amendment on the basis that a resolution would be prepared, jointly sponsored by the Employer and Worker groups, that sought to clarify difficulties that might arise over the definition of seafarers.
- 111.** Subparagraphs 1(f), (g) and (h) were adopted without amendment.
- 112.** The Chairperson announced that, at the request of the Steering Committee, a Working Party had been established on Article II, paragraph 1(i), with the following task: to identify and clarify certain questions that had been raised with respect to the determination of ships

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that could be considered as navigating exclusively in inland waters or in waters within, or closely adjacent to, sheltered waters or areas where port regulations applied. The Working Party would take account of the substance of the following amendments: D.5, D.12, D.15, D.16, D.19 and D.20. He added that, in accordance with its terms of reference, the Working Party was not directly requested to propose a firm solution, but rather to discuss, exchange views, review the six amendments, and to report its understanding back to the Steering Committee.

**113.** The Working Party reported to the Steering Committee on its deliberations. An alternative approach was adopted to resolve the issue at hand.

**114.** The President of the Conference recalled that, when it became clear that the Working Party on Article II, paragraph 1(i), had not been in a position to elucidate the problem before it, the problem had been referred to him by the Steering Committee for solution with the assistance of the “Friends of the President”. After discussion with some of the Members most interested in the amendments involving that question, it became clear that some of the detailed provisions of the Code of the proposed Convention could cause real administrative problems for certain countries in the case of smaller ships. He had, therefore, considered that some further flexibility in the Convention would be desirable in order not to prejudice the objective of wide-scale ratification of the Convention. He had discussed the problem with Members strongly opposed to the amendments concerned. They had shown a very understanding attitude, but had naturally been concerned that any flexibility agreed would be strictly limited to the perceived problem and would not in any way affect the concept of a level playing field. He had therefore drafted a proposal for text which sought to meet those two concerns. The text would relate only to cases where particular problems were caused to a Government with respect to specific details in the Code. The Government, in consultation with its social partners, would be allowed to deal with those details by providing appropriate protection to seafarers in the manner set out under its national laws or regulations or other measures. The national provisions would of course have to comply with the Articles and Regulations of the Convention. His proposal would consist of an additional paragraph after Article II, paragraph 5, and a change to the present paragraph 6.

**115.** The following new paragraph would be inserted after Article II, paragraph 5:

Where the competent authority determines that it would not be reasonable or practicable at the present time to apply certain details of the Code referred to in Article VI, paragraph 1, to a ship or particular categories of ships flying the flag of the Member, the relevant provisions of the Code shall not apply to the extent that the subject matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures. Such a determination may only be made in consultation with the shipowners’ and seafarers’ organizations concerned and may only be made with respect to ships of less than 200 gross tonnage not engaged in international voyages.

Paragraph 6 would be amended to read as follows: “Any determinations made by a Member under paragraph 3 or 5 or 6 of this Article shall be communicated to the Director-General of the International Labour Office, who shall notify the Members of the Organization.”

**116.** This proposal was designed to offer a balanced text which took care of the concerns reflected in amendments D.5, D.12, D.15, D.16, D.19 and D.20 as well as subsequent amendments along the same lines. The proposal had already been presented to the Steering Committee which had accepted it. If it could be accepted by the Committee of the Whole without change, it would constitute a mutually satisfactory solution to a very difficult problem.

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- 117.** The Employer Vice-Chairperson, while acknowledging the difficulty of accommodating widely differing interests, consented to the President's proposal. If there were, however, any other possibility to satisfy the Philippines' concerns connected with their special geographical situation and to help that country overcome its constitutional problems when deciding to ratify this Convention, the Employers' group would like to seize it.
- 118.** The Worker Vice-Chairperson requested clarification on three issues. First, he enquired whether the wording "a ship or particular categories of ships flying the flag of the Member" meant that the new paragraph would only apply to national ships and not to foreign-flagged ships. Second, he asked for confirmation as to whether the phrase "the relevant provisions of the Code shall not apply to the extent that the subject-matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures" implied that having the subject matter unregulated was not an option. Third, as regards the words "in consultation with the shipowners' and seafarers' organizations concerned", he queried the difference between "in consultation" and "after consultation".
- 119.** The representative of the Secretary-General responded to the first question by explaining that the new paragraph indeed only referred to national ships and not to foreign ships in the waters of a Member concerned. With respect to the second question, she confirmed that the wording implied that the subject matter had to be dealt with by national laws or regulations or collective bargaining agreements or other measures. The idea was precisely to avoid gaps in seafarers' protection and to ensure protection for those who would be excluded from the coverage of the Code. Regarding the third question, she referred to a legal opinion given by the Legal Adviser at the third High-level Tripartite Working Group on Maritime Labour Standards in 2003. According to that legal opinion, "in instruments adopted by the ILO the two terms 'in consultation' and 'after consultation' could be found quite frequently. The two terms were not absolutely identical. There was a difference between them in respect of the continuity of the process of consultation; in the event of the term 'in consultation with the shipowners' and seafarers' organizations', it would be a continuous process of consultation".
- 120.** Following these explanations, the Worker Vice-Chairperson expressed his group's support for the proposal. The Workers' group understood, however, that the proposal represented a global solution for all problems raised by different countries, including the Philippines. The Workers' group only agreed on the basis that there would be no further discussions on this aspect of the Convention's scope of application.
- 121.** The Government member of China, speaking on behalf of the Government group, stated that there was consensus among Governments to support the proposed text in its entirety.
- 122.** The Government member of Liberia accepted the proposal. It was essential for his country, as a major flag State, when ratifying the Convention, to know that important labour-supplying States such as the Philippines were also able to ratify it.
- 123.** The Chairperson concluded that there was tripartite consensus and the proposal was adopted.
- 124.** Subparagraph 1(i) was adopted without amendment.
- 125.** The Chairperson opened a general discussion on the issues raised in amendment D.8, submitted by the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom, which sought to delete in the second line of

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subparagraph 1(j) the word “agent” and to add at the end of the text the words “, irrespective of any subcontracting to other organizations or persons to perform certain duties and responsibilities on his or her behalf”.

- 126.** The Government member of the United Kingdom explained that the amendment comprised two elements. The deletion of the word “agent” was proposed solely for the sake of consistency, since a very similar definition of “shipowners” was provided in the International Safety Management (ISM) Code, 1993. The additional text had been drafted to clarify the provision and remove any uncertainty regarding the definition of a shipowner.
- 127.** The Employer Vice-Chairperson supported the deletion of “agent”, given its use in the ISM Code, as well as the inclusion of additional text proposed. This would clarify the point that the person ultimately responsible under the Convention was the shipowner, irrespective of the entity or person who represented him.
- 128.** The Worker Vice-Chairperson recalled that the term “agent” was used in the Recruitment and Placement of Seafarers Convention, 1996 (No. 179) and therefore was not redundant. The responsibilities under the proposed Convention were significant and the shipowner was ultimately responsible. The speaker did not challenge the intent of the amendment, which was meant to facilitate identification of those responsible for ensuring compliance with the proposed Convention. The wording of the amendment led to confusion, however.
- 129.** The Government member of Japan indicated that he would oppose the amendment, which would modify wording which was basically that contained in several international Conventions, including the SOLAS and STCW Conventions, the International Ship and Port Facility Security (ISPS) Code and ILO Conventions No. 179 and the Seafarers’ Hours of Work and the Manning of Ships Convention, 1996 (No. 180). By introducing new language, there was a danger that serious administrative difficulties could be caused if the meaning of the term “shipowner” differed from that used in other related instruments. Moreover if, as indicated by the sponsors of the amendment, there was no intent to introduce a substantive change, the amendment was not needed. Rather than increasing clarity, its effect would be to amplify uncertainties. The problem arose in situations in which a particular shipowner (“A”) decided to delegate certain operating or managerial responsibilities to another party (“B”), who would then pass certain responsibilities to a third party (“C”) making it extremely difficult for the seafarer or the public authorities to identify the party truly responsible for fulfilling the obligations under the Convention, for example in relation to the payment of wages. The risk was that the proposed new wording would create a situation in which responsibilities could be endlessly passed from one party to another and in which it would be very difficult to identify the actual shipowner. The inclusion of such a clause would help unscrupulous shipowners to avoid their responsibilities.
- 130.** The Government member of Egypt expressed opposition to the deletion of the term “agent”, which was contained in other Conventions that needed to be taken into account in the present instrument. In practice, port state authorities very frequently contacted agents and representatives of shipowners, especially in the case of ships flying foreign flags, as it would otherwise be very difficult to identify the shipowner. The proposed additional text failed to clarify the original text and was likely to create further confusion.
- 131.** The Government member of Norway indicated that the problem lay with the very structure of the shipping industry, and the need for definitions to be adapted to current realities, rather than the other way round. It was very common for functions, such as manning, technical management or commercial operation, to be subcontracted to other entities. In such a situation, it was necessary to be able to identify the party with the final

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responsibility. In a context of shared or subcontracted responsibilities, the amendment sought to make it easier to identify the single responsible entity, irrespective of any subcontracting arrangements which might be in place.

- 132.** The Government member of the United Kingdom affirmed that the purpose of the amendment was to provide greater clarity and precision in identifying the ultimate single responsible entity in a complex situation in which the management of ships often involved many subcontracting arrangements. Referring to the example given by the Government member of Japan, he stressed that the intent was to be able to identify party “A”. He recalled that in the proposed maritime labour certificate and sample declaration of maritime labour compliance, there was only a single line to enter the details of the shipowner. If any of the wording was causing confusion, such as the term “irrespective”, which might be clearer in the French and Spanish versions of the amendment, the input of the Drafting Committee would be welcome.
- 133.** The Government member of France confirmed that the intent of the amendment was to avoid any dilution of responsibility, especially in triangular employment relationships. The French version of the proposed amendment was clear.
- 134.** The Government member of Germany added that the amendment sought to ensure that the responsibilities set out in the Convention could not be avoided through delegation or subcontracting arrangements. It was not the aim of the amendment to reduce the responsibilities of shipowners, but to define them more clearly.
- 135.** The Government member of Singapore believed that the present text of subparagraph 1(j) was sufficiently clear. It should not be modified.
- 136.** The Government member of Spain believed that the proposed amendment served an important purpose in taking into account the real situation in today’s world in social and labour relations. The shipowner needed to be clearly identified as the ultimately responsible party, regardless of any subcontracting arrangement. The Spanish version might need to be referred to the Drafting Committee, as a minor inconsistency had slipped into the text as compared to the English and French versions.
- 137.** The Government member of Malta proposed that the term “irrespective” in the English version of the amendment, which appeared to be causing some confusion, could be brought closer to the French and Spanish versions, for example by using a term such as “independently”.
- 138.** The Government member of Japan reaffirmed his opposition to the amendment. It was the duty of governments to protect the rights of seafarers, even where necessary, by making use of administrative or judicial proceedings. Objective criteria were therefore required for the identification of the shipowner. The wording used in the Convention should be that used in other ILO and IMO instruments so as to prevent any dilution of the protection afforded to seafarers, or any blame being attached to national authorities for failure to protect their rights. The word “irrespective” seemed to be a source of confusion.
- 139.** The Government member of Panama supported the comment made by the Government member of the United Kingdom. The main issue was to ensure that the responsibility of the shipowner was not diluted.
- 140.** The Government member of South Africa said that the amendment created confusion as to the entity ultimately responsible for the vessel. The amendment would also dilute the protection provided under joint and several liability.

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- 141.** The Government member of Denmark said that the amendment was essential. The objective was to define the shipowner so as to clearly show who was ultimately responsible for discharging the responsibilities set out in the Convention. Shared responsibility was often weakened responsibility.
- 142.** The Government member of Greece said that the amendment did not encourage subcontracting. However, in cases where subcontracting did exist, the competent authority needed to be able to identify the entity ultimately responsible for the operation of the ship.
- 143.** The Government member of Australia stated that a specific party would have to request the maritime labour certificate from the government, and would be required to provide all relevant information. As with the IMO ISM Code, 1993, finding the entity whose name was on the certificate would not be difficult, since that entity had approached the authorities originally to obtain the certificate.
- 144.** The Government member of Benin agreed with the Government members of Japan and Singapore that it would be best to be consistent with the definitions used in other international instruments. Rather than adding clarity, the amendment created greater confusion.
- 145.** The Employer Vice-Chairperson noted that the proposed language allowed for many interpretations. The Convention would be harmed by this kind of ambiguity. The Committee's intent was that the responsibility should remain ultimately with the shipowner. Perhaps the Drafting Committee could assist in clarifying the language while maintaining this intent.
- 146.** The Worker Vice-Chairperson said that some clarity had been provided by the discussion. The Workers' group was aware of issues such as flags of convenience and beneficial owners, and therefore supported any wording which made it easier to identify the true responsible entity. However, there appeared to be a problem with the drafting of the proposed amendment. It might be clearer, for example, if the various sections of subparagraph (j) could be broken up, perhaps using dashes, so as to make it clear that the phrase "irrespective of any subcontracting to other organizations or persons to perform certain duties and responsibilities on his or her behalf" referred to all of the possible entities identified. The Workers' group could support the amendment if it served the purpose for which it was intended. However, it did not yet do so and would therefore need to be submitted to the Drafting Committee for possible restructuring. The Workers' group opposed the deletion of the word "agent".
- 147.** The Government member of the United Kingdom agreed that the matter could be referred to the Drafting Committee, with the understanding that the discussion of the issue would resume within the Committee subsequent to the advice provided by the Drafting Committee.
- 148.** The Chairperson noted the Committee's agreement on the intended meaning of subparagraph (j) and referred the matter to the Drafting Committee.
- 149.** The Drafting Committee proposed the following wording for Article II, paragraph 1(j):
- (j) *shipowner* means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.

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150. The Employer and Worker Vice-Chairpersons supported the proposal.
  151. The Committee adopted proposal C.R./D.4 from the Drafting Committee. As a result, amendment D.8 fell.
  152. Subparagraph 1(j) was adopted as amended.
  153. Paragraph 1 was adopted as amended.
  154. Paragraphs 2 and 3 were adopted without amendment.
  155. The Chairperson opened a general discussion on the issues raised in amendment D.7, which was sponsored by the Government members of Singapore and the United States and sought to delete the word “ordinarily”.
  156. The Worker Vice-Chairperson observed that the issue raised by amendment D.7 had already been discussed at previous meetings. Discussion had revolved around ships that had been taken away from their commercial activities for one voyage to carry government cargo. Leaving the term “ordinarily” in this provision would mean that those ships were covered by the Convention, since their non-commercial activities were only occasional. It had been argued that the UNCLOS Article 236 provisions on sovereignty were relevant to this issue; however, those provisions only related to the protection and preservation of the marine environment and so were not applicable in this case. Being on board a ship requisitioned for one non-commercial voyage was not sufficient reason to remove those seafarers from the protection of this Convention.
  157. The Government member of the United States explained that the objective of the amendment was to remove the ambiguity introduced by the word “ordinarily”.
  158. The Government member of Singapore concurred with the Government member of the United States. Vessels were either engaged or not engaged in commercial activities.
  159. The Employer Vice-Chairperson stated that the Employers’ group would not support the amendment.
  160. The Government member of Singapore, in consultation with the Government member of the United States, withdrew the amendment.
  161. The Chairperson opened a general discussion on the issues raised in amendment D.10, which was sponsored by the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom and sought to insert, in the third line, the word “maritime” before the words “commercial activities other than” in the English version of the text.
  162. The Government member of the United Kingdom stated that amendment D.10 was intended to enhance the clarity of the text by aligning the English version with the French and Spanish versions. She added that the proposed terminology had already been used in the Seafarers’ Hours of Work and the Manning of Ships Convention, 1996 (No. 180).
  163. The Employer Vice-Chairperson suggested that this should be sent to the Drafting Committee.
  164. The Worker Vice-Chairperson noted that English had been the working language and the practice had been to bring the French and Spanish texts into line with the English, not



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vice versa. Since a decision had never been taken to add the word “maritime” to the English version, the Drafting Committee should be asked to bring the French and Spanish versions into line with the agreed-upon English version by deleting “maritime” from those versions.

- 165.** The representative of the Secretary-General said that, as was indicated in Note 3, paragraph 14, of Report I(1A), a constituent had drawn the Office’s attention to the discrepancy between the language versions. In that note, the Office had suggested that the versions be aligned. However, the comment by the Workers’ group related to an issue of substance, not drafting.
- 166.** The Worker Vice-Chairperson pointed out that the formulation in Article 1, paragraph 1, of Convention No. 180 referred to “commercial maritime operations” and thus differed from the proposed wording. The offshore energy sector as well as research ships could be examples of the difference between “commercial activities” and “maritime commercial activities”. This issue was not merely a drafting point but one of substance. The use of the term “maritime” in the French and Spanish versions had been a mistake. Since there had been no discussion to include that word in the English version, it should be deleted from the other language versions.
- 167.** The Government member of Canada suggested sending the text back to the Drafting Committee so that the Drafting Committee could review its previous work and correct any mistakes, if necessary.
- 168.** The representative of the Secretary-General stated that the current text of paragraph 4 had come from the PTMC. In addition, only drafting issues could be sent to the Drafting Committee. If the Committee of the Whole wished to align the French and Spanish text to the English text, then this matter could be referred to the Drafting Committee. The amendment raised a substantive issue however, as the addition of the term “maritime” to the English text would lead to the exclusion of vessels that would have otherwise been included. Therefore, the Committee needed to reach an agreement on the substance of the issue before referring it to the Drafting Committee.
- 169.** In a spirit of compromise and for the sake of progress, the Government member of the United Kingdom, speaking on behalf of the sponsors, withdrew the amendment.
- 170.** The Chairperson opened a general discussion on the issues raised in amendment D.6, which was sponsored by the Government members of United States and Singapore and sought to add the following new subparagraph:

any warships, naval auxiliaries or other vessels owned or operated by a State and engaged, for the time being, only on governmental 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.

The Chairperson suggested that Committee members might wish also to consider the issues raised in amendment D.4, which was sponsored by the Government members of Chile and the Bolivarian Republic of Venezuela and sought to add a new subparagraph (c), to contain similar wording to that in Article III(a) of the STCW-95 Convention, namely “warships and naval auxiliaries”.

- 171.** The Government member of Chile said that in order to achieve coherence with other instruments, namely the MARPOL, SOLAS and STCW Conventions, the proposed Convention should not cover warships and naval auxiliary ships. While some of these ships might occasionally be used for commercial purposes, they retained their diplomatic

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status and sovereign extraterritoriality. Ships with this legal status would not be subject to port state control.

- 172.** The Government member of the United States supported the view expressed by the Government member of Chile. She explained that the intention of the amendment was that ships temporarily engaged in military activities or similar activities be excluded from the application of the Convention. The wording suggested in amendment D.6 was narrow and did not apply to privately operated vessels. Furthermore, it stipulated that States should act in a manner that was consistent with the Convention, so far as was reasonable and practicable. Such a provision was important to the navy with regard to their support for the Convention.
- 173.** The Government member of Japan supported the position of the Government member of the United States and indicated his delegation's support for amendment D.6.
- 174.** The Employer Vice-Chairperson said that the reasoning behind the suggested exclusion of warships and auxiliary ships was convincing, given the special legal status of these ships. The Employers' group could therefore support amendment D.4. It was not clear, however, that "other vessels owned or operated by a State and engaged, for the time being, only on governmental non-commercial service" should be excluded from the Convention and the Employers' group would therefore be unable to support amendment D.6.
- 175.** The Worker Vice-Chairperson stated that a warship was publicly owned and did not ordinarily engage in commercial activity. It was therefore already excluded. The term "naval auxiliaries" was not common to all countries and needed further consideration by the Workers' group. In addition, while D.4 made reference to Article III(a) of the STCW-95 Convention, it was actually D.6 that used the wording found in that Article. Also, D.4 used phrases such as "for the time being" and "consideration of appropriate measures" and "as far as is reasonable and practicable", which were meaningless. The Workers' group would not object to the exclusion of warships from the Convention and could also support the exclusion of naval auxiliaries, provided these operated under naval regulations. The phrase "other vessels" was too broad however, and could refer to ships operated for military purposes but under civilian regulations. The Workers' group could therefore not support either amendment.
- 176.** The Government member of Chile clarified that naval auxiliary ships were logistical ships, often used for transport or fuelling purposes. These ships could engage in commercial activity without ceasing to be warships and thus needed to be excluded from the application of the proposed Convention. Inspectors should not be allowed to board these ships.
- 177.** The Government member of the Bolivarian Republic of Venezuela supported the Government member of Chile and said that in his country, a ship was defined as a warship if its captain was serving in the armed forces.
- 178.** The Government member of Norway observed that a ship chartered by a government for the transport of military cargo was still engaged in commercial activities. The government in question had simply entered into a commercial contract.
- 179.** The Government member of the United Kingdom agreed with the Government member of Norway. The present wording was adequate, since it rightly referred to ships engaged in commercial activities.
- 180.** The Government members of Germany and Portugal also agreed with the position of the Government member of Norway.

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- 181.** The Government member of Singapore said that his delegation's intention had been to ensure that warships and naval auxiliaries would be explicitly excluded from the application of the Convention. The question of "other vessels" was more complex. In the case of state-owned vessels and privately owned vessels under long-term charter, governments exercised effective control over these vessels. However, the case of privately owned vessels that were chartered only for a short term was less clear, especially as regards port state control. In this connection, he agreed with the views expressed by the Government members of Chile and the Bolivarian Republic of Venezuela. In order to resolve this problem, he suggested that, subject to the views of the Employers' and Workers' groups, the Drafting Committee might be requested to draft text that provided the necessary flexibility and contained an explicit exclusion of these types of vessels.
- 182.** The Government member of the United States shared the view of the Government member of Singapore. The Convention should include an explicit exemption of warships and naval auxiliaries. She would be prepared to withdraw amendment D.6 provided that amendment D.4 was taken up.
- 183.** Discussion continued on the basis of amendment D.4.
- 184.** The Government member of Chile clarified that amendment D.4 related only to warships in the service of their country. Although not all were combat units and some of these might also be assigned transport or scientific tasks, they were not in commercial service. Port state control was not applicable to warships.
- 185.** The Employer Vice-Chairperson supported the exclusion of warships and naval auxiliaries as suggested in amendment D.4. The suggestion to exclude other vessels as defined in D.6 was, however, not supported by his group. If concerns only related to port state control, perhaps language could be found regarding inspection only.
- 186.** The Worker Vice-Chairperson pointed out that the wording in Article III(a) of the STCW Convention was the same as that in D.6. It was therefore not clear in what respect D.4 differed from D.6. He reminded the Committee of an earlier discussion on the term "ordinarily engaged" that had already addressed the exclusion of warships. His group could understand the reasons for a short, explicit exclusion of warships and naval auxiliaries, but did not support the full language found in the STCW Convention. It was not clear why privately owned ships which just happened to transport state-owned cargo should be exempt from the inspection of the seafarers' working and living conditions on board. These inspections would not concern the cargo but would focus only on labour issues, such as food and water supplies on board and crew accommodation. The Workers' group would, therefore, examine with an open mind a Drafting Committee proposal to provide an explicit exclusion for warships and naval auxiliaries only.
- 187.** The Government member of Singapore agreed with the Worker Vice-Chairperson that D.4 and D.6 had originally been identical and concurred with the proposal to refer the matter to the Drafting Committee.
- 188.** The Government member of Algeria requested clarification on the words "so far as is reasonable and practicable" used in the second sentence of the text proposed in amendment D.6.
- 189.** The Government member of Norway expressed the view that warships and naval auxiliaries were already exempt, in virtue of the wording of Article II, paragraph 4. Since these vessels could not be understood to be "ordinarily engaged in commercial activities", they fell outside the scope of the Convention. An explicit exemption was therefore unnecessary.

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- 190.** The Government member of the Bolivarian Republic of Venezuela indicated that an explicit exemption was necessary, since some naval vessels were in fact engaged in commercial activities.
- 191.** The Government member of the United States reiterated her delegation's desire for an explicit exclusion of warships and naval auxiliaries. Such exemption would be in line with other international instruments. She supported the suggestion to ask the Drafting Committee to devise appropriate wording.
- 192.** The Chairperson concluded that based on the substantive language contained in amendment D.4, the Drafting Committee should make a suggestion on how an explicit exclusion of warships and naval auxiliaries could best be included in Article II, paragraph 4.
- 193.** The Drafting Committee proposed the following wording for Article II, paragraph 4: "Except as expressly provided otherwise, this Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. This Convention does not apply to warships or naval auxiliaries."
- 194.** The Employer and Worker Vice-Chairpersons supported the proposal.
- 195.** The Government members of Chile and Spain agreed with the proposal. In the Spanish version, the word "gabarras" should be replaced by the term "dhow" which was also used in Article 1, paragraph 4, of the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180).
- 196.** The Committee adopted proposal C.R./D.2 from the Drafting Committee. As a result, amendment D.4 fell.
- 197.** Paragraph 4 was adopted as amended.
- 198.** Paragraphs 5, 6 and 7 were adopted without amendment.
- 199.** Article II was adopted as amended.

## **Articles III, IV and V**

- 200.** Articles III, IV and V were adopted without amendment.

## **Article VI**

- 201.** Paragraphs 1 and 2 were adopted without amendment.
- 202.** The Chairperson opened a general discussion on the issues raised in amendment D.1, which was sponsored by the Workers' group and sought to add at the end of the text of paragraph 3, the words "provided that the Member has not exempted any group or category of seafarers from the full application of this Convention".
- 203.** The Worker Vice-Chairperson explained that this issue was closely connected to the ongoing discussions of the Working Party on Article II. The amendment was intended to ensure that the concept of substantial equivalence would not be used to exclude large groups of seafarers from the application of the Convention. Since the Working Party had

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not yet resolved the issue related to Article II, his group proposed deferring consideration of this amendment.

**204.** The Worker Vice-Chairperson later withdrew the amendment.

**205.** Paragraph 3 was adopted without amendment.

**206.** Paragraph 4 was adopted without amendment.

**207.** Article VI was adopted without amendment.

## **Article VII**

**208.** Article VII was adopted without amendment.

## **Article VIII**

**209.** At the suggestion of the Steering Committee, a Working Party was established to examine the provisions on entry into force and certain aspects of the amendment procedures. The Working Party was given the following tasks:

1. To make proposals to fill the gaps left in Article VIII, paragraph 3, Article XIV, paragraph 4, and Article XV, paragraph 2, of the proposed Convention, with any consequential adjustments to the text.
2. To make a proposal to fill the gaps left in Article XV, paragraph 7, of the proposed Convention, with any consequential adjustments to the text.
3. To clarify the issues concerning a possible inconsistency between Article XIV, paragraph 9, and Article XV, paragraph 12, with respect to the event (e.g. adoption, deemed acceptance, entry into force) after which an amendment will be binding on newly ratifying Members when it enters into force, and to set out options for resolving any such inconsistency, if necessary.

After the completion of each task, the Working Party would report to the Steering Committee on the progress of its work.

**210.** The Chairperson invited the Committee to discuss in general terms the issues to be covered by the Working Party so as to give it guidance in its work.

**211.** The Employer Vice-Chairperson indicated that a variety of views had been expressed within the Employers' group on the issues to be covered by the Working Party and that the Employer members of the Working Party would represent this range of views. The Employers' group had not fixed specific figures for the number of member States and the tonnage of world shipping required for the entry into force of the Convention. In view of the broad support for the Convention, such figures were only of relative importance, although a decision would have to be taken on the subject.

**212.** The Worker Vice-Chairperson expressed the hope that, with regard to the complex issues involved in Article XV, paragraph 7, and the possible inconsistency between Article XIV, paragraph 9, and Article XV, paragraph 12, the Working Party would be able to propose solutions that were readily understandable. On the subject of the entry into force provisions, he recalled the position expressed previously by the Workers' group that

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30 member States and one-third of world shipping tonnage might be appropriate figures. A balance would be required between a realistic approach that would allow the Convention to enter into force within a reasonable period, such as five years, while not setting thresholds that were too low. Current ratification rates of the maritime Conventions varied widely. Another issue was whether reference should be made to the actual world tonnage of shipping or ILO member State tonnage. There were countries, such as the Marshall Islands, which were not ILO member States, but had a considerable shipping tonnage. It would therefore be preferable to refer to ILO member State tonnage. One solution might be to provide a formula that combined the two criteria of tonnage and member States.

**213.** The Government member of China, speaking on behalf of the Government group, stated that on Article VIII, paragraph 3, there was general support for requiring ratification by 30 Members for entry into force. There was also general agreement that gross tonnage should refer to world tonnage and not to ILO member State tonnage. Finally, a majority supported 30 per cent of gross tonnage for entry into force, while some Governments favoured higher figures of up to 40 per cent of gross tonnage. Regarding Article XV, paragraphs 2 and 7, there had been general agreement on the figure of five Governments to allow for the proposal of amendments to the Code, although other views had also been expressed for larger and smaller numbers. Significant support existed for the Office's proposals outlined in Note 13, paragraphs 5, 7 and 9, of Report I(1A). The Government group shared the view that references to both tonnage and member States should be kept. Concerning Article XIV, paragraph 9, and Article XV, paragraph 12, it was generally thought that further clarification on possible inconsistencies would be welcome and would assist Government members in determining their position on this issue.

**214.** The results of the Working Party are reported back under Article XV below.

## **Article IX**

**215.** Article IX was adopted without amendment.

## **Article X**

**216.** The Chairperson opened a general discussion on the issues raised in amendment D.3, which was sponsored by the Workers' group and sought to add square brackets around the words "Seafarers' Pensions Convention, 1946 (No. 71)".

**217.** The Worker Vice-Chairperson explained that this amendment related to a technical issue. In so far as the proposed Convention did not contain any provisions on seafarers' pensions, it could not be deemed to revise the Seafarers' Pensions Convention, 1946 (No. 71), which had been ratified by 13 member States. Instead of deleting the reference, his group preferred, however, to include provisions on pensions in the proposed Convention and would submit an amendment to that effect. He therefore suggested that consideration of the inclusion or deletion of the reference be postponed.

**218.** The Employer Vice-Chairperson had no objection to deferring a decision with respect to the reference to Convention No. 71. He gave clear warning, however, that any reopening of the discussion on Regulation 4.5 regarding social security would have grave consequences.

**219.** The Worker Vice-Chairperson suggested that the issue could be dealt with in a new Regulation.

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- 220.** The Employer Vice-Chairperson replied that the question of pensions was part and parcel of the social security debate which his group was unwilling to reopen.
- 221.** The Worker Vice-Chairperson rejoined that a formal revision of the Seafarers' Pensions Convention, 1946 (No. 71) would not be acceptable, unless the issue of pensions was specifically addressed in the maritime labour Convention.
- 222.** The Chairperson concluded that consideration of this issue would be postponed. As a result of later discussions on Title 4, it was agreed that amendment D.3, subamended to delete the reference to Convention No. 71, was adopted.
- 223.** Article X, with the exception of the reference to the Seafarers' Pensions Convention, 1946 (No. 71) was adopted.

## **Articles XI and XII**

- 224.** Articles XI and XII were adopted without amendment.

## **Article XIII**

- 225.** The Chairperson, noting that amendment D.2, which was sponsored by the Government members of Argentina, Costa Rica, Cuba, Mexico, Panama, Spain and the Bolivarian Republic of Venezuela, only concerned a drafting change in the Spanish version of paragraph 1, proposed that the amendment be referred to the Drafting Committee.
- 226.** The Government members of Argentina and Mexico, as co-sponsors of the amendment, agreed with the suggestion, as did the Employer and Worker Vice-Chairpersons.
- 227.** The Chairperson therefore referred the matter to the Drafting Committee.
- 228.** Paragraph 1 was adopted as amended in the Spanish version.
- 229.** The Chairperson opened a general discussion on the issues raised in amendment D.13, which was sponsored by the Employer members, and sought to add at the end of paragraph 2 the words "after consultation with the Joint Maritime Commission".
- 230.** The Employer Vice-Chairperson indicated that the purpose of the amendment was to make official reference to the Joint Maritime Commission (JMC), which was a unique ILO body with a long history of meritorious contribution. The JMC was tasked with reviewing the minimum wage of able seamen and was heavily involved in the selection of agenda items of maritime sessions of the International Labour Conference. The Employers' group believed that the JMC should continue to exist after the entry into force of the new Convention, although its role might be somewhat diminished. He reminded the Committee of the role played by the JMC in 2001 in helping to launch the process of consolidation of ILO maritime instruments. It would be appropriate for the JMC to play a role in future in the nomination of members of the Special Tripartite Committee.
- 231.** The Worker Vice-Chairperson agreed that it was wholly appropriate that nominations to the Special Tripartite Committee should be made after consultation with the JMC. The JMC had been instrumental in setting the present consolidation process in motion and in maintaining its momentum. The JMC had provided assistance to the Governing Body on maritime issues over many years and had encouraged the development of close working relations between the social partners. The Governing Body was well aware of the

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continued need for the JMC, not only to review seafarers' wages, but also to serve in an advisory capacity. The Workers' group therefore fully supported the amendment and thanked the Employer members for proposing it.

- 232.** The Government member of Greece welcomed the social partners' proposal to give recognition in the Convention to the JMC, which was a unique body in the ILO. The existence of the JMC was an acknowledgement of the unique character of the maritime sector.
- 233.** Amendment D.13 was formally submitted to the Committee and adopted.
- 234.** Paragraph 2 was adopted as amended.
- 235.** Paragraphs 3 and 4 were adopted without amendment.
- 236.** Article XIII was adopted as amended.

## Article XIV

- 237.** Article XIV was discussed by the Working Party on entry into force provisions. The terms of reference of the Working Party, as well as the general discussion of the issues involved, are reported under Article VIII. The Working Party's results and the subsequent discussion are reported under Article XV, below.

## Article XV

- 238.** The Government member of the United States, who served as Chairperson of the Working Party on Entry into Force Provisions, reported back to the Committee on the work and conclusions of the Working Party which had been set up at the request of the Steering Committee. The terms of reference of the Working Party were essentially to fill in the gaps which had been left in the final clauses and determine and resolve, if necessary, a possible inconsistency between Article XIV, paragraph 9, and Article XV, paragraph 12.
- 239.** With regard to Article VIII, paragraph 3, the Working Party had deemed it appropriate to keep the figures for the entry into force of the Convention high enough to give legitimacy to the instrument, yet low enough to allow the Convention to enter into force within the next five years. After lengthy discussion, the members of the Working Party had unanimously suggested a figure of 30 registered ratifications and 33 per cent of the world or global tonnage for the gaps left in Article VIII, paragraph 3. The Working Party had also unanimously agreed on the same results for Article XIV, paragraph 4, on the entry into force of amendments to the Articles and Regulations of the Convention, given that these provisions related to the core principles of the Convention. It should be noted that for both of these provisions, some participants of the Working Party had felt that the numbers were too high, while others had felt that they were too low, and others had felt that ILO tonnage, not world tonnage, should be used. After long debates, in the spirit of finding a way forward and getting the job done, compromises had been made by the participants.
- 240.** In relation to Article XV, paragraphs 2 and 7, the speaker indicated that a package deal had been agreed upon which delicately balanced the interests concerned and was a compromise position for the members of each group. He said that the package included the number five in paragraph 2 and, in paragraph 7, the figures of 40 per cent of ratifying Members and 40 per cent of the tonnage of ratifying Members, not world tonnage as in the previous cases. The figure of five in paragraph 2 represented a balance between discouraging



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frivolous amendments and not demanding an undue burden on governments. The figures of 40 per cent were designed to make it difficult, but not impossible, to block an amendment which had substantial support.

- 241.** Turning to the possible inconsistency between Article XIV, paragraph 9, and Article XV, paragraph 12, the Working Party concluded that there was a possible inconsistency, for no other reason than Article XIV, paragraph 9, was difficult to understand. Furthermore, since Article XIV, paragraph 9, appeared to require Members which wished to ratify the Convention, after amendments had been adopted, to apply the Convention without the amendments if the amendments never entered into force, and with the amendments if they did, this lack of certainty regarding whether the amendments would enter into force or not was also a possible inconsistency. Indeed, many Governments felt that this lack of certainty regarding the legal requirements being undertaken would discourage Members from ratifying the Convention.
- 242.** The speaker added that the present Convention would be the first to employ the type of procedure found in Article XIV for the amendment of the core principles. Previously, ILO Conventions had been revised, not amended. For revising Conventions, the standard ILO clauses allowed for newly ratifying Members to ratify the previous text of the Convention until the revising Convention entered into force. The cut-off point was entry into force, not adoption. The effect of moving this cut-off point from adoption to deemed acceptance would be to move closer to standard ILO practice and remove legal uncertainty. He explained that initially some participants had reserved their view on this issue. However, when the Steering Committee expanded its terms of reference, the Working Party ultimately, and unanimously, agreed on the text of Article XIV, paragraph 9, which was now proposed to the Committee of the Whole, together with a consequential amendment to resolve the possible inconsistency. The proposed solution moved the point in time at which non-ratifying Members were prevented from ratifying the unamended Convention from the adoption of an amendment to the deemed acceptance of the amendment, thereby removing the uncertainty for non-ratifying Members which wished to ratify the Convention after an amendment had been adopted. It had also been determined that a consequential amendment was needed to make Article XIV, paragraph 7, consistent with the new text of Article XIV, paragraph 9. Accordingly, the words “subject to paragraph 9” should be added to paragraph 7.
- 243.** With this explanation, the speaker introduced a new draft contained in COT/D.3 of Articles VIII, XIV and XV, as proposed by the Working Party and agreed by the Steering Committee. The text proposed by the Working Party read:

Article VIII

Paragraph 3

This Convention shall come into force 12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of at least 33 per cent.

Article XIV

Paragraph 4

An amendment shall be deemed to have been accepted on the date when there have been registered ratifications, of the amendment or of the Convention as amended, as the case may be, by at least 30 Members with a total share in the world gross tonnage of ships of at least 33 per cent.

Paragraph 9

Any Member whose ratification of this Convention is registered after the adoption of the amendment but before the date referred to in paragraph 4 of this Article may, in a declaration

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accompanying the instrument of ratification, specify that its ratification relates to the Convention without the amendment concerned. In the case of a ratification with such a declaration, the Convention shall come into force for the Member concerned 12 months after the date on which the ratification was registered. Where an instrument of ratification is not accompanied by such a declaration, or where the ratification is registered on or after the date referred to in paragraph 4, the Convention shall come into force for the Member concerned 12 months after the date on which the ratification was registered and, upon its entry into force in accordance with paragraph 7, the amendment shall be binding on the Member concerned unless the amendment provides otherwise.

Paragraph 7

Subject to paragraph 9 of this Article, for Members referred to in paragraph 3 of this Article, the Convention as amended shall come into force 12 months after the date of acceptance referred to in paragraph 4 of this Article or 12 months after the date on which their ratifications of the Convention have been registered, whichever date is the later.

Article XV

Paragraph 2

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

Paragraph 7

An amendment approved by the General Conference shall be deemed to have been accepted unless, by the end of the prescribed period, formal expressions of disagreement have been received by the Director-General from more than 40 per cent of the Members which have ratified the Convention and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified the Convention.

- 244.** The Employer Vice-Chairperson said his group was satisfied with the outcome of the Working Party discussions. The Committee now had a consensus, which was extremely important for one of the four core Conventions relating to the maritime industry inasmuch as all the figures cited in the text had been endorsed by all the maritime countries attending the Conference.
- 245.** The Worker Vice-Chairperson said his group was pleased to support the new text which had already obtained the full endorsement of the Steering Committee.
- 246.** The Government member of China, speaking on behalf of the Government group, said that the proposed text had the unanimous support of the Government group and congratulated the members of the Working Party for their excellent work.
- 247.** The proposed text was adopted without amendment.
- 248.** Articles VIII, XIV and XV were adopted as amended.

## Article XVI

- 249.** Article XVI was adopted without amendment.

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## **Explanatory note to the Regulations and Code of the maritime labour Convention**

250. The explanatory note to the Regulations and Code of the maritime labour Convention was adopted without amendment.

### **Title 1. Minimum requirements for seafarers to work on a ship**

#### **Regulation 1.1 – Minimum age**

251. Regulation 1.1 was adopted without amendment.

252. Standard A1.1 was adopted without amendment.

253. The Government member of Norway introduced amendment D.73, which was sponsored by the Government members of Norway and Sweden and sought to insert the following text in Guideline B1.1: “When regulating working and living conditions, Members should give special attention to the needs of young persons under the age of 18, in particular with regard to their inexperience as seafarers”. The amendment sought to improve the instrument by paying more explicit attention to the needs of young seafarers.

254. The Employer and the Worker Vice-Chairpersons supported the proposed amendment.

255. The Government member of Greece proposed a subamendment to delete the words “, in particular with regard to their inexperience as seafarers”. He indicated that young age and inexperience were not necessarily synonymous.

256. The Government member of Norway accepted the subamendment, which was supported by the members of Denmark, Germany, Malaysia, Pakistan, Singapore and Switzerland.

257. The Employer Vice-Chairperson said that, in his view, young persons, both above and below the age of 18, tended to be inexperienced. However, he would accept the majority view and support the subamendment.

258. The Worker Vice-Chairperson indicated that his group could also accept the subamendment.

259. Amendment D.73 was adopted as subamended.

260. Guideline B1.1 was adopted as amended.

#### **Regulation 1.2**

261. Paragraphs 1 and 2 of Regulation 1.2 were adopted without amendment.

262. The Committee adopted two amendments (D.83, sponsored by the Employer members, and D.90, sponsored by the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and the United Kingdom) which sought to delete paragraph 3.

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- 263.** Regulation 1.2 was adopted as amended.
- 264.** The Government members of Canada and the United States withdrew amendment D.70.
- 265.** Standard A1.2, paragraphs 1, 2, 3, 4, 5, 6 and 7 were adopted without amendment.
- 266.** The Government member of Chile, speaking also on behalf of the Government member of the Bolivarian Republic of Venezuela, introduced amendment D.97 which sought to delete paragraph 8. Paragraph 8 was not necessary because paragraph 9 covered important aspects of medical certificates. In addition, the expression “recent date” was not clear and could be interpreted in many ways.
- 267.** The Employer Vice-Chairperson did not support the amendment. He recalled the PTMC discussions on this point and considered that paragraphs 8 and 9 addressed two different situations.
- 268.** The Worker Vice-Chairperson opposed the amendment.
- 269.** The Government member of Malaysia supported the amendment.
- 270.** The Government members of Egypt, Namibia and Pakistan did not support the amendment.
- 271.** The Government member of Chile expressed willingness to withdraw the amendment, but sought to render the expression “recent date” more precise by adding a specific reference to 30 days.
- 272.** The Government member of Argentina supported this proposal. Medical certificates had a validity of two years, and therefore the term “recent” was vague.
- 273.** The Government member of Chile withdrew his amendment, but stressed the need to specify 30 days as the valid time frame for “recent date”.
- 274.** Standard A1.2, paragraphs 8 and 9, were adopted without amendment.
- 275.** The Government member of the United Kingdom introduced amendment D.91, submitted by the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom, which sought to add, after paragraph 9, the following new paragraph: “The medical certificates for seafarers working on vessels ordinarily engaged in international trade must as a minimum be provided in English.” The aim was to ensure that maritime certificates and medical declarations for seafarers on ships engaged in international trade were globally comprehensible, while at the same time providing flexibility for ships that did not engage in international trade.
- 276.** The Employer Vice-Chairperson supported the amendment.
- 277.** The Worker Vice-Chairperson requested clarification as to who would bear the financial burden for the translation of medical certificates.
- 278.** The Government member of the United Kingdom stated that the proposed Convention was silent on the issue of cost.

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- 279.** The Worker Vice-Chairperson proposed a subamendment to add the phrase “, at no cost to the seafarer”.
- 280.** The Government member of the United Kingdom did not accept the subamendment. The issue of cost had not been addressed in other provisions on medical certificates and there was no reason to begin to address it at this point. Furthermore, the forms for medical certificates were pre-printed and so additional costs were not likely to be incurred.
- 281.** The Government member of Congo supported the position of the Government member of the United Kingdom.
- 282.** The Government member of Norway also opposed the subamendment. In practical terms, a seafarer who sought employment on a ship engaged in international trade would probably not be employable if he did not have a certificate in English. A shipowner would not wish to employ a seafarer whose medical certificate could not be verified by the port State control of various countries. Therefore the amendment did not create new obligations for seafarers, but rather made clear the existing situation.
- 283.** The Government member of France did not believe that the proposed provision would cause problems. While not opposed to the subamendment, he suggested that placing it elsewhere in the text might be more appropriate.
- 284.** The Worker Vice-Chairperson withdrew the subamendment and expressed support for the amendment. He noted however, that seafarers should not be expected to bear any new costs in this regard.
- 285.** The Government member of Namibia noted that even if pre-printed forms existed for the medical certificate, situations would certainly arise where the certificate would be issued by a private doctor in that doctor’s own language, thus necessitating that the seafarer seek translation.
- 286.** The Government member of Cyprus stated that medical certificates should only be printed in formats approved by the administration. These would include an English version. One could not expect officials in foreign ports to verify certificates in languages they did not understand.
- 287.** The Government members of Pakistan and the Bolivarian Republic of Venezuela agreed. The medical certificate should certainly be provided in English, the standard language of the maritime world.
- 288.** The Government member of Namibia had no objection to the amendment. He requested clarification, however, since the amendment seemed to suggest that there might be a need for two medical certificates: one for all seafarers and another for seafarers working on vessels engaged in international trade.
- 289.** The Government member of the United Kingdom stated that, in practice, most administrations would probably choose to use one bilingual form. The amendment left this decision to national administrations.
- 290.** The representative of the Secretary-General drew attention to the ILO/IMO/WHO Guidelines for Conducting Pre-sea and Periodic Medical Fitness Examinations. Although these guidelines needed to be updated, they provided a sample medical certificate form in English, French and Spanish. Perhaps a form of this type, using check-boxes, could be the type of form used. The Office could make the sample form available online if it would be of use.

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- 291.** The Committee adopted the amendment.
- 292.** Standard A1.2 was adopted as amended.
- 293.** Guidelines B1.2 and B1.2.1 were adopted without amendment.

### **Regulation 1.3 – Training and qualifications**

- 294.** Paragraph 1 of Regulation 1.3 was adopted without amendment.
- 295.** The Employer Vice-Chairperson introduced amendment D.87 to replace the words “successfully completed training” by the words “received appropriate training or instruction” in paragraph 2, in order to harmonize the language with that of the STCW Convention and the ISM Code. The purpose was to avoid requiring a seafarer to undergo two different training courses: one for the STCW Convention and one for this Convention.
- 296.** The Worker Vice-Chairperson opposed the amendment. Note 17, paragraph 4, of Report I(1A) stated that:

The current provision reflects the advice of the IMO on the appropriate wording to ensure that it is consistent with the STCW. However, in its comments (Part II, General discussion, paragraph 12), the IMO has noted that, unlike the proposed Convention, the STCW does not allow for substantial equivalence, a matter which may be important from the perspective of the ILO oversight process.

The text of the proposed Convention was therefore consistent with the STCW Convention and the ISM Code and the amendment was unnecessary. Also, there was an important difference between receiving training and successfully completing training.

- 297.** The Government member of Greece agreed with the Workers’ group. Paragraph 3 of Regulation 1.3 referred back to paragraphs 1 and 2, and clearly stipulated that training and certification in accordance with IMO instruments would meet the requirements of those paragraphs.
- 298.** The Government member of South Africa opposed the amendment. National legislation in his country required the successful completion of accredited training. Successful completion of training was of vital importance.
- 299.** The Government member of the Bolivarian Republic of Venezuela opposed the amendment. Only when training had been successfully completed could the competency of seafarers to perform certain tasks be ensured.
- 300.** The Government member of Denmark associated her delegation with the views expressed by the Government member of Greece. She noted also that a State party to the STCW Convention could not use substantial equivalence to opt for courses of a lesser standard than that required by the STCW Convention.
- 301.** The Government member of the Republic of Korea noted that substantial equivalence was only applicable to part A of the Code. As this provision was a regulation, substantial equivalence did not apply. This might help allay some concerns.
- 302.** The Government member of Liberia supported the amendment. Since seafarers could be trained through STCW familiarization training however, perhaps the amendment could be modified to read “... successful completion of training or familiarization”.

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- 303.** The Government member of Singapore considered paragraph 2 to be a subset of paragraph 3. Personal safety was covered in the STCW Convention. Perhaps it might be appropriate to revise paragraph 2 to say “training for on-board service”.
- 304.** The Employer Vice-Chairperson withdrew the amendment.
- 305.** Paragraph 2 was adopted without amendment.
- 306.** The Government member of the United Kingdom introduced amendment D.92, submitted by the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom, to insert the word “mandatory” before the word “instruments” in paragraph 3. Given the large number of instruments that the IMO adopted, not all of which were mandatory, it would be advisable for that word to be inserted, especially given that this provision was a regulation.
- 307.** The Employer and Worker Vice-Chairpersons supported the amendment.
- 308.** The amendment was adopted.
- 309.** Paragraph 3 was adopted as amended.
- 310.** The representative of the Secretary-General drew the Committee’s attention to Note 17, paragraph 5, in Report I(1A). This commentary dealt with Regulation 1.3, paragraph 3, and the legal status of the Certification of Able Seamen Convention, 1946 (No. 74), which was one of the Conventions listed in Article X as being revised by the proposed Convention. Paragraph 5 read:

*Paragraph 3 paves the way for the transfer to the IMO by providing that training and certification in accordance with the instruments adopted by the IMO shall be considered as meeting the generally worded requirements of the Regulation. In the comments just referred to, the IMO has indicated that, at its 80th Session (May 2005), the Maritime Safety Committee (MSC) approved the establishment by the Standards of Training and Watchkeeping (STW) Sub-Committee of an intersessional correspondence group under the coordination of the United Kingdom to facilitate the development of standards of competence of ratings. The STW Sub-Committee also proposed that the ILO should consider the legal status of those countries that have ratified the Certification of Able Seamen Convention, 1946 (No. 74). Accordingly, if the IMO provisions are not sufficiently advanced at the time of the adoption of the present Convention, it might be prudent to add an appropriate transitional provision to this Regulation to take account of Members which have ratified Convention No. 74. Otherwise, the consolidated Convention would, by providing for the ipso facto denunciation of the revised Conventions (Note 10, paragraph 4), have the effect of diminishing existing protection during the interval preceding the adoption of appropriate arrangements under IMO instruments. Accordingly, the following paragraph 4 might be considered for inclusion at the end of the Regulation:*

4. Any Member which, at the time of its ratification of this Convention, was bound by the Certification of Able Seamen Convention, 1946 (No. 74), shall continue to carry out the obligations under that Convention unless and until its subject matter is covered by instruments adopted by the International Maritime Organization or until five years have elapsed since the entry into force of this Convention in accordance with paragraph 3 of Article VIII, whichever date is the earlier.

- 311.** Normally, this issue would have been dealt with by an amendment, but no amendment had been submitted on this matter. Nonetheless, the Office thought the issue required attention. For this reason, the speaker enquired whether the Committee would object to the inclusion

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of the suggested text as a new paragraph 4 of Regulation 1.3. This did not create any additional obligations but would serve to take care of these transitional arrangements.

- 312.** The Employer Vice-Chairperson supported the inclusion of the new paragraph. It was essential, as it had legal implications for those member States bound by Convention No. 74, who should continue to be bound by it until the IMO instruments were in place.
- 313.** The Worker Vice-Chairperson concurred.
- 314.** The Government member of Namibia sought clarification as to whether member States that ratified the proposed Convention would also be bound by Convention No. 74.
- 315.** The representative of the Secretary-General said that the proposed paragraph referred only to Convention No. 74. Until the issues in that Convention were covered by instruments adopted by the IMO, or until five years had elapsed since the entry into force of the proposed Convention, whichever date was the earlier, Members that had ratified Convention No. 74 would continue to be bound by its obligations.
- 316.** The Government members of Denmark, Ghana, Turkey and United States supported the proposal.
- 317.** The Government member of Ireland reminded the Committee that the able seafarer document had been highly valued by seafarers. That should be borne in mind in any ILO/IMO dealings on this issue.
- 318.** The Committee adopted the new paragraph to follow paragraph 3.
- 319.** Regulation 1.3 was adopted as amended.

## **Regulation 1.4 – Recruitment and placement**

- 320.** Paragraphs 1, 2 and 3 of Regulation 1.4 were adopted without amendment.
- 321.** The Employer Vice-Chairperson introduced amendment D.84, which sought to insert, after paragraph 3, the following new paragraph: “The provisions under this Regulation shall apply only to persons whose duties primarily relate to the safe operation and navigation of the ship.” Given the enormous number of placement agencies that dealt essentially with special categories of seafarers, such as entertainers, the need to verify that these agencies conformed to the requirements set out in the Code would place an impossible burden on Governments and, indirectly, shipowners. Such regulation should be restricted therefore to those agencies dealing primarily with seafarers that did not fall into these special categories.
- 322.** The Worker Vice-Chairperson drew the Committee’s attention to the stated purpose of Regulation 1.4, which was “to ensure that seafarers have access to an efficient and well-regulated seafarer recruitment and placement system”. The issues dealt with in this regulation were of major concern to seafarers. While passenger ships certainly employed seafarers who provided service to passengers, defining who among them also had duties related to the safe operation and navigation of the ship was virtually impossible. The amendment sought to limit the scope of application of the regulation of private recruitment and placement agencies. That was incompatible with the Recruitment and Placement of Seafarers Convention, 1996 (No. 179). The amendment would permit the continued exploitation of seafarers who had to pay large sums of money to find a job and would encourage the criminal activity of agencies that lured people into paying for jobs that did



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not even exist. The amendment, if adopted, would exclude precisely those areas that most needed to be regulated. The Office text aimed to help solve such problems.

- 323.** The Government member of Germany said that the idea behind amendment D.84 was of great importance to his Government, which had sponsored a similar amendment (D.71). The Worker Vice-Chairperson was right to say that this amendment risked excluding many seafarers from the protection of Regulation 1.4, and that was why amendment D.71 focused on the recruitment and placement companies themselves. The main issue of concern was recruitment and placement companies whose main purpose might not be to place seafarers but nonetheless had a small number of seafarers on their lists. Germany was not a major supplier of seafarers and many of its private recruitment services might place only 20 or 30 seafarers out of 5,000 placements. It would be impractical to impose the provisions of Regulation 1.4 on those agencies. In addition, due to the wide definition of seafarers, even private agencies that recruited seafarers whose duties did not relate primarily to the operation of the ship would come under the obligations of Regulation 1.4. In practice, this meant that Germany would have to apply Regulation 1.4 to almost all its private recruitment and placement agencies. His delegation was anxious not to undermine Regulation 1.4, but as it stood, it constituted a serious obstacle to ratification.
- 324.** The Worker Vice-Chairperson observed that amendment D.71 raised somewhat different issues from amendment D.84 and should therefore be discussed separately. Article 2, paragraph 2, of the Private Employment Agencies Convention, 1997 (No. 181), expressly excluded from its scope the recruitment and placement of seafarers. Thus, limiting the regulation of such services in the manner suggested by amendment D.84 would leave many seafarers unprotected. The introduction of the new seafarers' identity document meant that all workers on board a ship would need to have a seafarer's ID that would give evidence that they were seafarers. It was true that regulating private recruitment services that placed personnel on board ships would be difficult, but that was no reason not to do so. The speaker emphasized that the adoption of the amendment would encourage the exploitation of thousands of people.
- 325.** The Government member of Indonesia did not support the amendment. The STCW Convention listed seven categories of personnel on board ship, while the amendment referred only to those responsible for the safe operation and navigation of the ship. Seafarers such as cooks, whose primary functions were not related to the safe operation and navigation of the ship, would be excluded from the provisions of Regulation 1.4.
- 326.** The Government member of Norway agreed that categories such as catering, hotel and service staff should be covered by the Convention and appreciated the concern expressed by the Worker Vice-Chairperson regarding the amendment. It was more important that those seafarers be covered by the Convention, than it was to modify the Convention to cover the very particular cases of special types of workers, such as entertainers. He urged the social partners to recognize that not all seafarers needed to be covered in exactly the same way.
- 327.** The Government members of Denmark, Namibia, Singapore and South Africa opposed the amendment.
- 328.** The Employer Vice-Chairperson withdrew the amendment.
- 329.** Regulation 1.4 was adopted without amendment.
- 330.** Standard A1.4, paragraph 1, was adopted without amendment.

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- 331.** The Government member of Norway introduced amendment D.76, submitted by the Government members of Norway, Philippines and Singapore, which sought to replace the word “If” by the word “When” at the start of Standard A1.4, paragraph 2, and to delete the final sentence of that paragraph. Since recruitment and placement agencies were the most common means of finding employment for seafarers, the word “When” was more suitable than “If”. As to the deletion of the last sentence, the language used in the current text was derogatory. Its deletion would hurt no one.
- 332.** The Employer Vice-Chairperson observed that the paragraph under discussion was taken from the Recruitment and Placement of Seafarers Convention, 1996 (No. 179) and reflected the situation that had prevailed at the time. It was possible that circumstances had changed somewhat since then and the text could be transferred to the Guidelines. In addition, the speaker suggested replacing “If” by “Where” instead of “When”.
- 333.** The Worker Vice-Chairperson noted that the last sentence of paragraph 2 was taken almost word for word from Convention No. 179, which had been adopted in 1996. Its purpose was to avoid an excessive number of competing services that would result in a race to the bottom as related to standards. The speaker could support the Employers’ proposal for “Where”, but did not support the deletion of the last sentence of paragraph 2.
- 334.** The Government member of Japan supported the views expressed by the Worker Vice-Chairperson. Japan had no private recruitment services, but had free public recruitment and placement services and attached great importance to the protection of seafarers. It was important to distinguish between public and private recruitment agencies; the last sentence of paragraph 2 of Standard A1.4 was compatible with paragraph 4, which was directed at private agencies.
- 335.** The Government member of Cyprus opposed the amendment and supported only replacing “if” by “where”. There was nothing disparaging about the use of the word “proliferation”. It was quite acceptable that States should, for example, require financial guarantees from private agencies to ensure that seafarers actually received the wages that were due to them.
- 336.** The Government members of Denmark and Panama opposed the amendment.
- 337.** The Government members of Egypt and Pakistan supported the Employers’ proposal regarding “Where” but opposed the deletion of the last sentence of paragraph 2.
- 338.** The Government member of Norway introduced a subamendment to replace the word “If” by “Where” and withdrew the rest of the amendment.
- 339.** The Committee adopted the amendment as subamended.
- 340.** The Government member of Germany introduced amendment D.71, submitted by the Government members of Australia and Germany, to insert the words “, whose main purpose is to carry out seafarer recruitment and placement” after the words “operating in its territory” in Standard A1.4, paragraph 2. The amendment addressed two concerns. First, Standard A1.4, paragraph 2, should not be imposed on placement agencies whose main purpose was not the recruitment of seafarers, but of workers for all industrial sectors. Second, due to the wide definition of “seafarer”, if a recruitment and placement agency placed a hairdresser or a dancer on board a ship, the agency would be required to comply with Standard A1.4. This was problematic. Flexibility was required. In response to Workers’ concerns regarding a narrowing of the scope of coverage that would exclude many seafarers, this amendment related to recruitment and placement agencies, not to seafarers. His delegation was flexible on the wording but called for support as regarded the purpose of the amendment.

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- 341.** The Government member of Australia stated his delegation had concerns similar to those expressed by the Government member of Germany. One of the Committee's objectives had been to develop a Convention that would be widely ratifiable. It was not logical therefore, to attempt to preserve the wording of the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), an instrument that had achieved few ratifications. Some flexibility was necessary to allow governments to implement the Convention and to assume regulatory responsibility in a sensible manner.
- 342.** The Worker Vice-Chairperson did not support the amendment. Determining recruitment and placement agencies' "main purpose" was problematic. The speaker understood the concerns of the Government member of Germany. The Workers' group was of the opinion, however, that given the great difficulties in drawing the line as to whether an agency should fall within or outside the scope of the amendment, the line should not be drawn at all. Instead, all agencies that recruited and placed seafarers should be provided with guidance on how to comply with the standard.
- 343.** The Government member of Pakistan pointed out that the text itself referred to private services that needed to be licensed by governments. The amendment was confusing. The speaker preferred the Office text.
- 344.** The Government member of the Russian Federation opposed the amendment as it narrowed down the number of agencies to be licensed and exempted agencies from the scope of application of the proposed Convention.
- 345.** The Government member of Greece noted the importance of this issue for the Australian and German delegations and proposed establishing a small, informal working group to attempt to find solution that would be suitable to all parties.
- 346.** An informal working group was set up with the following members: the Government members of Australia, Germany and the Netherlands; Mr. A. Bowring (Employer, Hong Kong, China), Ms. T. Hatch (Employer, Australia), Mr. M. Zier (Employer, Netherlands); and Mr. D. Benze (Worker, Germany), Mr. P. Crumlin (Worker, Australia), Ms. K. Higginbottom (ITF).
- 347.** The Worker Vice-Chairperson introduced amendment D.72 to add the following new paragraph after Standard A1.4, paragraph 2:

Notwithstanding paragraph 2 of Standard A1.4, these provisions shall not apply to recruitment and placement services operated through the collective bargaining process between legally recognized maritime trade unions and shipowners located in the Member whose flag a ship flies. To be exempt such a service must be operated in a manner to be conducive to the achievement of the general object and purpose of the relevant provisions of the Code.

This amendment was closely connected with the principles of freedom of association and collective bargaining reaffirmed in Article III. The amendment sought to recognize the Canadian and United States systems of "hiring halls". These systems for the recruitment of seafarers were maintained by collective bargaining and governed by national regulations. Aggrieved seafarers had recourse to an open and transparent complaint procedure. Rules applicable to hiring halls were familiar to all seafarers. Any infraction was actionable under the law. The amendment therefore sought to recognize these systems.

- 348.** The Employer Vice-Chairperson noted this amendment exempted a specific type of agency from the application of the regulation and wondered why the same had not been possible in relation to other proposed amendments. Nonetheless, the Employers' group could support the amendment if subamended to include the phrase "and must respect the free choice of

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seafarers to select a ship and free choice of shipowners to select seafarers” at the end of the last sentence.

- 349.** The Government member of Namibia expressed reservations with regard to subamendment. His understanding was that the subamendment intended to ensure the freedom of an individual seafarer to sign with an individual shipowner. His delegation was sensitive to the issue of “yellow unions”, however, and it appeared that the subamendment undermined the collective bargaining process by reducing matters to the level of the individual.
- 350.** The Worker Vice-Chairperson opposed the subamendment. The Workers’ group viewed it as a hostile and deliberately provocative attempt to undermine the intent of the amendment.
- 351.** The Government member of Canada supported the amendment. As part of its preparations to implement the proposed Convention, his Government had examined issues related to national recruitment and placement systems. Canada did not supply a large number of seafarers to other countries, but a small number of organizations did provide placement services in an attempt to alleviate seafarer shortages. Cooperation between shipowners and seafarers’ trade unions in providing this service was a normal practice in North America.
- 352.** The Government member of the United States supported the amendment, stating that it went to the heart of the United States maritime employment system that sought to guarantee seafarers’ social rights. The first amendment to the United States Constitution guaranteed freedom of association. The maritime industry in the United States was largely unionized and hiring halls were a product of collective bargaining. They were run by trade unions and regulated by national legislation. Employers paid for the operation of the halls and the complaints procedure was subject to the national Labour Relations Act. These hiring halls had been in existence for decades and had proved to be effective and efficient.
- 353.** The Government member of Argentina supported the amendment. In her country, there were no private placement agencies for seafarers. Her country was a signatory to Convention No. 9 and, in meeting its obligations to that Convention, had established a placement centre through a collective agreement between workers and employers. Regulations designed for private agencies could not easily be applied to services provided by trade unions and shipowners, who, as unions and employers, had other responsibilities in addition to placement.
- 354.** The Government member of Australia supported the amendment of the Workers’ group as subamended by the Employers’ group, since it provided the flexibility for workers and employers to work together without regulation by the Government.
- 355.** The Government member of Singapore considered it fair to allow seafarers and shipowners to work together. His delegation could therefore support the proposal if the Workers’ and Employers’ groups were able to agree on the Employers’ subamendment.
- 356.** The Government member of the United Kingdom, speaking for the Austrian presidency of the European Union on behalf of the Government members of the Committee Member States of the European Union (Austria, Belgium, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovenia, Spain, Sweden and United Kingdom), sympathized with the situation of the United States and Canada. However, the instrument before the Committee was an international one. It was therefore dangerous to create a blanket exemption from the Standard and possibly even the Regulation. It was unclear why

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the North American systems could not comply with the regulatory principles found in paragraph 4.

- 357.** The Government member of the Russian Federation supported the views expressed by the Government member of the United Kingdom.
- 358.** The Government member of Malaysia stated that the exemption proposed by the amendment would render paragraph 5 inoperable. Moreover, the exemption would prevent the competent authority from providing complete statistics on all seafarers subject to its national laws and regulations, as provided in Guideline B5.1.4, paragraph 10(d).
- 359.** The Government member of Nigeria opposed the amendment. In Nigeria, recruitment and placement was performed either directly by the shipowner or by manning agencies, and, in both cases, the system was regulated by the Government. If adopted, this amendment might create an obstacle to ratification for Nigeria.
- 360.** The Worker Vice-Chairperson pointed out that Standard A1.4, paragraph 4(a), was only applicable to private recruitment services. Hiring halls were neither private companies, nor manning agencies. Hiring halls were governed by national labour law and were most akin to public agencies, which were exempt from this provision. Hiring halls were however, operated through the collective bargaining process guaranteed by Article III. The amendment was limited to legally recognized trade unions and shipowners located in the Member whose flag a ship flies. The relevant recruitment and placement services did not supply seafarers to all flags of the world. This constituted a major difference from private agencies working for profit. The issue of opening a door to exemptions, raised by the Government member of the United Kingdom, needed some thought, especially in the light of “yellow unions”. However, the amendment only covered legally recognized maritime trade unions. The speaker reminded the Committee that unless this issue were resolved, it could lead to ratification difficulties for the two countries in question.
- 361.** The representative of the Secretary-General suggested that this amendment should be the subject of an informal working group, in view of the importance that the proponents attached to it.
- 362.** An informal working group was set up composed of the following members: the Government members of Malaysia, Namibia, Netherlands and the United States; Mr. J. Bebianio (Employer, Portugal), Mr. J. Cox (Employer, United States), Mr. D. Dearsley (Employer, United Kingdom); Mr. G. Lackey (Worker, United States), Mr. P. McEwen (Worker, United Kingdom), Mr. J. Meredith (Worker, Canada).
- 363.** The Committee later heard reports from the chairpersons of the informal working groups.
- 364.** The Government member of Australia reported back to the Committee on the outcome of the discussions of the informal working group which considered amendment D.71. These discussions had been aimed at avoiding placing heavy administrative burdens on Members, but also at avoiding loopholes that would be detrimental to workers. The working group had presented to the Steering Committee, and the Steering Committee had accepted, a new draft paragraph 2, contained in amendment COT/D.4(Add), which read:

Where a Member has private seafarer recruitment and placement services operating in its territory whose primary purpose is the recruitment and placement of seafarers or which recruits and places a significant number of seafarers, 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 shipowners' and seafarers' organizations concerned. In the event of doubt as to whether this Convention applies to a recruitment and placement service, the question shall be determined by the

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competent authority in each Member after consultation with the shipowners' and seafarers' organizations concerned. Undue proliferation of private seafarer recruitment and placement services shall not be encouraged.

The working group had endeavoured to address the situation in certain countries where a very small number of seafarers were recruited by agencies who generally dealt with other industry sectors. It sought to avoid placing an inappropriate regulatory burden on administrations that might disincline them to ratify the Convention, yet it sought to prevent the opening up of loopholes that could adversely affect seafarers in the wider world. The working group had also identified the need for consultation between administrations and the social partners in the event of doubt.

**365.** The Government member of Namibia, who chaired the informal working group which considered amendment D.72, reported back to the Committee and presented a new additional draft paragraph, contained in amendment COT/D.4(Add), to be inserted after paragraph 2:

The provisions of paragraph 2 of this Standard shall also apply – to the extent that they are determined by the competent authority, in consultation with the shipowners' and seafarers' organizations concerned, to be appropriate – in the context of recruitment and placement services operated by a seafarers' organization in the territory of a Member for the supply of seafarers who are nationals of that Member to ships which fly its flag. The services covered by this paragraph are those fulfilling the following conditions:

- (a) the recruitment and placement service is operated pursuant to a collective bargaining agreement between that organization and a shipowner;
- (b) both the seafarers' organization and the shipowner are based in the territory of the Member;
- (c) the Member has national laws or regulations or a procedure to authorize or register the collective bargaining agreement permitting the operation of the recruitment and placement service; and
- (d) the recruitment and placement service is operated in an orderly manner and measures are in place to protect and promote seafarers' employment rights comparable to those provided in paragraph 4 of this Standard.

**366.** The speaker explained that the Steering Committee had accepted the proposal. The new draft paragraph placed further emphasis on private and public employment services, and added a third pillar to the recruitment and placement process through collective agreement. Such agreements on placement were being implemented in several countries. Some prominent features of the new text included the following: such employment and placement services should be determined by the competent authority, in consultation with seafarers' and shipowners' organizations concerned; the service should be in the member State of which the ship flew the flag; the seafarers to be placed should be nationals of the flag State; the service should be operated pursuant to a collective agreement between seafarers' and shipowners' organizations; both parties should be based in the Member's territory; the Member should have national laws and regulations in place; and the service should be operated in an orderly manner so as to protect and promote seafarers' employment.

**367.** The Employer and the Worker Vice-Chairpersons agreed with the proposals of both informal working groups.

**368.** The Government member of China, speaking on behalf of the Government group, said that there had been wide support in the Government group for the new texts.

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- 369.** The Chairperson concluded that there was tripartite agreement for the adoption of revised paragraph 2 and the insertion of new paragraph 3. Consequently, amendments D.71 and D.72 fell.
- 370.** The Government member of the United Kingdom made a statement on behalf of the Government members of the Committee Member States of the European Union. He indicated that the Member States of the European Union had certain obligations, and the new paragraph to be inserted after paragraph 2 was contrary to those obligations. Consequently, these countries could not apply this new provision, but in order to facilitate the process of adoption of the Convention in a spirit of tripartite consensus decision-making, they did not object the new paragraph.
- 371.** Paragraphs 2 and 3 of Standard A1.4 were adopted as amended.
- 372.** The Government member of the United Kingdom, speaking also on behalf of the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Sweden and Spain, introduced amendment D.93, which sought to delete the words “and advise the competent authority of any unresolved complaint” in clause 4(c)(v) and amendment D.94, which sought to delete clause 4(c)(vi). Emphasizing that the co-sponsors of these amendments in no way wished to reduce the right of seafarers to lodge complaints, he pointed out that clauses (v) and (vi) of Standard A1.4, paragraph 4(c), introduced some confusion as to where such complaints were to be lodged. Title 5 of the Convention, and in particular Standard A5.1.5, sufficiently addressed the issue of on board complaint procedures and ensured seafarers’ right to address complaints to external authorities, where necessary.
- 373.** The Employer Vice-Chairperson supported the amendments.
- 374.** The Worker Vice-Chairperson felt that the requirement in clause (v) that recruitment services should advise the competent authority of any unresolved complaint would encourage placement services to address complaints received. Clause (vi), requiring all complaints concerning working or living conditions on board ship to be brought to the attention of the appropriate authority, was also useful, as the seafarers’ main point of contact onshore was often their manning agent. These requirements did not place too much of a burden on governments and indeed would assist in the monitoring process. The Workers preferred the Office text.
- 375.** The Government member of South Africa also preferred the Office text.
- 376.** The Government member of Argentina said that, if her country had private recruitment services, it would be in favour of unresolved complaints being notified by the placement agencies to the competent authority. She therefore opposed the amendments.
- 377.** The Government member of Croatia supported the amendments.
- 378.** The Government member of the United Kingdom remarked that there appeared to be a clear majority in favour of the amendments.
- 379.** The Worker Vice-Chairperson commented that seafarers might not always be inclined to use the ship’s normal procedure or to go ashore to pursue their complaint, fearing that it might reduce their chances of being re-employed at a later date. Reputable manning agencies might be their only recourse. Unresolved complaints could sometimes concern significant matters, and amendment D.93 left unresolved the question of what became of

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such complaints. His group might therefore envisage supporting amendment D.94 if amendment D.93 were withdrawn.

- 380.** The Government members of Algeria, Egypt and Pakistan preferred the Office text.
- 381.** The Government members of the Bahamas, Nigeria and Singapore supported the proposal of the Worker Vice-Chairperson to retain clause (v) and delete clause (vi).
- 382.** The Government member of the United Kingdom, speaking only on behalf of his own delegation, indicated that he could agree to the proposal made by the Worker Vice-Chairperson and would be willing to withdraw D.93 on the basis that D.94 was accepted.
- 383.** The Employer Vice-Chairperson accepted the compromise proposal.
- 384.** The Government members of Germany, Malta, Pakistan and United Arab Emirates also supported the new proposal.
- 385.** The Chairperson considered amendment D.93 to be withdrawn and concluded that there was tripartite consensus to adopt amendment D.94.
- 386.** Amendment D.94 was adopted.
- 387.** Standard A1.4, paragraph 4(c)(v), was adopted without amendment.
- 388.** Standard A1.4, paragraph 4(c)(vi), was deleted.
- 389.** Standard A1.4, paragraph 4(c)(vii) and paragraphs 5, 6, 7, 8 and 9 were adopted without amendment.
- 390.** Standard A1.4 was adopted as amended.
- 391.** Guidelines B1.4 and B1.4.1 were adopted without amendment.
- 392.** Title 1 was adopted as amended.

## **Title 2. Conditions of employment**

### **Regulation 2.1 – Seafarers’ employment agreements**

- 393.** Regulation 2.1 was adopted without amendment.
- 394.** Standard A2.1, subparagraphs 1(a) and (b), were adopted without amendment.
- 395.** The Government member of the Russian Federation, speaking also on behalf of the Government members of Estonia and Latvia, submitted amendment D.81 to replace, in subparagraph 1(c) before the word “copy”, the word “a” by “an equally authentic”. While the Office text merely required a copy, national legislation in his country required equally authentic copies to be in the possession of the seafarer and the shipowner. The Office text failed to make this clear. His delegation could accept different wording as long as it ensured that both copies had equal force under the law.
- 396.** The Employer Vice-Chairperson stated that his group had initially opposed the amendment due to concerns with regard to the term “authentic”, which seemed to imply that



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notarization would be required. The problem could be overcome by wording such as “original copy” that would ensure that both parties had copies bearing the signatures of both parties.

- 397.** The Worker Vice-Chairperson indicated that his group had also expressed concern about the possible cost implications of the amendment. He was prepared, however, to accept the wording proposed by the Employers’ group on the understanding that an original copy meant that the shipowner and the seafarer each had a copy signed by both parties.
- 398.** The Government member of the Bahamas drew attention to the problem of cruise ships with several hundred crew members using articles of agreement saying that providing a signed original of the articles for each crew member was impractical.
- 399.** The Government member of Malaysia affirmed that in his country, articles of agreement were used as seafarers’ employment agreements. It would be problematic for each seafarer to have a signed original copy of the articles of agreement.
- 400.** The Chairperson suggested that the expression “a signed original of the seafarers’ employment agreement” might be an acceptable alternative. He referred to Article II, paragraph 1(g), which defined “seafarers’ employment agreement” to include both a contract of employment and articles of agreement.
- 401.** The Government member of the Russian Federation found this formulation more accurate and supported it, as did the Government members of Algeria, Brazil, Cyprus, Denmark, Ghana, Kenya, Mexico, Pakistan, Singapore and Sri Lanka.
- 402.** The Government member of France summarized the discussion. The employment contract was to be signed by both the shipowner and the seafarer. Each would receive a copy which had the original signatures of both parties. Two original copies were essential.
- 403.** The representative of the Secretary-General drew the Committee’s attention to the Seamen’s Articles of Agreement Convention, 1926 (No. 22), Article 3 of which read:
1. Articles of agreement shall be signed both by the shipowner or his representative and by the seaman. Reasonable facilities to examine the articles of agreement before they are signed shall be given to the seaman and also to his adviser.
  2. The seaman shall sign the agreement under conditions which shall be prescribed by national law in order to ensure adequate supervision by the competent public authority.
  3. The foregoing provisions shall be deemed to have been fulfilled if the competent authority certifies that the provisions of the agreement have been laid before it in writing and have been confirmed both by the shipowner or his representative and by the seaman.

She noted that even though this instrument made no provision for a copy to be given to the seafarer, it explicitly provided for individual signature. For the countries using articles of agreement, she saw no issue with providing seafarers with signed original copies of the documents they had signed.

- 404.** The Worker Vice-Chairperson referred to Regulation 2.1, which required the terms and conditions for employment of a seafarer to be set out or referred to in a clear written legally enforceable agreement. It was also required that seafarers’ employment agreements be agreed to by the seafarer under conditions which ensured that the seafarer had an opportunity to review and seek advice on the terms and conditions in the agreement and freely accepted them before signing. He recalled from discussions at previous meetings that the primary concern had been to prevent problems with enforcement. To be legally

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enforceable both the shipowner and the seafarer needed an original copy of the employment contract signed by both parties.

- 405.** Amendment D.81 was adopted as subamended.
- 406.** Subparagraph 1(c), was adopted as amended.
- 407.** Subparagraphs 1(d) and (e) and paragraphs 2 and 3 were adopted without amendment.
- 408.** The Government member of Malaysia, speaking also on behalf of the Government members of China, Indonesia, Japan, Republic of Korea, Malaysia, Pakistan, Philippines, Singapore and United Arab Emirates, introduced an amendment (D.79), which sought to delete the word “family” after the words “the seafarer’s” in subparagraph 4(a) since, in some regions, family names did not exist. In the meantime, however, the sponsors had agreed to subamend their proposal to replace the words “the seafarer’s family name and other names” with the words “the seafarer’s full name”. This wording would be in line with that used in the Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185).
- 409.** The Employer and the Worker Vice-Chairpersons accepted the amendment in its modified wording.
- 410.** Amendment D.79 was adopted as subamended.
- 411.** Standard A2.1, subparagraph 4(a), was adopted as amended.
- 412.** Subparagraphs 4(b), (c), (d), (e), (f), (g), (h), (i), (j) and (k) were adopted without amendment.
- 413.** Paragraph 4 was adopted as amended.
- 414.** The Government members of Canada and the United States withdrew amendment D.69.
- 415.** Paragraphs 5 and 6 were adopted without amendment.
- 416.** Standard A2.1 was adopted as amended.
- 417.** Guidelines B2.1 and B2.1.1 were adopted without amendment.

## **Regulation 2.2 – Wages**

- 418.** Regulation 2.2 and Standard A2.2 were adopted without amendment.
- 419.** Guidelines B2.2 and B2.2.1 were adopted without amendment.
- 420.** Guideline B2.2.2, paragraphs 1, 2 and 3, were adopted without amendment.
- 421.** The Government member of Norway, speaking also on behalf of the Government member of Germany, introduced amendment D.74, which sought to consolidate subparagraphs (c) and (f) of paragraph 4 to read: “wages should be paid in legal tender and directly to seafarers’ designated bank accounts unless they request otherwise;”. The purpose was to consolidate two subparagraphs which dealt with the same subject and to reflect what had now become normal practice in the shipping industry.

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422. The Employer Vice-Chairperson did not support the amendment. The Worker Vice-Chairperson did not support the amendment.
423. The Government member of Norway withdrew amendment D.74.
424. Guideline B2.2.2, paragraphs 4 and 5, were adopted without amendment.
425. Guidelines B2.2.2, B2.2.3 and B2.2.4 were adopted without amendment.

### **Regulation 2.3 – Hours of work and hours of rest**

426. Regulation 2.3 was adopted without amendment.
427. The Employer Vice-Chairperson withdrew amendment D.85.
428. Standard A2.3, paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 were adopted without amendment.
429. The Employer Vice-Chairperson introduced amendment D.88, which sought to insert before the words “in English”, the words “, except for ships engaged only in domestic voyages,” in paragraph 11. He recalled an earlier decision to include within the scope of the Convention ships engaged in domestic trade. This had raised a small technical issue that the amendment was intended to address. The table of shipboard working arrangements mentioned in paragraph 10 did not need to be posted in English in the case of ships engaged only in domestic voyages, but only in the working language or languages of the ship concerned.
430. The Worker Vice-Chairperson opposed the amendment. Paragraph 11 was useful for those seafarers who were not conversant with the working language or languages of the ship. Even on domestic voyages, there were often a variety of nationalities of seafarers involved and English would therefore be necessary, not only for the working schedule, but also for such important information as safety and health instructions.
431. The Government member of Japan indicated that, with regard to domestic voyages, English would not always be necessary. Local languages should suffice. The same issue had arisen in relation to collective bargaining agreements under Standard A2.1, paragraph 2, where the same wording “except for ships engaged only in domestic voyages” had been used. The circumstances differed somewhat, but the principle was the same. The speaker therefore supported the amendment.
432. The Government member of Pakistan said that the wording “except for ships engaged only in domestic voyages” should be placed after the word “English”.
433. The Government members of Egypt and Sri Lanka, as well as the United Kingdom, speaking on behalf of the Government members of the Committee Member States of the European Union, did not support the amendment.
434. The Employer Vice-Chairperson withdrew amendment D.88.
435. Paragraphs 11, 12, 13 and 14 were adopted without amendment.
436. The Government member of Japan, speaking also on behalf of the Government members of Indonesia, Republic of Korea, Malaysia, New Zealand, Pakistan, Philippines, Russian Federation and Thailand, submitted amendment D.98, which sought to add, after paragraph 14, the following new paragraph:

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National laws and regulations may, after consultation with shipowners and seafarers concerned, stipulate that masters are covered by paragraphs 5, 6 and 8 of this Standard only when engaged in regular watchkeeping.

and as a consequence to add the following new Guideline B2.3.2:

*Guideline B2.3.2 – Masters*

In applying paragraph 15 of Standard A2.3, the competent authority should pay particular attention to fatigue, and should take into account the nature of masters' duty, which includes the overall safety and management responsibilities on board the ship.

- 437.** The speaker explained that masters were the supreme commanders of their vessels and bore heavy responsibility in all matters, including maintenance and discipline on board. It was, therefore, inappropriate to regulate their hours of work even though Standard A2.3, paragraphs 13 and 14, did provide for some degree of flexibility. Referring to the situation in his country, he stated that the regulations governing masters' watchkeeping were stricter than the provisions of the STCW Convention limiting watchkeeping to eight hours, especially in view of the fatigue factor. He believed, therefore, that the Government of Japan took masters' fatigue more seriously than most other countries. Masters exercised a multitude of functions being responsible, among other things, for port state control issues, complaint procedures and scheduling the crew's hours of service. Furthermore, in Japan there were about 70 Laws delegating authority to ship masters, including policing. Masters were expected to fulfil their duties at all times and therefore could not be subject to the ordinary eight-hour per day schedule nor the maximum 14 hours of work per day. Masters should be able to manage their working hours freely. This view represented the tripartite consensus in Japan. If their hours of work were to be strictly regulated, two or three masters might be required for each ship, which would prevent the normal operation of the ship.
- 438.** The Employer Vice-Chairperson recalled that the master of the ship bore ultimate responsibility for the safety of the ship, the passengers, the cargo, the crew and the conservation of the marine environment. Masters required flexibility in the arrangement of their hours of work and rest. He accordingly supported the amendment.
- 439.** The Worker Vice-Chairperson strongly opposed the amendment. One position which required enhanced protection was that of the master who carried an extensive list of responsibilities and was held accountable for practically everything that happened on board. Most importantly, the master was responsible for the lives of all persons on board. Excluding the master from the application of hours of work and rest regulations was unacceptable. Referring to Annex 2, paragraph 2, of the IMO resolution A.890(21) of 1999 concerning principles of safe manning, he stressed that it was widely recognized that every company had the responsibility to ensure that the master, officers and ratings did not work more hours than was safe. He also referred to the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), Article 13, which required the shipowner to ensure that the master was provided with the necessary resources for the purpose of compliance with obligations under that Convention, including those relating to the appropriate manning of the ship.
- 440.** Turning to the issue of fatigue, the speaker quoted an excerpt from the June 2005 study by the United Kingdom Marine Accident Investigation Branch (MAIB) which referred to a worrying number of merchant ships involved in collisions or near misses. While the details of the accidents might vary, the fundamentals remained depressingly consistent: fatigued crews, due to undermanning; falsified hours of work records; no dedicated lookout on the bridge; and poor situational awareness, anticipation and judgment by officers of the watch. These were classic symptoms of fatigue. In 2004, MAIB had conducted a safety study covering 1,600 accidents over the last ten years, 66 of which were examined in detail. The

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results showed conclusively that poor manning levels and fatigue were major causal factors in collisions and groundings. The speaker would welcome the idea of having three masters on a ship and could not see what might be objectionable with such an eventuality. It was unacceptable for masters to be exempt from the hours of work and rest coverage of the new Convention. Neither the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) nor the European agreement on the organisation of working time of seafarers (2002) provided for such an exemption. He believed that, in any event, Regulation A2.3, paragraph 13, offered sufficient flexibility. Many governments took safety seriously. He therefore sought the support of Government members to ensure that the master, like all other seafarers, was covered by this Convention. This amendment should be rejected.

- 441.** The Government member of the United Arab Emirates noted that masters were entrusted with great powers but also had huge responsibilities. In his opinion, paragraph 14 provided sufficient proof that masters were a special category of seafarer. He proposed a subamendment which would result in the following text: "National laws and regulations may, after consultation with shipowners and seafarers concerned, stipulate that masters are exempt from paragraphs 5, 6 and 8 of this Standard."
- 442.** The Government member of Panama supported the amendment, as it would enable ship masters to establish their own schedule. Considering all of the responsibilities masters had, this would give them the necessary flexibility to use common sense when discharging their duties and managing fatigue levels.
- 443.** The Government member of the United Kingdom expected that this new Convention properly recognized the rights of seafarers, the most fundamental of which was the right to life. Seafarers should not be placed at risk of losing their life while serving on board a ship. The master was responsible for everyone on board, and also for adhering to international maritime regulations. Both the IMO and the ILO recognized the importance of addressing the issue of fatigue. Indeed it was the responsibility of all parties to ensure safe manning levels at all times. Fatigue had been identified as the underlying cause of many maritime accidents. The new Convention must not condone nor indeed permit ships to be operated by seafarers who were not fit to perform their duties due to fatigue. There should be no exceptions to minimum hours of rest, particularly for masters. Amendment D.98 was not acceptable.
- 444.** The Government member of Bulgaria also opposed the amendment.
- 445.** The Government member of Indonesia noted that hours of work and rest were covered in Annex II, paragraph 2 of IMO resolution A.890(21) concerning safe manning. The resolution dealt with situations such as intensive cargo operations, preparation for immediate sailing, and long pilotage or adverse weather conditions requiring the master to be on the bridge for extended periods of time, etc. This resolution was not, however, mandatory. Hours of work or rest were also regulated by the STCW Convention, Code A8/1, which would be in line with the SOLAS Convention. Since these Conventions were mandatory, his delegation supported the amendment.
- 446.** The Government member of the Republic of Korea stated that the flexibility in the proposed Convention mentioned by the Worker Vice-Chairperson was insufficient. Paragraph 8 only applied to unmanned engine room spaces. Paragraph 13 only applied in cases where watchkeeping seafarers were granted more frequent or longer leave periods or compensatory leave or where seafarers worked on board ships on short voyages. Paragraph 14 allowed for exemptions only if necessary for the safety of the ship, persons or cargo. However, there could be other emergency situations that would require the master's attention, such as marine pollution, security matters, or the detention of the ship.

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Paragraph 14 did not cover these situations. By stipulating that paragraphs 5, 6 and 8 would apply only when the master was engaged in regular watchkeeping, the amendment stayed in line with the STCW Convention. The proposed new Guideline B2.3.2 provided that the competent authority should pay particular attention to fatigue. The speaker suggested that the Guideline could be shifted to the mandatory part of the Code.

- 447.** The Government member of Algeria approved the goal of the amendment because it offered the master the necessary flexibility to determine his own hours of rest in conformity with Standard A2.3, subparagraph 1(b).
- 448.** The Government members of Egypt, Saudi Arabia and Sudan supported the amendment which offered the necessary flexibility to allow masters to organize their own hours of rest and work.
- 449.** The Government member of the Russian Federation noted that the Convention prescribed limits on hours of work or rest in any 24-hour or seven-day period. The 24-hour provision would be difficult, if not impossible to comply with. The seven-day provision would probably be possible to implement but required more flexibility. A more realistic approach was essential.
- 450.** The Government member of the Bahamas emphasized that he did not want to increase the working hours of masters. Accidents could result from fatigue. Nonetheless, the master could be blamed in court if he held rigidly to the rules and were resting undisturbed during heavy traffic or were not on the bridge in fog. Masters must have the right to exercise judgment. Otherwise, they would find themselves in the invidious position whereby upholding one law, they ended up breaking another.
- 451.** The Government member of Singapore did not support the amendment, although he agreed with its intent of ensuring a master was able to control his time. During a meeting of the Asia-Pacific group, the speaker had attempted to show other Government members that paragraphs 8 and 14 of the present text allowed for flexibility, however, the proposed Convention lacked a provision that explicitly stated that a master could control his own hours of work and rest. His delegation wished, therefore, to suggest a new paragraph after paragraph 14 with the following wording:

Nothing in this Standard shall prevent a master of a ship from deciding on his hours of work and hours of rest taking into consideration his/her overall safety and management responsibilities on board a ship. He should in no circumstances work longer than the hours stipulated in Standard A2.3, paragraph 5(a), in times where there were call-outs to work, and may rest longer than the hours stipulated in Standard A2.3, paragraph 5(b), in times where there were no call-outs to work.

The suggestion was to insert wording into the Convention ensuring that masters had rest, in line with the Convention, while at the same time retaining flexibility to allow him or her to accomplish all duties. The speaker also noted that were the matter to come to a vote, he would abstain.

- 452.** The Government member of Spain opposed the amendment and the wording proposed by Singapore. The European social model held that workers had certain inalienable rights that could not be renounced or negotiated away. Among these rights was the right to a maximum number of daily hours of work and a minimum period of rest, which was closely related to the right to health.
- 453.** The Government member of South Africa, speaking also on behalf of the Government member of Namibia, strongly opposed the amendment. He drew attention to the phrase “only when engaged in regular watchkeeping”. A master should never be a regular

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watchkeeping officer. Those who applied absolute minimum manning levels should examine their conscience.

- 454.** The Government member of France firmly opposed any form of amendment to the Office text, which was mature. The Code needed to be looked at in its entirety and to consider this issue in relationship to Regulation 2.7 on manning hours. It was not necessary to introduce additional flexibility to the instrument. Flexibility could be achieved by instituting innovative practices. In France, for example, cross-channel vessels were now run with two masters. Certain rules needed to be observed by all States, if they seriously sought to implement the Convention.
- 455.** The Government member of New Zealand agreed. Masters should not be on watch. Some quite large ships were manned by a master with one mate, where the master was obliged to keep watch.
- 456.** The Government member of Denmark noted that the proposed exemption would concern only non-watchkeeping officers. Watchkeeping officers were covered by the minimum periods stipulated in the STCW Convention. As for non-watchkeeping officers, her delegation was not in favour of total flexibility. The preferred solution was not an exemption for masters, but rather a more precise stipulation as to the conditions that should apply to masters. Such an approach would also ensure harmonization of the use of paragraphs 13 and 14, which allowed for flexibility. The periods of rest provided in the STCW Convention would be a good starting point for a provision on hours of work and rest of masters. She offered to come forward with a more formal proposal as a compromise text, if there were support for such a solution.
- 457.** The Government member of Kenya supported compliance with the STCW Convention.
- 458.** The Government member of Norway associated his delegation with the views expressed by the Government member of the United Kingdom. The amendment would result in masters being overworked. Masters were not fully in control of their working time, since they depended upon the shipowner, who determined manning levels. Minimum manning meant more work for masters. Masters should not be obliged to argue with the shipowner over manning levels based on the fact that rules for rest periods of masters were non-existent.
- 459.** The Government member of Cyprus, speaking as president of the Cyprus Master Mariners' Association, stated that the masters in that organization would welcome an international regulation on hours of work and rest for masters. However, none would be willing to strictly adhere to this regulation for two reasons. First, they could not envisage suspending the operation of the vessel due to their inadequate hours of rest. Second, any such suspension of operation would guarantee a loss of employment for the master. The amendment would not change the situation in the real world. The speaker did not support the amendment.
- 460.** The Government member of Croatia opposed the amendment. The answer lay in minimum safe manning, not in reducing masters' hours of rest. Standard A2.3 provided a framework with sufficient flexibility. It was unacceptable that masters should be excluded from its provisions.
- 461.** The Government member of Greece opposed the amendment not only for the reasons expressed by previous speakers, but also on principle. At the outset of its deliberations, the Committee had expressed the desire to leave mature text unchanged. This provision was mature text.

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- 462.** The Government members of Argentina, Austria, Belgium, Benin, Brazil, Canada, Congo, Cuba, Ecuador, Estonia, Finland, Ghana, Guinea, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Oman, Poland, Portugal, Romania, Sri Lanka, Sweden, Syrian Arab Republic, United Republic of Tanzania, United Arab Emirates and Uruguay also opposed the amendment.
- 463.** The Government member of Liberia expressed the hope that this issue would not come to a vote, as it was a highly divisive subject. If it were to come to a vote, his delegation would support the amendment. He wondered however, if the sponsors of the amendment might not accept the proposed text at this time and allow the issue be revisited during the Joint Maritime Commission and other future deliberations.
- 464.** The Government member of the United States stated that hours of work and rest was a complex matter related to manning, trade patterns, type of ship, type of trade and the issues of responsibilities. The United States had strict hours of work regulations and would therefore, not be affected either way by this amendment. For this reason, her delegation neither opposed nor supported the amendment. She urged the Committee not to resort to a vote; it would be a pity if one side were to win at the expense of the other.
- 465.** The Government member of Japan requested clarification from the Office on the flexibility contained in paragraphs 13 and 14.
- 466.** The representative of the Secretary-General responded to the request of the Government member of Japan. Paragraph 13 provided that:

Nothing in paragraphs 5 and 6 of this Standard shall prevent a Member from having national laws or regulations or a procedure for the competent authority to authorize or register collective agreements permitting exceptions to the limits set out. Such exceptions shall, as far as possible, follow the provisions of this Standard but may take account of more frequent or longer leave periods or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ships on short voyages.

This paragraph was almost identical in its wording to paragraph 6 of Article 5, of the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180). In the first sentence of paragraph 13, it seemed important to note the reference to collective agreements "permitting exceptions" to the limits in paragraphs 5 and 6. Thus, the competent authority might authorize exceptions to be permitted in certain circumstances. The second sentence in paragraph 13 specified that these "exceptions shall, as far as possible, follow the standards set out, but may take account of more frequent leave periods etc...". The second part of the sentence, with its use of the word "but", indicated a contrast with the previous statement. The speaker would understand it as implying that exceptions should seek to follow the standards of the Convention "as far as possible", except where the variations to the limits were appropriately combined with other elements in the agreement concerning more frequent or longer leave periods or compensatory leave for specified groups of seafarers. Of course, any exception would need to avoid any risk of fatigue. Compatibility between a collective agreement and paragraph 13 would depend upon whether or not the collective agreement followed the limits set out in paragraphs 5 and 6 of the Convention "as far as possible", and whether sufficient account had been taken of the exceptional nature of reductions of those limits. Such reductions could be regarded as permissible for specific categories of seafarers (including masters) and/or in specific circumstances in which it could reasonably be considered not possible to follow the normal standards.

Paragraph 14 stated that:



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Nothing in this Standard shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea. Accordingly the master may suspend the schedule of hours of work or hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored. ...

Although a master could not really deliver orders to him or herself, a reasonable reading would require the same flexibility to apply, above all, to the master in the emergency situation concerned.

- 467. The Government members of Indonesia, Japan and Malaysia withdrew the amendment, in light of the clarification provided by the Office.
- 468. The Government member of the Republic of Korea supported the withdrawal of the amendment, but asked whether paragraph 14 covered issues such as marine pollution, security matters, the detention of the ship or other overriding operational circumstances
- 469. In response, the representative of the Secretary-General stated that paragraph 14 could be interpreted to cover those cases as highlighted by the Government member of the Republic of Korea.
- 470. Standard A2.3 was adopted without amendment.
- 471. Guidelines B2.3 and B2.3.1 were adopted without amendment.

## **Regulation 2.4 – Entitlement to leave**

- 472. Paragraph 1 of Regulation 2.4 was adopted without amendment.
- 473. The Government member of Norway introduced amendment D.75 submitted by the Government members of Germany and Norway to replace the text of paragraph 2 by the following: “Seafarers shall be granted shore leave to ensure their health and well-being and consistent with the operational requirements of their positions.” The amendment was immediately subamended to replace the word “ensure” by “benefit”. The Office text could conceivably be interpreted as meaning that seafarers were to be granted shore leave only if such leave fulfilled two requirements: that it be consistent with their health and well-being, and that it be consistent with the operational requirements of their positions. It was to avoid that ambiguity that the sponsors had submitted their amendment.
- 474. The Employer Vice-Chairperson said that his group supported the amendment, but suggested that the word “promote” would be preferable to “benefit”.
- 475. The Worker Vice-Chairperson also supported the amendment, but preferred the word “benefit”.
- 476. The Government members of Germany and Singapore supported the amendment and expressed a preference for the word “benefit”.
- 477. The amendment was adopted as subamended by the Government member of Norway. It was referred to the Drafting Committee with a request to pay special attention to the other language versions.
- 478. Paragraph 2 was adopted as amended.

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479. Regulation 2.4 was adopted as amended.

480. Standard A2.4 and Guidelines B2.4, B2.4.1, B2.4.2, B2.4.3 and B2.4.4 were adopted without amendment.

## **Regulation 2.5 – Repatriation**

481. Regulation 2.5 was adopted without amendment.

482. Amendments D.80 and D.86 were withdrawn.

483. Paragraphs 1, 2, 3 and 4 of Standard A2.5 were adopted without amendment.

484. The Government member of Norway introduced amendment D.78 submitted by the Government members of Norway and the United States to delete the words “and recover the cost from the Member whose flag the ship flies” in subparagraph 5(a) of Standard A2.5. He also introduced a related amendment (D.77) submitted by the Government members of Norway and the United States to replace the words “whose flag the ship flies” by “who has incurred them” in subparagraph 5(b) of the same Standard. The amendment did not affect seafarers’ repatriation rights. Instead, it addressed the financing of repatriation and, more particularly, the fact that the cost of repatriation incurred by a port State was not directly recoverable from the shipowner. The change proposed in the amendment could have a favourable impact on ratification.

485. The Employer Vice-Chairperson recalled that the agreement on the text of the Repatriation of Seafarers Convention (Revised), 1987 (No. 166), from which the Office text was drawn, had been achieved only after extensive discussion. It was certainly not right that the port State should bear the cost of repatriation.

486. The Worker Vice-Chairperson opposed the amendment. The proposed Convention provided a clear, step-by-step indication of each party’s responsibility in recovering the cost of repatriation from the flag State and ensuring that no expense was incurred by the seafarer. The Office text was mature text and there was no reason to change it.

487. The Government member of Malaysia observed that cases involving the recovery of costs might end up in a court of law, but no State could take another State to court.

488. The Government members of Norway and the United States withdrew both amendments.

489. Paragraph 5 was adopted without amendment.

490. The Government member of the United Kingdom introduced amendment D.95, which was sponsored by the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom, and sought, in paragraph 6 of Standard A2.5, to replace the words “Taking into account” by the words “Subject to”. He believed that the term “subject to” was more appropriate in respect of another international instrument.

491. The Employer Vice-Chairperson requested clarification as to whether the International Convention on Arrest of Ships, 1999, had entered into force, or whether it would be more appropriate to refer to another international instrument.

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- 492.** The Worker Vice-Chairperson commented that the term “Taking into account” appeared to be correct in the present context, as it would be necessary when complying with the obligations under the present Convention to have regard to those established by other international instruments. Moreover, the expression “subject to” might be interpreted as meaning that the provisions of the present Convention could be inferior to those of the International Convention on Arrest of Ships. He opposed the amendment and asked Governments to reflect on the implications of the wording used.
- 493.** The representative of the Secretary-General indicated that, according to the information provided by the IMO representative to the Conference, the International Convention on Arrest of Ships, 1999, had entered into force in 2005. In her view, the wording “taking into account” did not create any obligations for countries which had not ratified the instrument in question. She agreed with the Worker Vice-Chairperson regarding the interpretation of the expression “subject to”.
- 494.** The Government member of Norway further explained the purpose of the proposed amendment, which was an issue that was basically of significance to governments. The mechanisms of the International Convention on Arrest of Ships took precedence over the procedure of detention in respect of the matters under consideration. This did not mean that that Convention was a superior instrument, but simply that it was the detailed instrument that regulated this issue. In practice, one of the main differences was that, in the event of the detention of a ship, the vessel would have to stay in the port until the claim was honoured. If the provisions of the International Convention on Arrest of Ships prevailed, a guarantee could be put up, the ship would be released and the case would go to court.
- 495.** The Employer Vice-Chairperson preferred the Office text.
- 496.** The Worker Vice-Chairperson did not agree that the issue was solely of concern to governments. The principle needed to be reaffirmed that, where a government had paid for the repatriation of a seafarer, it should be able to obtain reimbursement.
- 497.** The Government member of Norway withdrew the amendment on behalf of the sponsors.
- 498.** Paragraphs 6, 7, 8 and 9 were adopted without amendment on behalf of the sponsors.
- 499.** Standard A2.5 was adopted without amendment.
- 500.** Guideline B2.5 was adopted without amendment.
- 501.** The Employer Vice-Chairperson withdrew amendment D.82.
- 502.** Guideline B2.5.1 was adopted without amendment.
- 503.** The Government member from the United Kingdom introduced amendment D.96, which was sponsored by the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom, and sought to insert, in paragraph 1 of Guideline B2.5.2, after the words “flag State”, the words “and the seafarer’s State of nationality”. He indicated that the proposal was entirely consistent with Standard A2.5, paragraph 5, and added a reference to the nationality of the seafarer, as it would also be prudent for the competent port authorities to contact the consular services of the seafarer’s State of nationality.

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504. The Employer Vice-Chairperson supported the amendment and suggested that it be referred to the Drafting Committee to align the reference to seafarers.
505. The Worker Vice-Chairperson welcomed the amendment.
506. The Government member of Cyprus raised the issue of a seafarer who might be residing in a country other than that of his nationality, for example, where the seafarer had been granted political asylum, and where it might not be prudent to involve the State of nationality of the seafarer. He therefore proposed a subamendment to add the words “or State of residence, as appropriate” after the words “and the seafarer’s State of nationality”.
507. The Employer and Worker Vice-Chairpersons agreed to the subamendment.
508. The amendment was adopted as subamended, and referred to the Drafting Committee.
509. Paragraph 1 was adopted as amended.
510. Paragraphs 2 and 3 were adopted without amendment.
511. Guideline B2.5.2 was adopted as amended.

### **Regulation 2.6 – Seafarer compensation for the ship’s loss or foundering**

512. Regulation 2.6 was adopted without amendment.
513. Standard A2.6 was adopted without amendment.
514. Guidelines B2.6 and B2.6.1 were adopted without amendment.

### **Regulation 2.7 – Manning levels**

515. Regulation 2.7 was adopted without amendment.
516. Standard A2.7 was adopted without amendment.
517. Guidelines B2.7 and B2.7.1 were adopted without amendment.

### **Regulation 2.8 – Career and skill development and employment opportunities for seafarers**

518. Regulation 2.8 was adopted without amendment.
519. Standard A2.8 was adopted without amendment.
520. Guidelines B2.8 and B2.8.1 were adopted without amendment.
521. Paragraph 1 of Guideline B2.8.2 was adopted without amendment.
522. The Government member of Greece introduced amendment D.89, which was sponsored by the Government members of Cyprus and Greece and sought to replace existing paragraphs 2 and 3 of Guideline B2.8.2 by the following paragraph:

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Taking into account that in connection with the employment of seafarers, freedom of choice of ship should be assured to seafarers and freedom of choice of crew should be assured to shipowners, seafarers on such a register or list should:

- (a) have priority of engagement in seafaring;
- (b) be required to be available for work in a manner to be determined by national law or practice or by collective agreement.

The purpose of the amendment was to reorganize and merge paragraphs 2 and 3, without leaving out any of the original wording, but adding certain wording from Article 6 of the Placing of Seamen Convention, 1920 (No. 9). In so doing, the relevant text had been downgraded from a Convention to a guideline because this was the only appropriate location for it. The speaker emphasized that the registration of seafarers on such a list did not mean that they would need to work on the first ship that was available to them, nor were shipowners obliged to accept seafarers merely because they were available. He recalled the appreciation expressed by the Workers' group for countries which maintained public recruitment and placement services for seafarers.

- 523.** The Employer Vice-Chairperson did not support the amendment. The present text was the product of a long discussion in Committee 2 of the PTMC, during which the provisions of the Continuity of Employment (Seafarers) Convention, 1976 (No. 145) had been taken into account. However, following much discussion, an almost completely new text had been prepared by the Drafting Committee. Agreement had been reached on a package that should not be reopened.
- 524.** The Worker Vice-Chairperson concurred that the Office text should be considered as a mature text which formed part of an agreed package. The amendment was based on Convention No. 9, which had been adopted in 1920 and had now been superseded by the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), which upheld the principle of the freedom of choice of ship and crew. He therefore preferred the Office text.
- 525.** The Government member of the United Kingdom, speaking on behalf of the Government members of the Committee Member States of the European Union, as well as on behalf of the Government members of Bulgaria, Iceland, Norway and Romania, offered full support for the amendment, which gave expression to an up-to-date and valid principle.
- 526.** The Government member of Nigeria opposed the amendment.
- 527.** The Government member of Greece observed that Convention No. 9 was indeed an old instrument, but certain countries had been complimented for maintaining public recruitment services for seafarers and it should be realized that such services existed because those countries had ratified Convention No. 9. Nevertheless, in view of the opposition of the social partners, he withdrew the amendment.
- 528.** The Government member of Cyprus also agreed to withdraw the amendment. He stated that the suggested amendment had aimed to provide more clarity in the text of the Convention.
- 529.** Paragraphs 2, 3, 4 and 5 were adopted without amendment.
- 530.** Guideline B2.8.2 was adopted without amendment.
- 531.** Title 2 was adopted as amended.

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## **Title 3. Accommodation, recreational facilities, food and catering**

### **General discussion**

- 532.** The Chairperson opened a general discussion on the issues raised by the amendments to Title 3, in particular those amendments that dealt with the issue of living and/or working conditions.
- 533.** The Employer Vice-Chairperson noted that some ships sailed only during the day and remained in harbour overnight, allowing the seafarers who worked on board to return home in the evenings. No one slept on board and such ships did not have overnight accommodation. As currently drafted, however, the text might require these types of vessels to have cabins for overnight accommodation. Certainly sanitary facilities, lighting, heating and other facilities of this nature were necessary on all ships. However, certain types of ships did not require overnight accommodations.
- 534.** The Worker Vice-Chairperson said that ventilation, heating and sanitary facilities should be common to all seafarers, whether they were sleeping on board or not. Seafarers who worked for 12-hour shifts on ferries should be provided with decent living conditions. The speaker briefly reviewed the amendments that had been submitted to Title 3 and expressed the view that they could be dealt with expeditiously.
- 535.** With reference to the amendments relating to working and/or living conditions on board, the Government member of Greece reminded the Committee that there was no need to touch mature text. Rather, the Committee should deal with issues that might create obstacles to ratification. The Title 3 provisions on accommodation were mature text that should be left unchanged. The Committee should recall, however, that the provisions on accommodation resulted from the consolidation of the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133). The drafters of these two Conventions had not had in mind special categories of ships, such as high-speed craft. Standard A3.1, paragraph 1, was a compromise for these categories of ships, where it was unclear if Conventions Nos. 92 and 133 would apply. The Committee should therefore keep in mind special categories of ships that did not exist when Conventions Nos. 92 and 133 were developed.
- 536.** The Government member of the Republic of Korea stated his country's understanding that Standard A3.1, paragraph 3, stipulated that the inspections required under Regulation 5.1.4 should be carried out when a ship was registered or re-registered, or when the seafarer accommodation on a ship had been substantially altered. Paragraph 3 should not be interpreted as requiring existing ships to comply with the requirements in the Code relating to ship construction and equipment. Regulation 3.1, paragraph 2, clearly provided that the requirements in the Code relating to ship construction and equipment applied only to ships constructed on or after the coming into force of this Convention for the Member concerned. If an existing ship were required to meet the new standards concerning ship construction and equipment, there would be major financial implications. Such an interpretation would constitute an obstacle to widespread ratification of this Convention. Standard A3.1, paragraph 3, should, therefore, be read to mean that: (1) inspection of accommodation would be carried out in addition to the regular inspection required under Regulation 5.1.4; and (2) inspections for existing ships would only be conducted in accordance with applicable existing standards of Conventions Nos. 92 and 133 for Members having ratified those Conventions, when an existing ship was registered or re-registered, or the seafarer accommodation on a ship had been substantially altered.

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**537.** The Government member of the United Kingdom, as a co-sponsor of three amendments relating to working and/or living conditions on board, wished to reassure the Committee that the intent was to ensure that appropriate accommodation would be provided on ships, but not to require unnecessary accommodation. Seafarers working, but not living, on board should of course have sanitary facilities, heating, lighting and ventilation that complied with standards. His delegation had submitted an amendment concerning existing ships based on the Office commentary. The Government group, however, sought confirmation from the Office as to whether the proposal referencing the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) was necessary, in order for these Conventions to remain effective for existing ships.

**538.** The representative of the Secretary-General responded that the comments of the Government members of the Republic of Korea and the United Kingdom were linked. Regulation 3.1, paragraph 2, provided that the requirements in the Code relating to ship construction and equipment applied only to ships constructed on or after the coming into force of this Convention for the Member concerned. The requirements included in Standard A3.1, paragraph 3, would, therefore, not apply to existing ships. In Note 27 of the Office Commentary (Report I(1A)) on Regulation 3.1, the Office had made a suggestion that was now the subject of an amendment submitted by the Government member of the United Kingdom. Article 19, paragraph 8, of the ILO Constitution provided that the adoption or ratification of a Convention would not affect existing, more favourable conditions under other Conventions. The effect of Article X of the proposed Convention would be the revision of many Conventions (including the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) and, thus, their automatic denunciation in case of ratification of the proposed Convention. The reason was that the new Convention would provide comprehensive protection as favourable as the protection provided by the present Conventions. However, the Committee would have to be sure that the new Convention covered the same subject matter as the revised Conventions. This was not the case with Regulation 3.1, paragraph 2. This provision excluded existing ships, which might be covered by present ILO Conventions, from the detailed protection under the Code that contained the substance of Conventions Nos. 92 and 133. It would not be safe to rely on the argument that article 19, paragraph 8, of the ILO Constitution should be considered as making Conventions Nos. 92 and 133 applicable to those countries. Not only would arguments of this kind undermine legal certainty as to the new regime under the proposed Convention, but the basic overall obligation in Regulation 3.1 would continue to apply to existing ships. Only the details in the Code would be excluded by Regulation 3.1, paragraph 2. No less favourable treatment would, therefore, continue to be required under the new Convention. It was the details of this requirement that would be missing in the case of existing ships, which could result, in practice, in less protection. Those details were contained in Conventions Nos. 92 and 133, and the purpose of the amendment was to make clear that those details would still apply to existing ships to the extent that they were already applicable to the Members concerned.

### **Regulation 3.1 – Accommodation and recreational facilities**

**539.** Amendment D.56, submitted by the Government members of the Netherlands and the United Kingdom to delete the word “living” after the words “maintain decent” in Regulation 3.1, paragraph 1, was formally submitted to the Committee for its consideration.

**540.** The Employer and Worker Vice-Chairpersons supported the amendment.

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- 541.** The Committee adopted the amendment.
- 542.** The Employer Vice-Chairperson introduced amendment D.42 to replace the words “working or living on board, or both” by the words “working and living on board”, in paragraph 1. The amendment sought to ensure that ships that did not sail at night were not required to have sleeping accommodation.
- 543.** Following informal consultation, it was agreed that the chapeau of Standard A3.1, paragraph 9, should be amended to read: “Where sleeping accommodation on board ships is required, the following requirements for sleeping rooms shall apply.”
- 544.** The Employer Vice-Chairperson stated that this amendment indicated that ships trading only during the day would not be required to have sleeping accommodation. Seafarers on those vessels would have access, however, to all other types of accommodation. Amendment D.42 was withdrawn.
- 545.** The Committee adopted the amendment to the chapeau of Standard A3.1, paragraph 9.
- 546.** The Government member of the Republic of Korea noted that Regulation 3.1, paragraph 1, contained the words “working or living on board, or both”. “Working” covered a seafarer who only worked on board; “living” covered a seafarer who lived and worked on board. Therefore, the words “or both” were redundant. Also, the use of “or both” in this paragraph might lead to a contradiction with an upcoming amendment. Perhaps the text could be sent to the Drafting Committee.
- 547.** The Chairperson stated that while the term “or both” was perhaps redundant, it did no harm to the text. Since amendment D.42 had been withdrawn, it could not be subamended.
- 548.** The Government member of Spain introduced amendment D.57, submitted by the Government members of Argentina, Chile, Cuba, Ecuador, Mexico, Spain and the Bolivarian Republic of Venezuela, to replace, in the French version, “travaillant et vivant à bord” with the words “travaillant et/ou vivant à bord” and, in the Spanish version, insert after the words “gente de mar”, the words “trabaja o” and after the words “vive a bordo” insert the words “, o ambas cosas”. The amendment sought to bring the French and Spanish texts of paragraph 1 of Regulation 3.1 into line with the English text and to ensure that the scope of application of the Convention was the same in all language versions.
- 549.** The Committee adopted the amendment, with a request that the Drafting Committee ensure conformity among the three language versions.
- 550.** Paragraph 1 was adopted as amended.
- 551.** The Worker Vice-Chairperson introduced amendment D.48 to replace paragraph 2 with the following new paragraph:

The requirements in the Code implementing this Regulation which relate to ship construction and equipment apply only to ships constructed on or after the date when this Convention comes into force for the Member concerned. For ships constructed before that date, the requirements relating to ship construction and equipment that are set out in the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) shall continue to apply to the extent that they were applicable, prior to that date, under the law or practice of the Member concerned. A ship shall be deemed to have been constructed on the date when its keel is laid or when it is at a similar stage of construction.



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This amendment met the Convention's need for a grandfather clause, which had been referred to earlier by the representative of the Secretary-General.

**552.** The Employer Vice-Chairperson supported this amendment.

**553.** The Government members of China and the United Kingdom supported the amendment.

**554.** The Government member of Greece asked if member States were still bound by ILO's Accommodation of Crews Convention (Revised), 1949 (No. 92), the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), and the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) and its Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (P147), if they had ratified them and, in particular, the substantial equivalence provision. In addition, if this amendment were adopted, were there any implications in relation to Article V, paragraph 7, on no more favourable treatment for a State that had ratified Conventions Nos. 92, 133 and 147 and the Protocol?

**555.** The representative of the Secretary-General referred the Committee to Note 27, paragraph 6, of Report 1(1A), which stated:

6. At the Intersessional Meeting, it was recognized that paragraph 1 would temporarily reduce the protection already available under existing international labour standards. Many of the ships concerned might already be covered by the detailed requirements in Conventions Nos. 92 and 133, or by Convention No. 147 and the Protocol to that Convention, requiring a "substantially equivalent" application of Conventions Nos. 92 and 133, where they have not been ratified by the Member concerned. As a result of Article X (Note 10, paragraph 4), the flag States of those ships will be deemed to have denounced all those Conventions and will no longer be bound by the latter as soon as the new Convention comes into force for them. The exclusion of all existing ships from the application of the Code provisions relating to ship construction and equipment would thus result in a lessening of existing protection. This would not be in line with the original intentions behind the Convention or with article 19, paragraph 8, of the ILO Constitution. The Intersessional Meeting agreed with the thrust of an amendment proposed in the PTMC to correct this lacuna. It was suggested that the amendment concerned could be redrafted with the advice of the Office and reviewed at the Conference. The following rewording of paragraph 2 is suggested (with the first sentence remaining the same in substance as the relevant paragraph in the PTMC draft Convention):

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 date when this Convention comes into force for the Member concerned. For ships constructed before that date, the requirements relating to ship construction and equipment that are set out in the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), shall continue to apply to the extent that they were applicable, prior to that date, under the law or practice of the Member concerned.

Therefore, a number of countries were bound by these existing instruments and ratifiers of the Protocol were bound by the provision on substantial equivalence in this regard. Regulation 3.1 would continue to apply to existing ships, but the details in the Standard might differ. In addition, the no more favourable treatment clause in Article V, paragraph 7, applied.

**556.** The Committee adopted the amendment.

**557.** The Government member of the United Kingdom, speaking also on behalf of the Government member of the Netherlands, withdrew amendment D.53.

**558.** Paragraph 2 was adopted as amended.

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- 559.** Paragraph 3 was adopted without amendment.
- 560.** The Government members of Australia, the Republic of Korea and Singapore withdrew amendment D.46.
- 561.** Regulation 3.1 was adopted as amended.
- 562.** The Government member of the United Kingdom, speaking also on behalf of the Government member of the Netherlands, introduced amendment D.63 to replace, after the words “meet minimum standards”, the rest of the text of Standard A3.1, paragraph 1(a), by the words: “to ensure that any accommodation for seafarers, working or living on board, or both, is safe, decent and in accordance with the relevant provisions of this Standard; and”. He drew the Committee’s attention to the word “any”. The amendment supported the principle of not requiring the provision of unnecessary accommodation.
- 563.** The Employer and Worker Vice-Chairpersons supported the amendment.
- 564.** The Committee adopted the amendment and sent it to the Drafting Committee with the request to ensure conformity among the three language versions, and to examine the use of the phrase “or both” for any possible redundancy.
- 565.** As a consequence of the adoption of amendment D.63, amendments D.49 and D.58 fell.
- 566.** Paragraph 1 was adopted as amended
- 567.** Paragraphs 2 and 3 were adopted without amendment.
- 568.** The Government member of the Bolivarian Republic of Venezuela withdrew amendment D.59
- 569.** Paragraphs 4 and 5 were adopted without amendment.
- 570.** The Government member of the United Kingdom introduced amendment D.62, which was sponsored by the Government members of the Netherlands and the United Kingdom, and sought to replace the words “for living accommodation” by the words “for seafarers’ living and working accommodation” in the chapeau of paragraph 6. It was intended to achieve coherence in the text and to clarify that the requirements concerning accommodation contained in the instrument only applied to ships on which accommodation was needed in practice.
- 571.** The Employer Vice-Chairperson proposed a subamendment to modify the chapeau of paragraph 6 by deleting the word “living”, so that it would read: “With respect to general requirements for accommodation:”.
- 572.** The Government member of the United Kingdom accepted the subamendment.
- 573.** The Worker Vice-Chairperson also endorsed the subamendment.
- 574.** Amendment D.62 was adopted as subamended.
- 575.** The Government member of the United Kingdom introduced amendment D.68, which was sponsored by the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom, and sought to add the words: “as defined in Regulation 2(e) and (f) of the

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SOLAS Convention adopted by the International Maritime Organization in 1974,” after the words “passenger ships,” in paragraph 6(c). He recalled that, as the term “passenger ships” was only used in Title 3 of the instrument, and was not therefore defined in Article II, the amendment was merely intended to provide a cross-reference to the definition of the term “passenger ship” contained in the SOLAS Convention.

- 576.** The Employer and Worker Vice-Chairpersons supported the amendment.
- 577.** Amendment D.68 was adopted.
- 578.** Paragraph 6 was adopted as amended.
- 579.** Paragraphs 7 and 8 were adopted without amendment.
- 580.** The Committee considered jointly amendments D.66 and D.65, which were both sponsored by the Government members of China, Japan and the Republic of Korea. Amendment D.66 sought to add the phrase “where both men and women are on board a ship” at the end of subparagraph 9(b). Amendment D.65 sought to add the same phrase at the end of subparagraph 11(a).
- 581.** The Government member of the Republic of Korea, introducing both amendments, referred to paragraph 37 of Appendix A in Report I(1A), which indicated that the phrase “where necessary” had been deleted from the provision by the Drafting Committee on the grounds that at the time of the construction of a ship, the gender of the seafarers working on the ship would not be known. In his view, this assumption was only partially true. In many cases, shipowners knew who they would be employing on certain types of ships. Moreover, a great majority of ships were manned only by male seafarers. The deletion of the phrase would result in a situation in which all ships would have to have separate sleeping rooms and sanitary facilities for men and women, even if no women worked on board, which would necessarily have financial implications. The reintroduction of the words “where necessary” might be open to misinterpretation, however, so the amendments proposed clearer wording.
- 582.** The Employer Vice-Chairperson asked whether accommodation rooms intended for women could be used by male seafarers when there were no women crew members.
- 583.** The Government member of the Republic of Korea indicated that ships should have a sufficient number of cabins, which would be allocated appropriately in cases where there were women on board.
- 584.** The Worker Vice-Chairperson criticized the assumption that crews were composed only of male seafarers. There were many women seafarers and their numbers were growing. Separate accommodation should be provided for men and women. The cabins should be the same, but should be allocated separately. If it were helpful, amendment D.66 could perhaps be subamended to add the words “where necessary”, so that paragraph 9(b) would read: “separate sleeping rooms shall be provided for men and women, where necessary”. However, he opposed amendment D.65, since separate sanitary facilities should clearly be provided for men and women. In conclusion, his preference was for the present text of the proposed instrument.
- 585.** The Government member of Malaysia strongly opposed the reintroduction of the words “where necessary”. During the meeting of the Asia-Pacific group, he had highlighted the fact that the issues involved were highly sensitive, since they related to culture and belief. The speaker preferred the Office text.

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- 586.** The Government member of Croatia also supported the original text of the proposed Convention. Ships needed to be constructed in such a way that facilities could be separated whenever necessary. If this were not done, it would discourage employers from recruiting women and would therefore further prejudice the employment of women seafarers.
- 587.** The Government members of Ghana, Pakistan, South Africa and United Kingdom, speaking on behalf of the Government members of the Committee Member States of the European Union, preferred the Office text.
- 588.** The Government members of China and Japan withdrew their support for amendments D.66 and D.65.
- 589.** The Government member of the Republic of Korea withdrew amendments D.66 and D.65.
- 590.** The Government member of Japan introduced amendment D.51, which was sponsored by the Government members of Japan, Republic of Korea, Russian Federation and Singapore, and sought to add in subparagraph 9(l), after the words “8.5 square metres;” the following new sentence: “however, in the case of such ships of less than 3,000 gross tonnage, the competent authority may allow a reduced floor area;”. There was inconsistency between the provisions relating to the floor area of sleeping rooms for officers. In subparagraph (l), the floor area for officers in ships other than passenger ships and special purpose ships had three categories for different tonnages. However, in subparagraph (k), the floor area for officers on passenger ships and special purpose ships was 8.5 square metres, regardless of gross tonnage. For ships less than 3,000 gross tonnage, 8.5 square metres was larger than for ships other than passenger ships and special purpose ships. As a result, this requirement led to an inconsistency with subparagraphs (f) and (g); therefore some flexibility was needed in subparagraph (l).
- 591.** The Employer Vice-Chairperson indicated that the whole chapter had been negotiated during previous meetings and an agreement had been reached. He did not support the amendment.
- 592.** The Worker Vice-Chairperson reminded the Committee that in previous discussions, the Workers’ group had sought the application of the same graded scale as appeared in paragraph 9(k) to passenger ships, but their proposal had been rejected. The result was that the current text of subparagraph 9(l) prescribed a floor area of 8.5 square metres for officers’ sleeping rooms on passenger ships and special purpose ships, irrespective of the size of the ship.
- 593.** The Government member of the Russian Federation indicated that he had co-sponsored the amendment because the wording of subparagraph 9(l) neglected to take into account situations in which passenger ships and special-purpose ships were of less than 3,000 gross tonnage. He would therefore be able to support a proposal to apply the differentiations contained in subparagraphs 9(k) and (i) to passenger ships of less than 3,000 gross tonnage.
- 594.** The Employer Vice-Chairperson recalled that, at the PTMC, there had been a common view that a floor area of 7.5 square metres would be appropriate for junior officers and a floor area of 8.5 square metres for senior officers. However, due to difficulties in finding a workable definition for “junior officer” and “senior officer”, no decision had been taken and the present text of the proposed instrument did not reflect that discussion. He therefore suggested a wording in accordance with the discussion at the PTMC, which might also resolve the problem raised by the Government member of the Russian Federation. After the words “per person” in subparagraph 9(l), the words “shall not be less than 8.5 square metres” would be replaced by the words “shall for junior officers not be less than

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7.5 square metres and for senior officers not less than 8.5 square metres; junior officers are understood to be at the operational level and senior officers at the management level”.

- 595.** The Worker Vice-Chairperson concurred with the proposed subamendment.
- 596.** The Government members of Japan and the Russian Federation accepted the proposed wording.
- 597.** The Government member of the United Kingdom, while agreeing to the proposed wording in general, feared that the terms used for junior and senior officers would be very difficult to interpret. The lack of clarity would give rise to administrative difficulties in relation to the uniform application of the provision.
- 598.** The Government member of Singapore said that the terms “operational level” and “management level” were defined in the STCW Convention. He proposed that the Drafting Committee could examine how the wording could be brought into line with the definitions of the STCW Convention.
- 599.** Amendment D.51, as subamended by the Employer Vice-Chairperson, was adopted and referred to the Drafting Committee, with particular reference to the definition of junior and senior officers.
- 600.** Paragraph 9 was adopted as amended.
- 601.** Paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 were adopted without amendment.
- 602.** The Employer Vice-Chairperson introduced amendment D.45, which was submitted by the Employers’ group and sought to replace the figure “[200]” by “[500]” in paragraph 20. He indicated that 500 gross tonnage had been the figure that had originally been proposed at the PTMC and the Intersessional Meeting for the exemptions specified in the paragraph, and that a decision on the matter had been postponed pending the adoption of the new Convention on fishing at the Conference in June 2005. However, since no Convention had finally been adopted, he proposed that the original figure be reinstated in the text.
- 603.** The Worker Vice-Chairperson indicated that his recollections differed quite markedly from those of the Employer Vice-Chairperson. Referring to extracts of the report of the Intersessional Meeting, he recalled that a small tripartite working group, in which the Employers’ spokesperson had participated, had agreed on a compromise figure of 200, which was the maximum that had been acceptable to the Workers’ group, particularly since the proposed draft of the Convention on fishing then available had set the figure of 100 gross tonnage. He therefore called on the Employers’ group to withdraw the proposed amendment.
- 604.** The Government member of the United States said that, although she would have preferred the figure of 500 gross tonnage, she could confirm that the correspondence group which had discussed the matter following the Intersessional Meeting had indeed agreed on the figure of 200 gross tonnage.
- 605.** The Government member of Norway also recalled that 200 gross tonnage had been agreed upon at the Intersessional Meeting.
- 606.** The Employer Vice-Chairperson indicated that he stood corrected and, on behalf of his group, withdrew amendment D.45.
- 607.** Paragraphs 20 and 21 were adopted without amendment.

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- 608.** Standard A3.1 was adopted as amended.
- 609.** Guideline B3.1 was adopted without amendment.
- 610.** Paragraphs 1, 2, 3 and 4 of Guideline B3.1.1 were adopted without amendment
- 611.** The Government member of China introduced amendment D.47, which was sponsored by the Government members of Australia, China, Japan, Republic of Korea, Malaysia, New Zealand, Pakistan, Philippines, Singapore and United Arab Emirates and sought, in paragraph 5, to insert the word “non-slip” before the word “surface”.
- 612.** The Employer and Worker Vice-Chairpersons supported the proposed amendment.
- 613.** Amendment D.47 was adopted.
- 614.** Paragraph 5 was adopted as amended.
- 615.** Paragraph 6 was adopted without amendment.
- 616.** Guideline B3.1.1 was adopted as amended.
- 617.** Guidelines B3.1.2, B3.1.3 and B3.1.4 were adopted without amendment.
- 618.** Paragraphs 1, 2, 3 and 4 of Guideline B3.1.5 were adopted without amendment.
- 619.** The Government member of the Republic of Korea introduced amendment D.54, which was sponsored by the Government members of Australia, China, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Philippines, Saudi Arabia, Singapore and United Arab Emirates, and sought, in paragraph 5 of Guideline B3.1.5, to replace the words “first engineer” by the words “second engineer”. He indicated that the term “second engineer” was the widely accepted term and was clearly defined in subparagraph 1.9 of Regulation I/1 of the STCW Convention, as amended. The term “second engineer” meant the engineer officer next in rank to the chief engineer officer and who would take over responsibility for mechanical and electrical installations in the event of the incapacity of the chief engineer officer.
- 620.** The Employer and Worker Vice-Chairpersons supported the proposed amendment and requested that the Drafting Committee ensure consistency among the three language versions.
- 621.** Amendment D.54 was adopted.
- 622.** Paragraph 5 was adopted as amended.
- 623.** Paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 were adopted without amendment.
- 624.** Guideline B3.1.5 was adopted as amended.
- 625.** Paragraph 1 of Guideline B3.1.6 was adopted without amendment.
- 626.** The Government member of the Bolivarian Republic of Venezuela withdrew amendment D.60.
- 627.** Paragraphs 2, 3, 4, 5, 6 and 7 were adopted without amendment.

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- 628.** Guideline B3.1.6 was adopted without amendment.
- 629.** Paragraph 1 of Guideline B3.1.7 was adopted without amendment.
- 630.** The Employer Vice-Chairperson withdrew amendment D.44.
- 631.** The Government member of the Republic of Korea introduced amendment D.64, which was sponsored by the Government members of Australia, China, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Philippines, Saudi Arabia, Singapore and United Arab Emirates and sought to replace, in Guideline B3.1.7, paragraph 2, the words “with an ample flush of water” by the words “with an ample flush of water or air or with some other suitable flushing means”. He indicated that the amendment was intended to accommodate the latest developments in sanitary facilities, such as the use of air rather than water for flushing.
- 632.** The Employer and Worker Vice-Chairpersons supported the amendment and suggested it be referred to the Drafting Committee.
- 633.** Amendment D.64 was adopted.
- 634.** Paragraph 2 was adopted as amended.
- 635.** The Government member of Korea introduced amendment D.55, which was sponsored by the Government members of Australia, China, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Philippines, Saudi Arabia, Singapore and United Arab Emirates and sought to delete the word “requirements” in the chapeau of paragraph 3. It was purely a drafting matter.
- 636.** The Employer and Worker Vice-Chairpersons supported the amendment.
- 637.** Amendment D.55 was adopted.
- 638.** Paragraph 3 was adopted as amended.
- 639.** Paragraph 4 was adopted without amendment.
- 640.** Guideline B3.1.7 was adopted as amended.
- 641.** Guidelines B3.1.8, B3.1.9 and B3.1.10 were adopted without amendment.
- 642.** Paragraphs 1, 2, 3, 4, 5 and 6 of Guideline B3.1.11 were adopted without amendment.
- 643.** The Government member of the Bolivarian Republic of Venezuela introduced amendment D.61, which was sponsored by the Government members of Panama and the Bolivarian Republic of Venezuela, and sought to bring the Spanish translation into line with the English term “occasional” in paragraph 7. The amendment was adopted and referred to the Drafting Committee on the understanding that the English wording would remain unchanged.
- 644.** Paragraph 7 was adopted as amended.
- 645.** Guideline B3.1.11 was adopted as amended.
- 646.** Guideline B3.1.12 was adopted without amendment.

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## Regulation 3.2 – Food and catering

- 647.** The Government member of Greece introduced amendment D.67, which was sponsored by the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom and sought, in paragraph 1, to replace the words “cultural, religious and gastronomic” by the words “cultural and religious”. He asked how such a requirement could be regulated in light of the many nationalities of seafarers on board and their various gastronomic backgrounds. Such a requirement would create more problems than it solved. Such a provision might be more acceptable if it were in the form of a guideline.
- 648.** The Employer and Worker Vice-Chairpersons did not support the amendment.
- 649.** The Government members of France, Germany and the United Kingdom indicated that such a requirement would be impossible to enforce.
- 650.** The Government member of Australia saw no reason for the amendment as, in his view, the word “cultural” also covered “gastronomic”.
- 651.** The Government members of Canada and Germany indicated that they could accept the reference to gastronomic backgrounds in a guideline.
- 652.** Following consultation with the Employer Vice-Chairperson, the Worker Vice-Chairperson suggested a subamendment that read: “Each Member shall ensure that ships that fly its flag carry on board and serve food and drinking water of appropriate quality, nutritional value and quantity that adequately cover the requirements of the ship and take into account the various cultural and religious backgrounds.”
- 653.** The Government members of Denmark, Germany and Greece supported the subamendment on the understanding that the phrase “adequately cover the requirements of the vessel” referred to the needs of seafarers.
- 654.** The Government member of Japan believed that there was a difference in meaning between “have a supply” in the Office text and “carry on board” in the subamendment. In Japan ships did not always carry supplies on coastal voyages as they very frequently put in to ports and procured food ashore. It was therefore not necessary for them to carry provisions on board.
- 655.** The representative of the Secretary-General pointed out that the phrase “adequately covers the requirements of the ship” meant that supplies only needed to be carried where they were needed, which would take into account the concerns of the Government member of Japan.
- 656.** Amendment D.67 was adopted as subamended.
- 657.** Paragraph 1 was adopted as amended.
- 658.** The Worker Vice-Chairperson introduced amendment D.50, which was sponsored by the Workers’ group and sought, in paragraph 2 of Regulation 3.2, to insert the words “working or” after the word “seafarers”. He indicated that the purpose of the amendment was to align the text with current practice, according to which those who worked on board for several hours, but did not live on the ship, would be provided with food free of charge. He cited several examples of seafarers, including engineers and pilots, who did not live on



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board, but might work long hours on a ship and who had to eat on board as there was no alternative.

- 659.** The Employer Vice-Chairperson opposed the amendment.
- 660.** The Government members of Denmark, Netherlands and Norway believed that the arrangements in question should be covered by collective agreements and that governments should not be placed under a requirement to interfere in this process.
- 661.** The representative of the Secretary-General drew attention to the terms of Article IV, paragraph 5, the second sentence of which provided that “Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice.” As the requirements of the Convention could be given effect, among other methods, through collective agreements, she believed that this should address the concerns expressed by the Government members of Denmark, Netherlands and Norway.
- 662.** The Government member of Denmark explained that in her country the requirements of international instruments had to be given effect through national laws since, even though great emphasis was placed on collective bargaining, not all seafarers would be covered by collective agreements. If the amendment were adopted, and the requirement had to be set out in law, the Government would be responsible for its application and for any complaints that were made. Moreover, all ships, regardless of size, would be obliged to provide facilities for the preparation of food, which would have significant cost implications.
- 663.** The Government member of South Africa wondered whether a time frame might be established by specifying a number of hours worked on board over which seafarers would be entitled to receive free meals.
- 664.** The Government member of Australia proposed a subamendment to delete the word “living”. He recalled that the definition of seafarers in Article II, paragraph 1(f), namely “seafarer means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies”, already covered the terms “working or living”, which were therefore redundant in the present provision.
- 665.** The Worker Vice-Chairperson supported the subamendment proposed by the Government member of Australia.
- 666.** The Government members of China, Croatia, Cyprus, France, Ghana, Greece, Kenya, Liberia, Mexico, Nigeria, Pakistan, Republic of Korea, Russian Federation, Singapore, Switzerland, Turkey, United Arab Emirates and United States supported the subamendment.
- 667.** The Employer Vice-Chairperson also supported the subamendment.
- 668.** Amendment D.50 was adopted as subamended.
- 669.** Paragraph 2 was adopted as amended.
- 670.** Paragraph 3 was adopted without amendment.
- 671.** Regulation 3.2 was adopted as amended.
- 672.** Standard A3.2, paragraphs 1, 2, 3 and 4 were adopted without amendment.

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- 673.** The Government member of Japan, speaking also on behalf of the Government members of Australia, China, Republic of Korea, Pakistan, Philippines and Singapore, introduced an amendment (D.52) which sought after the words “less than ten” to insert the word “or” and to delete the words “the size of the crew or” in paragraph 5. The wording, which was an agreement between the Employers’ and the Workers’ groups at the PTMC, was confusing and the amendment would make it linguistically correct. He believed that the reference to the “size of the crew” was redundant, since it was practically the same with the expression “manning of less than ten”. Leaving the text unclear would give rise to interpretation problems and might compromise the ratification process.
- 674.** The Worker Vice-Chairperson did not support the amendment. As it currently stood, the Office text provided for a single criterion, that is, ships with less than ten crew members. By introducing the word “or”, the proposed amendment would add a second criterion, that is, the trading pattern, which would presumably permit a ship carrying 30 or more seafarers, for example, not to have a qualified cook on board.
- 675.** The Government member of the United Kingdom thought the expression “prescribed manning” in the Office text meant the minimum crew complement required, although nothing prevented a shipowner from having more seafarers on board. He requested clarification from the Workers’ group as to whether ten was considered to be the maximum number of persons working on board.
- 676.** The Government member of Singapore supported the amendment and explained that if the word “or” in between “size of the crew” and “the trading pattern” was replaced by the word “and”, this would make the text less problematic.
- 677.** The Government member of Norway supported the Office text. It was not for governments to intervene in matters of seafarers’ welfare which should be settled between the social partners.
- 678.** The Employer Vice-Chairperson affirmed that the Office text was part of a deal reached at the PTMC and therefore his group did not support the amendment.
- 679.** The Government member of Japan withdrew the amendment.
- 680.** Standard A3.2, paragraph 5, was adopted without amendment.
- 681.** The Employer Vice-Chairperson introduced an amendment (D.43) which sought to insert the following new paragraph after paragraph 5:
- In circumstances of exceptional necessity, the competent authority may issue a dispensation permitting a non-fully qualified cook to serve in a specified ship for a specified limited period, until the next convenient port of call or for a period not exceeding one month, provided that the person to whom the dispensation is issued is able to fill adequately the vacant post in a competent manner, to the satisfaction of the competent authority.
- 682.** The proposal permitted a special dispensation here limited to one month, similar to that provided for officers under the STCW Convention, in the event that a certified cook fell ill or suffered an injury. Experience had shown that it took some time to replace a person on board, since the personnel department had to find a replacement and then prepare the travel authorizations and address other administrative issues.
- 683.** The Worker Vice-Chairperson did not support the amendment.
- 684.** The Government member of Switzerland supported the amendment and referred to the Certification of Ships’ Cooks Convention, 1946 (No. 69) which, in Article 3, paragraph 2,

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made provision for possible exemptions. He believed that the one-month period should be extended.

- 685.** The Government member of Pakistan concurred that the one-month period was too short and suggested that the dispensation be extended to 90 days.
- 686.** The Government members of Australia, Bahamas, Chile, China, Denmark, Egypt, Germany and Indonesia supported the amendment.
- 687.** The Government member of Benin pointed to a possible contradiction in the proposed wording, since it could not be reasonably expected from a non-fully qualified cook to fill the vacant post “in a competent manner”.
- 688.** The Government member of Nigeria concurred with the view expressed by the Government member of Benin and suggested that the Drafting Committee re-examine the wording.
- 689.** The Government member of the Russian Federation opposed the amendment, as the Convention already provided for food and catering arrangements under exceptional circumstances.
- 690.** The Worker Vice-Chairperson agreed that the amendment concerned an exceptional, yet real, situation when no qualified person would be available on board. The minimum requirements set out in Standard A3.2, paragraph 5, should also be applicable to a replacement. He noted that the amendment would require notification of and dispensation by the competent authority. The Workers’ group would support the amendment if it were subamended to read as follows:

In circumstances of exceptional necessity, the competent authority may issue a dispensation permitting a non-fully qualified cook to serve in a specified ship for a specified limited period, until the next convenient port of call or for a period not exceeding one month, provided that the person to whom the dispensation is issued is trained or instructed in areas including food and personal hygiene and handling and storage of food on board ship.

- 691.** The Employer Vice-Chairperson accepted the subamendment.
- 692.** The new paragraph to follow paragraph was adopted, as subamended.
- 693.** Paragraphs 6 and 7 were adopted without amendment.
- 694.** Standard A3.2 was adopted as amended.
- 695.** Guidelines B3.2, B3.2.1 and B3.2.2 were adopted without amendment.
- 696.** Title 3 was adopted as amended.

## **Title 4. Health protection, medical care, welfare and social security protection**

### **Regulation 4.1 – Medical care on board ship and ashore**

- 697.** Regulation 4.1 was adopted without amendment.

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- 698.** Paragraphs 1, 2 and 3 of Standard A4.1 were adopted without amendment.
- 699.** The Worker Vice-Chairperson introduced amendment D.100, which was sponsored by the Worker members and sought to insert, at the end of subparagraph 4(a), the following words: “in the absence of a national medical guide, the medical guide carried aboard ship shall be the *International Medical Guide for Ships*, published by the World Health Organization;”. In this regard, he drew attention to Note 29, paragraph 4 of Report I(1A), in which it was indicated that the WHO had suggested the inclusion of the sentence contained in the amendment.
- 700.** The Employer Vice-Chairperson expressed support for the amendment.
- 701.** The Government member of the United Kingdom, speaking on behalf of the Government members of the Committee Member States of the European Union, as well as on behalf of the Government members of Bulgaria, Iceland, Norway and Romania, did not support amendment D.100 and expressed a preference for amendment D.112, submitted by the Government members of Luxembourg, Netherlands and the United Kingdom, which allowed national authorities greater flexibility with regard to the medical guides to be used. In practice, many countries used national guides produced by other countries.
- 702.** The Government members of Australia and the Bahamas agreed with the previous speaker and indicated that their countries used the guide produced in the United Kingdom, which they found easier to use than the WHO Guide.
- 703.** The Government member of Malta added that where a ship was manned principally with seafarers of a certain nationality, it might be more appropriate to that country’s medical guide with which they were more familiar, rather than an international guide.
- 704.** The Worker Vice-Chairperson withdrew the amendment.
- 705.** The Employer Vice-Chairperson introduced amendment D.107, which was sponsored by the Employers’ group, and sought to insert, after subparagraph 4(b), the following new subparagraph:

non-passenger ships to which paragraph 4(b) applies may carry a registered nurse instead of a qualified medical doctor when engaged in operations entirely within the Exclusive Economic Zone of a coastal State, provided that an arrangement is in place to enable, within a period of 24 hours, either the evacuation of a person on board to a hospital in that coastal State or the transportation of a medical doctor from that coastal State to the ship;

The amendment was based on a proposal from operators which were not normally active in the Employers’ group and was intended to address their specific concerns. The members of the Employers’ group had posed many questions to ascertain the grounds for submitting the amendment and had satisfied themselves that it was appropriate. Marine contractors serving the oil and gas mining industry at sea operated a variety of vessels, including pipe-laying vessels and crane vessels, many of which were self-navigating ships, to which the new Convention would apply. The larger vessels carried over 100 persons, including both the maritime crew and the specialist personnel required for the work in which the vessel was engaged. Such persons were required to be medically examined and declared fit for duty before they were allowed to board the vessels. This category of vessels operated entirely in the Exclusive Economic Zone (EEZ) of a coastal State while engaged in their specialist work. They normally remained at sea for a long period, sometimes for more than a year. Personnel joined and left by crew boat or helicopter. Because the operational area of the vessels was confined to the EEZ of a coastal State, the travelling time from shore to the vessel and vice versa was limited, especially in the case of helicopter transport, when it would take a few hours at most. This meant that, in the case of sudden serious illness or

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injury, the patient could be evacuated to shore by helicopter, with the possibility of boat transport as a fall-back option. Moreover, a qualified doctor could be brought to the vessel if needed. As ships carrying 100 or more persons were allowed to sail without a doctor on voyages of a duration of less than four days, a maximum of 24 hours for the evacuation of a person or to bring in a doctor was not only practicable, but also reasonable.

- 706.** The Worker Vice-Chairperson understood the intent of the proposed amendment, but indicated that it gave rise to certain difficulties. The amendment introduced a completely new and substantive subject area that had not been covered in previous discussions. Moreover, he drew attention to the second part of subparagraph 4(b), which indicated that “national laws and regulations shall also specify which other ships shall be required to carry a medical doctor, taking into account, inter alia, such factors as the duration, nature and conditions of the voyage”. Although acknowledging that subparagraph 4(b) had not been drafted with a view to covering the types of vessels referred to by the Employers’ group, their needs might already be covered by the subparagraph. He also emphasized that those who manned the ships in question operated in a very hostile environment in which there was a high risk of serious injury. In such cases, the possibility of evacuation within 24 hours by helicopter, provided that the weather conditions so permitted, was not satisfactory. Moreover, the term EEZ gave rise to difficulties, as it was interpreted in certain cases as extending out to 200 miles. A preferable term would be “territorial waters”. The suggested period within which a person should be evacuated or a doctor transported to the ship should be set at four hours instead of 24 hours. Although the Workers’ group was not supportive of the amendment as currently worded, they were prepared to discuss the issues raised involving this category of vessel with a view to finding a solution, possibly in the context of a small working group, which should examine whether another paragraph was in fact needed to cover the question and, if so, whether it needed to be in such complex language. He concluded by noting that this was a substantive amendment to a mature text.
- 707.** The Government member of Congo supported the amendment and was willing to be part of an informal working group. Based on the experience of his country as an oil-producing nation, he indicated that the problems involved in such situations needed to be taken seriously. In particular, the management of safety and health issues was complex in this type of operation.
- 708.** The Government member of the United Kingdom, speaking on behalf of the Government members of the Committee Member States of the European Union, as well as the Government members of Bulgaria, Iceland, Norway and Romania, agreed with the difficulties raised by the Worker Vice-Chairperson, notably, the hostile environment, the possibility of severe weather conditions and the inter-relationship with subparagraph 4(b). He also raised the issue of the terms drawn from UNCLOS and expressed concern at the proposal to use the expression “territorial waters”. In addition, he wondered whether a paramedic might not be more appropriate than a registered nurse. He offered the expertise of his delegation to assist in the work of the informal working group.
- 709.** The Government member of Brazil also raised concerns related to the coverage of such situations by UNCLOS. Oil-producing operations of this type were dangerous and she therefore questioned the wisdom of having a registered nurse present, rather than a qualified doctor.
- 710.** The Government members of Australia and the Bahamas pointed out that as the vessels concerned by the amendment operated entirely within the EEZ of a coastal State, they were not covered by the provisions of subparagraph 4(b), which only applied to ships ordinarily engaged in international voyages. There was therefore no need for the amendment.

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- 711.** The Government member of Norway suggested that the term “continental shelf” replace “Exclusive Economic Zone”.
- 712.** The Government member of Greece indicated that if an informal working group were established, amendment D.107 should be withdrawn and the terms of reference of the working group should be to determine the appropriate wording of subparagraph 4(b) so as to cover the issue that had been raised.
- 713.** The Chairperson indicated that an informal working group would be established to examine the matter. It should be made up of members with expertise on UNCLOS, the oil and gas industry and the medical profession. It would not be under any constraints with regard to the end product, but should examine whether the language in the amendment was appropriate or whether subparagraph 4(b) covered the issue or could be adapted to do so. The informal working group would be composed of members of the Employers’ and Workers’ groups and the Government members of Australia, Brazil, Congo, Mexico, Norway and United Kingdom.
- 714.** The Government member of Australia, who chaired the informal working group on amendment D.107, reported back to the Committee and proposed a new text (COT/D.5) to be inserted as a new subparagraph after subparagraph (b):

For a non-passenger ship carrying 100 or more persons, the competent authority of the Member with jurisdiction shall determine, in consultation with the shipowners’ and seafarers’ organizations concerned, whether a qualified paramedic or registered nurse may be carried instead of a medical doctor when the ship is engaged in operations entirely within waters under the jurisdiction of the Member, provided that an arrangement is in place to enable, within a period of 12 hours, either the evacuation of a person on board to a hospital in the Member or the transportation of a medical doctor from the Member to the ship.

- 715.** He explained that the issue was that certain niche offshore ships, like pipe-laying barges and oil rigs, might be caught up by paragraph 4(b) of Standard A4.1. In this connection, the informal working group addressed three main issues: did paragraph 4(b) capture these vessels? Was it necessary to add a new paragraph? And, if so, how should it be expressed? A majority of Governments thought that it was covered in existing standards, including by SOLAS, and that trying to develop a solution in haste at this stage in the Conference might cause more problems than it was worth. The Workers’ group appreciated the Employers’ group’s concerns, but did not want to change the Office text.
- 716.** The Employer Vice-Chairperson thanked those who had prepared a constructive text. He intended, however, to withdraw amendment D.107, as he was informed that it did not enjoy the support of the Government group.
- 717.** The Worker Vice-Chairperson recognized the shipowners’ amendment aimed at a category of ship not specifically covered in the draft Convention. Withdrawing the amendment would be appropriate under the circumstances.
- 718.** The Government member of Congo, opposing the amendment, underlined the fact that his country was among those with intensive offshore activity. He also observed the tremendous difficulty of getting coastal States, like his, and flag States to cooperate, and noted, with thanks, the IMO resolution of November 1999 that the STCW be amended with regard to persons not covered by that Convention. He called on the ILO and the IMO to jointly ascertain specific circumstances that might need to be addressed in future work.
- 719.** The Government member of Norway considered the amendment as unnecessary. Subparagraph (b) applied only to international voyages and the activity referred to in the amendment was not seen by Norway as international voyages.

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- 720.** The Government members of Liberia and the United Arab Emirates opposed the amendment.
- 721.** The Employer Vice-Chairperson thanked those who had been involved in seeking a solution to the issue raised by his group and withdrew the amendment.
- 722.** The Government member of Greece introduced amendment D.111, which was sponsored by the Government members of Denmark, Greece and the United Kingdom and sought, in subparagraph 4(d) of Standard A4.1, to replace the words “between a ship and those ashore giving the advice” by “from those ashore giving the advice to the ship”. The amendment sought to address a concern which had been raised in previous meetings that because of the way in which calls were charged over radio or satellite communication systems, the medical service might end up being billed by certain shipowners for the cost of the communication from the ship. Clearly, the specialist medical advice provided was free of charge and the institution providing the advice would not charge for its communications to the ship. However, it should not have to pay for the original communication from the ship. In his opening statement the speaker had focused on the need to resolve issues which would constitute obstacles to ratification of the proposed Convention. If the present amendment were not adopted, an obstacle would remain in the instrument which might prevent certain countries from ratifying it.
- 723.** The Employer Vice-Chairperson recalled that the same issue had been discussed before the adoption of the Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164), from which the relevant text in subparagraph 4(d) had been taken. At previous meetings, it had been agreed that the wording of newer Conventions, that is those which had been adopted within the past 20 years, should not be changed. His group preferred to abide by that decision and therefore opposed the amendment.
- 724.** The Worker Vice-Chairperson considered that the amendment would entail a change of emphasis. Subparagraph 4(d) required the competent authority to ensure by a prearranged system that medical advice by radio or satellite communication to ships at sea, including specialist advice, was available 24 hours a day. On the high seas, mobile phones were of no use, doctors were not present on board, hospital facilities were out of reach and radio or satellite communication was the only opportunity to contact a specialist. The system was intended in particular for serious cases of illness and injury, in which permission would be sought from the master to call ashore and get advice. It was vital to avoid a scenario in which the master would have to be concerned with budgetary issues in such situations and where the availability of medical advice might depend on a commercial decision. The current Office text should therefore be retained for the reasons indicated by the Employer Vice-Chairperson. He also expressed concerns about the issue of two-way radio communications and the impact of Chapters 4 and 5 of the SOLAS Convention. Flag States should not begrudge paying the cost of onward satellite transmission in situations where an injured seafarer needed professional medical advice.
- 725.** The Government member of the United Arab Emirates indicated that amendments D.111 and D.105 dealt with the same subparagraph and almost the same issue. In his view, the adoption of amendment D.111 would have undesirable effects, as it might become necessary to distinguish between serious emergency situations, in which calls for medical advice should be free, and non-serious situations, in which calls could be charged. In this respect, amendment D.105 offered a compromise solution, namely that the seafarer should not be charged.
- 726.** The Government member of Croatia enquired as to whether the term “competent authority” in subparagraph 4(d) referred to the flag State or the coastal State.

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- 727.** The Government member of Greece replied that the competent authority was not linked to either the flag State or the coastal State. All ratifying Members would have to apply the provision.
- 728.** The Government member of Germany emphasized that the right of seafarers to medical advice was not at issue. The question was whether the State which provided such advice free of charge should risk subsequently being charged for the cost of the communication. Clearly, such a cost should not be charged to the seafarer, but nor should it be charged to the State that provided the advice. With regard to the previous agreement not to change the wording of recent Conventions, the extremely rapid developments in the area of telecommunications over the past 20 years needed to be taken into account. He therefore supported amendment D.111.
- 729.** The Government member of Cyprus referred to language problems involving foreign crew members who, in an emergency, would prefer to consult doctors who spoke their own language. This would involve consulting the medical systems of other countries. As the adoption of amendment D.111 would entail administrative burdens, he expressed a preference for amendment D.105.
- 730.** The Government member of the United Kingdom emphasized that there was no question of reducing the service provided by the State to a ship seeking emergency medical advice, which would be provided free of charge. Moreover, if the State were unable to provide the medical advice immediately, it would call back at its own expense. The amendment was intended to avoid situations in which the shipowner, after receiving the advice, sent the State the bill for the call seeking such advice. This was unfair to the State that had provided life-saving advice free of charge.
- 731.** The Worker Vice-Chairperson noted that, according to the proposed Convention, medical advice, including the transmission by radio or satellite communication between a ship and those ashore giving the advice, should be available free of charge to all ships irrespective of their flag. This meant that neither the seafarer nor the shipowner would have to bear the relevant cost. If amendment D.105 were to be adopted, seafarers would still be provided with advice free of cost, but the shipowner would have to pay for the communication from the ship to the shore. The Workers' group wished to avoid the situation in which a commercial decision had to be made prior to making a call for medical advice for an injured seafarer. There were many ships on which such financial considerations would influence the decision as to whether to make the call or not.
- 732.** The Employer Vice-Chairperson observed that emergency calls for medical advice were free of charge in any case. Shipowners bore high costs in relation to medical care, such as the provision of medical equipment, but did not object to fulfilling their responsibilities in this regard.
- 733.** The Government member of Greece withdrew amendment D.111 but suggested that once the Convention entered into force, it might be worthwhile to revisit the issue when more data became available.
- 734.** The Government member of Norway introduced amendment D.105, which was sponsored by the Government members of the Republic of Korea and Norway and sought to replace, in subparagraph 4(d) of Standard A4.1, the words "all ships irrespective of the flag that they fly" by "seafarers on board". The text in the proposed Convention had been drawn from the Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164), which had been ratified by only 14 countries, including his own country. Under the new Convention, every ratifying Member would be required to ensure that such a system was available. The services involved could be provided directly by the government, or



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shipowners could subscribe to private medical services if the flag State did not provide the relevant services directly. The amendment allowed the responsibility to be transferred to shipowners. This could remove a potential obstacle to ratification.

- 735.** The Government member of the United Arab Emirates supported the amendment.
- 736.** The Government member of Denmark opposed the amendment, since medical advice should be free of charge for all ships.
- 737.** The Government member of the Republic of Korea pointed out that the Office text had been drafted before the adoption of the GMDSS system in the framework of SOLAS. Until then most telecommunication systems had been public systems. However, the private sector now operated telecommunications systems. Governments would find themselves in the position of allocating public resources to cover the costs of radio or satellite communications provided by private companies, without having the means to control those costs.
- 738.** The Government member of Cyprus raised the question of whether the provision of such services was only the responsibility of the flag State, or whether the country of residence of the seafarer should also be involved, particularly in view of the language problems which could arise among crews of mixed nationalities, especially in emergency situations.
- 739.** The Worker Vice-Chairperson preferred the Office text.
- 740.** The Employer Vice-Chairperson also preferred the Office text.
- 741.** The Government members of the Republic of Korea and Norway withdrew the amendment.
- 742.** Paragraph 4 was adopted without amendment.
- 743.** Standard A4.1 was adopted without amendment.
- 744.** Guideline B4.1 and paragraphs 1, 2 and 3 of Guideline B4.1.1 were adopted without amendment.
- 745.** The Government member of the Netherlands introduced amendment D.112, which was sponsored by the Government members of Luxembourg, Netherlands and the United Kingdom, and sought to replace, in paragraph 4 of Guideline B4.1.1, the rest of the sentence after “medical guide used nationally” with: “and in determining the contents of the medicine chest and medical equipment, the competent authority should take into account international recommendations in this field, including the latest edition of the *International Medical Guide for Ships*, published by the World Health Organization, and other guides mentioned in paragraph 2 of this Guideline”. The purpose of the amendment was to ensure that the latest edition of the *International Medical Guide for Ships* was used, not only in adopting or reviewing the ship’s medical guide used nationally, as called for by the present Office text, but also for determining the contents of the medical chest and the medical equipment carried on board.
- 746.** The Employer and Worker Vice-Chairpersons agreed to the amendment.
- 747.** Amendment D.112 was adopted.
- 748.** Paragraph 4 was adopted as amended.

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- 749.** Paragraphs 5 and 6 were adopted without amendment.
- 750.** Guidelines B4.1.1, B4.1.2 and paragraphs 1 and 2 of Guideline B4.1.3 were adopted without amendment.
- 751.** Amendment D.114, which was sponsored by the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom, sought, in paragraph 3 of Guideline B4.1.3, to replace the words “in ports” by the word “ashore”.
- 752.** The amendment was adopted by consensus.
- 753.** Paragraph 3 was adopted as amended.
- 754.** Guideline B4.1.3 was adopted without amendment.
- 755.** At the request of the Chairperson, a member of the secretariat explained that amendment D.110, sponsored by the Government members of Argentina, Brazil, Chile, Cuba, Mexico, Panama and the Bolivarian Republic of Venezuela, might have been motivated by an erroneous translation into French and Spanish in subparagraph 1(b) of Guideline B4.1.4. The English text suggested that two actions could be taken: “making optimum use of” all ships carrying a doctor and “stationing” ships at sea which could provide hospital and rescue facilities. The translation in the French and Spanish versions had, however, assumed that “stationing” was not an action, but merely an adjective further describing the ships at sea.
- 756.** The Committee referred the issue to the Drafting Committee.
- 757.** Guideline B4.1.4 was adopted without amendment.
- 758.** Guideline B4.1.5 was adopted without amendment

## **Regulation 4.2 – Shipowners’ liability**

- 759.** Regulation 4.2 was adopted without amendment.
- 760.** Paragraphs 1 and 2 of Standard A4.2 were adopted without amendment.
- 761.** The Government member of Norway, speaking also on behalf of the Government member of the Republic of Korea, introduced amendment D.104, which sought to replace the words “are left behind in the territory of a State other than the Member” by the words “the seafarers have benefited from the right to repatriation” in subparagraph 3(a) of Standard A4.2. He explained that the amendment referred only to seafarers’ rights under this Convention; in many cases national laws and collective bargaining agreements offered additional benefits. The wording of the Office text seemed to be based on the assumption that seafarers were residents of the flag State. The term “Member” did not relate to the seafarers’ country of residence, but the flag State. Since this could be very unfair to seafarers, his delegation proposed to amend the text so as to ensure that foreign seafarers would retain their right to full wages until they had been repatriated.
- 762.** The Employer Vice-Chairperson fully agreed with the rationale of the amendment, but proposed a subamendment which he felt clarified the issue. The wording put forward in

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amendment D.104 would therefore be replaced by the words “until they have been repatriated according to Standard A2.5, paragraph 2(c)”.

- 763.** The Worker Vice-Chairperson preferred the original amendment, since it was more straightforward.
- 764.** The Employer Vice-Chairperson withdrew the subamendment.
- 765.** Amendment D.104 was adopted.
- 766.** Standard A4.2, subparagraph 3(a), was adopted as amended.
- 767.** Subparagraph 3(b) and paragraph 4 were adopted without amendment.
- 768.** Subparagraph 5(a) was adopted without amendment.
- 769.** The Worker members submitted amendment D.99, which sought to replace the words “act, default or misbehaviour” by “misconduct” in subparagraph 5(b) of Standard A4.2. An identical amendment (D.106) was submitted by the Government members of the Republic of Korea and the United Arab Emirates.
- 770.** The Government member of Japan requested the Office to clarify whether the term “willful misconduct” would include serious negligence.
- 771.** The representative of the Secretary-General explained that if the two amendments were adopted, the provision would exclude liability only in the case of “willful misconduct”. With regard to the question raised by the Government member of Japan as to whether “willful misconduct” included cases of “serious negligence”, national laws used different terminology, and the two terms could be given different meanings. The term “serious” was particularly variable, so it would be preferable to stick to the concept of “willful misconduct” which contained two words “willful” and “misconduct”. The words “willful” and “misconduct” both seemed clear, especially bearing in mind that a narrow interpretation had to be given to them as the rights of individual seafarers were involved. The word “willful” implied an intention. It therefore meant more than simply being negligent. “Misconduct” – simply defined – meant doing something which should not be done. Taken together, the words “willful misconduct” also implied at least the intentional doing of something with the knowledge that serious injury or illness was a probable result of the intentional act or “with a wanton and reckless disregard of its possible result” – to use wording taken from a relevant court decision. Depending upon the national case law and legal terminology being considered in a particular case, the term “serious negligence” might also be considered as containing these two elements, namely, intentionally doing something which should not be done, with knowledge of the probable result or with a wanton and reckless disregard of the possible result. It was quite clear that these elements would not be present in a simple negligent act. If, however, the concept of “serious negligence” under a national law or practice necessarily included both elements, it would come within a reasonable definition of “willful misconduct”.
- 772.** The Government member of Japan stated that, in view of the Office’s explanation, his delegation fully supported the amendment.
- 773.** The Employer and the Worker Vice-Chairpersons also expressed their support.
- 774.** The Government member of Cyprus, while endorsing the amendment, said that his country had undertaken its own study in the context of the deliberations related to the European Union Directive on accidental pollution and found that the term “serious negligence” did

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not have international standing, while “willful misconduct” was a clearly defined legal term. Similarly, the Government members of Ireland and Nigeria supported the amendment.

- 775.** Amendments D.99 and D.106 were adopted.
- 776.** Standard A4.2, paragraph 5(b), was adopted as amended.
- 777.** Subparagraph 5(c) and paragraphs 6 and 7 were adopted without amendment.
- 778.** Standard A4.2 was adopted as amended.
- 779.** The Employer Vice-Chairperson withdrew amendment D.108.
- 780.** Guideline B4.2 was adopted without amendment.

### **Regulation 4.3 – Health and safety protection and accident prevention**

- 781.** Regulation 4.3 was adopted without amendment.
- 782.** Standard A4.3, paragraph 1, and subparagraphs 2(a), (b) and (c) were adopted without amendment.
- 783.** The Government member of the United Kingdom, speaking also on behalf of the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Sweden and Spain, introduced amendment D.113, which sought to insert at the end of subparagraph 2(d) the words “, where such a committee is established”. He remarked that the current text of paragraph 2 was largely based on Article 7 of the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134). There might not always be a need for a safety committee, especially on small ships with few seafarers, where perhaps just one person was responsible.
- 784.** The Employer Vice-Chairperson supported the amendment.
- 785.** The Worker Vice-Chairperson strongly opposed the amendment, as it would change the purpose of the text, and might imply that larger ships would not need safety committees either. He remarked that “substantial equivalence” could be used by some States or shipowners to avoid having staff involved in the safety culture of the ship at all, even on larger ships, if this revised wording were adopted. For small ships, it was clear that safety representatives could be appointed rather than elected, but it was implicit in the standard that there should be a committee, and that the crew’s involvement and commitment in relation to the safety culture on board ship was essential. In the IMO and the ILO, all parties were working hard to develop a safety culture, and in all this work the idea of having safety committees was included throughout. The Office text was the result of a small working group at the PTMC which had been approved without objections.
- 786.** The Government member of Liberia supported the amendment.
- 787.** The Government member of the United Kingdom asked whether it would be helpful to amend the text, specifying a minimum number of crew members above which a safety committee would be required. The Worker Vice-Chairperson suggested four crew members.

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- 788.** The Government member of Greece noted the object and purpose of the original provision, Article 7 of the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), and recalled that this was a consolidation exercise.
- 789.** The Government member of Germany asked for clarification as to whether the Convention laid down an obligation to establish a safety committee.
- 790.** The representative of the Secretary-General answered that, as currently worded, subparagraph (d) of Standard A4.3, paragraph 2, clearly implied an obligation to set up a safety committee.
- 791.** The Government member of Germany noted that if the Standard required that the ship have a safety committee, then the amendment did not make sense.
- 792.** The representative of the Secretary-General replied that the amendment would make sense if it relaxed that obligation. The Committee's concerns could be addressed by adding a provision which set parameters, for example by specifying the number of seafarers above which a safety committee would be required.
- 793.** The Government member of the Bahamas said that it was his understanding that under the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), there was not an obligation to establish a safety committee, and that the Office text therefore increased a Member's obligation. He supported the amendment.
- 794.** The Government member of the United Kingdom suggested a subamendment to read: "Such a committee shall be established on board a ship on which there are five or more seafarers".
- 795.** The Government members of Austria and Denmark supported the subamendment.
- 796.** The Employer and the Worker Vice-Chairpersons also accepted the subamendment.
- 797.** Amendment D.113 was adopted as subamended.
- 798.** Standard A4.3, subparagraph 2(d) was adopted as amended.
- 799.** Paragraphs 3, 4, 5, 6, 7 and 8 were adopted without amendment.
- 800.** Standard A4.3 was adopted as amended.
- 801.** Guideline B4.3 and paragraph 1 and subparagraphs 2(a), (b) and (c) of Guideline B4.3.1 were adopted without amendment.
- 802.** The Government member of China, speaking also on behalf of the Government members of Japan, Republic of Korea, Malaysia, Pakistan, Philippines, Singapore and United Arab Emirates, introduced amendment D.109 which sought to insert between subparagraphs (c) and (d) the following new subparagraph: "the effects of the extremely low or high temperature of any surfaces with which seafarers may be in contact;". He explained that the intention was to include extreme temperatures among the risk factors listed in paragraph 2. Surfaces of this nature existed, and the risk was real when seafarers engaged in repair or maintenance of equipment, such as for instance cargo heating and cooling systems.
- 803.** The Employer and the Worker Vice-Chairpersons supported the amendment.

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- 804.** The Government member of Turkey also supported the amendment.
- 805.** Amendment D.109 was adopted.
- 806.** All remaining subparagraphs in paragraph 2, as well as paragraphs 3 and 4, were adopted without amendment.
- 807.** Guideline B4.3.1 was adopted as amended.
- 808.** Guidelines B4.3.2, B4.3.3, B4.3.4, B4.3.5, B4.3.6, B4.3.7, B4.3.8, B4.3.9, B4.3.10 and B4.3.11 were adopted without amendment.

#### **Regulation 4.4 – Access to shore-based welfare facilities**

- 809.** Regulation 4.4 was adopted without amendment.
- 810.** Standard A4.4, paragraph 1, was adopted without amendment.
- 811.** The Government member of Liberia, speaking also on behalf of the Government members of the Bahamas, Canada and the United States, introduced amendment D.115 to insert in paragraph 2 after the word “concerned” the words “and with welfare boards where they exist.”. He explained that this would achieve consistency with other provisions of the Convention, in particular paragraph 3 of the same Standard and Guideline B4.4.3, which provided for the promotion of the development of welfare facilities and the encouragement of the establishment of welfare boards.
- 812.** The Employer Vice-Chairperson supported the amendment.
- 813.** The Worker Vice-Chairperson opposed the amendment, as the tripartite consultation arrangements of the Convention were clear. Any encouragement of the establishment of welfare boards should be channelled through existing tripartite structures which involved governments, management and labour. In this connection, he drew attention to Guideline B4.4.3, paragraph 2, which provided that welfare boards should include among their members representatives of shipowners’ and seafarers’ organizations. His group therefore preferred the Office text.
- 814.** The Government members of Denmark, Greece, Namibia, Norway, Pakistan and Saudi Arabia also opposed the amendment.
- 815.** The Government member of the Bahamas supported the amendment. He agreed that shipowners’ and seafarers’ organizations needed to be consulted. If, however, a greater spectrum of organizations related to the provision of welfare existed, they should also be involved.
- 816.** The Government members of Canada and the United States concurred and expressed their willingness to give a higher level of support to the numerous seafarers’ welfare organizations established in their respective countries.
- 817.** The Government members of the Libyan Arab Jamahiriya and the Russian Federation supported the amendment and thought that no organizations should be excluded from consultations.

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- 818.** The Government member of the Republic of Korea said he could not understand the opposition of the Workers' group, since Standard A4.4, paragraph 3, intended to encourage the establishment of welfare boards and therefore consultations with welfare boards would be to the benefit of all.
- 819.** The Government member of Liberia was also surprised by the reaction of the Workers' group. Many charitable organizations provided services for the benefit of seafarers; they were, alongside the social partners, included in the welfare boards. Since they were involved in providing welfare services, it was important to consult them in the context of Standard A4.4, paragraph 2.
- 820.** The Worker Vice-Chairperson replied that welfare boards could mean different things in different countries. They differed in their constitutional framework, objectives and intentions. It was, therefore, important that consultations in the context of Standard A4.4, paragraph 2, be tripartite. He recalled that in preparatory discussions his group had originally asked governments to fund welfare facilities. Governments had, however, opposed, since they did not want to have to collaborate with charitable organizations. In practice, some governments contributed to welfare facilities, as did the International Transport Workers' Federation (ITF), which used its resources in accordance with its convictions and provided considerable funds.
- 821.** The Government member of Liberia withdrew the amendment.
- 822.** Standard A4.4, paragraphs 2 and 3, were adopted without amendment.
- 823.** Standard A4.4 was adopted without amendment.
- 824.** Guidelines B4.4, B4.4.1, B4.4.2, B4.4.3, B4.4.4, B4.4.5 and B4.4.6 were adopted without amendment.

## **Regulation 4.5 – Social security**

- 825.** Regulation 4.5 was adopted without amendment.
- 826.** Standard A4.5 was adopted without amendment.
- 827.** Guideline B4.5 was adopted without amendment.

## **New Regulation 4.6**

- 828.** The Worker Vice-Chairperson wished to refer back to amendment D.3 previously submitted by his group, which sought to add in Article X square brackets around the words "Seafarers' Pensions Convention, 1946 (No. 71)". As previously explained, this was because the new Convention did not address in any manner the issue of pensions of seafarers nor did it revise the Seafarers' Pensions Convention, 1946 (No. 71). The Workers' group was prepared to withdraw amendments D.101, D.102 and D.103, which all related to the question of seafarers' entitlement to pension, on condition that a subamendment to D.3 could be adopted whereby the Seafarers' Pensions Convention, 1946 (No. 71) would be deleted from the list of revised Conventions in Article X. The Seafarers' Pensions Convention, 1946 (No. 71), which had been ratified by 13 Members, should continue to stand alone, be open to ratification and applicable to the Members bound by it.

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- 829.** The representative of the Secretary-General clarified that the proposal of the Workers' group was to condition the withdrawal of amendments D.101, D.102 and D.103 on the acceptance by the Committee of amendment D.3 as subamended. She recalled that the Workers' group had initially introduced amendment D.3 to add square brackets around the words "Seafarers' Pensions Convention, 1946 (No. 71)". The proposed subamendment would delete the reference to the Seafarers' Pensions Convention, 1946 (No. 71) altogether. Should the Committee accept amendment D.3 as subamended, then the withdrawal of the three amendments would take effect.
- 830.** The Employer Vice-Chairperson accepted the Workers' proposal. The proposed maritime labour Convention did not contain any provisions concerning pensions due to the commitment not to reopen discussions on the compromise reached on Standard A4.5 and the branches of social security protection to be provided by Members at the time of ratification. Accordingly, the Seafarers' Pensions Convention, 1946 (No. 71) should stay intact for the Members that had ratified it or would choose to ratify it in the future. His group supported amendment D.3 as subamended.
- 831.** The Government members of Algeria, Australia, Brazil, Croatia, Denmark, Estonia, Ghana, Greece, Pakistan and Turkey also approved amendment D.3 as subamended.
- 832.** The Chairperson concluded that amendment D.3 as subamended had been adopted through tripartite consensus and that amendments D.101, D.102 and D.103 should be considered as withdrawn.
- 833.** Title 4 was adopted as amended.

## **Title 5. Compliance and enforcement**

- 834.** The Chairperson opened the floor to a general discussion of the main issues of concern in Title 5.
- 835.** The Employer Vice-Chairperson announced that the Employers' group was completely supportive of the supervisory mechanisms set out in Title 5. Title 5 was mainly addressed to Governments, as they would have to implement the instrument. The Employers would nonetheless be operating under these rules and hoped for as little bureaucratic burden as possible.
- 836.** The Worker Vice-Chairperson raised two issues of concern within Title 5. The first issue dealt with flag state responsibility. As stipulated in Standard A4.5, paragraph 2, each Member was required to provide protection to seafarers in at least three of the nine social security branches listed in paragraph 1 of that provision. In discharging its responsibilities, the flag State therefore needed to ensure that the seafarers on board were in fact being covered by these social security provisions. Regulation 5.1.1, paragraph 2, would need to be amended to include a reference to social security protection. The second issue of concern dealt with the right of a seafarer to file a complaint in a port State or to other organizations. Seafarers were equal to any other persons before the law and should not be hindered in their access to the law. The Office commentary on this point had proved useful and had suggested action in this area. Otherwise, the Workers shared the Employers' satisfaction with Title 5, considered it a balanced compromise, and recognized that it was the most sensitive part of the Convention.
- 837.** The Government member of China, speaking on behalf of the Government group, indicated that Governments had focused their efforts on fine-tuning some of the details contained in Title 5.



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- 838.** The Government member of the United Kingdom stated that Title 5 dealt with the responsibilities of governments, as flag States and port States, and these responsibilities were taken seriously. He welcomed the proposed Convention as a new pillar of the maritime regulatory system, but stressed the importance of a workable instrument. Title 5 was crucial in terms of government decision-making with regard to ratification of the Convention. There were three main areas of concern. The first related to Standard A5.2.1, paragraph 4. The current, recognized port state control system allowed for the effective targeting of resources. If deficiencies were major, serious action was taken; if deficiencies were minor, fewer measures might be taken. Paragraph 4, which concerned only minor deficiencies, was overly burdensome. It should be acceptable to discuss a minor deficiency with the master, make a record, allow some time for its remedy and check for rectification at a later inspection. To undergo all the procedures set out in subparagraphs (a)-(c) was unnecessary and time-consuming. The second area of concern related to Standard A5.1.4, paragraph 9, which allowed inspectors discretion in dealing with breaches in certain circumstances. The requirement to keep a record of each exercise of discretion was excessive. The third issue of concern related to an inconsistency between Standard A5.1.3, paragraph 10, on the declaration of maritime labour compliance and the provisions concerning the maritime labour certificate with regard to the authority to issue the required certification. The final area of concern related to Guideline B5.1.4, paragraph 10(d), which recommended that the annual report of the competent authority contain statistics on all seafarers. This provision asked for information that was not always available, such as information on non-national seafarers or national seafarers working on foreign ships. The provision was too far-reaching and should be deleted.
- 839.** The Government member of the Republic of Korea indicated that his delegation had two proposals for Title 5. The first concerned the posting of the maritime labour certificate and declaration of maritime labour compliance in a conspicuous place on board. The present wording of Standard A5.1.3, paragraph 12, did not make clear whether the original or a copy should be posted. The speaker suggested that a copy be posted, in keeping with practice under the SOLAS and MARPOL Conventions. The second proposal referred to Standard A5.1.3, paragraph 10. It was important to clearly indicate the exemptions made by the competent authority, in accordance with Title 3, for ships of less than 3,000 GT. This could be indicated either by issuing an exemption certificate or by including such an exemption in Part I of the declaration of maritime labour compliance. Although SOLAS opted for the issuance of exemption certificates, the speaker recommended indicating these exemptions in Part I of the declaration of maritime labour compliance.
- 840.** The Government member of Norway noted an issue of concern in Appendix A5-III, which provided a list of the working and living conditions of seafarers that needed to be inspected by a port State carrying out an inspection pursuant to Standard A5.2.1. This list included the item “Payment of wages”. Since wages were generally paid directly into a bank account, the documentation necessary to ascertain payment of wages might not be found on board a ship. The speaker proposed that this item be removed from Appendix A5-III, noting that the complaints procedure would be in place to handle problems.
- 841.** The Government member of France observed that Standard A2.2, paragraph 2, stipulated that “seafarers shall be given a monthly account of the payments due and the amounts paid”. It was therefore feasible to ask for proof of payment of wages, since those monthly accounts should be available.
- 842.** The Government member of the Russian Federation suggested that the various references to “grounds”, “clear grounds” and “reasonable grounds” in Standard A5.2.1 be brought into line. In Standard A5.1.3, paragraph 2, it was important to have clear language regarding the validity of documents in order to know when renewals or replacements were

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required. In Guideline B5.2.1, the inspection policy should ensure compliance with international regulations.

- 843.** The Government member of Australia noted that for countries such as Australia, which were not major labour suppliers, the requirements of such a complex system of inspection and monitoring were unnecessary. Regulation 5.3 should be amended to allow for flexibility according to different national circumstances.
- 844.** The Employer Vice-Chairperson indicated that the general discussion had been useful in identifying areas of concern. Title 5 was of fundamental interest to governments and it was clear from their comments that some of the wording needed to be re-examined. The Employers wanted smooth inspection procedures so as not to disrupt the operation of a ship. They would listen carefully to the views of professionals and consider the implications of not changing the text.
- 845.** The Worker Vice-Chairperson agreed that there appeared to be areas where the wording of the instrument could be improved. Regarding the requirement that the social partners' organizations be informed when deficiencies prevented a ship from sailing, he reminded the Committee that the term "deficiencies" referred to breaches of seafarers' rights as laid out in the proposed Convention. It was therefore important that records be kept of these breaches and if the breach was serious enough to result in the seizure of a ship, then the seafarers' organization needed to be informed immediately.
- 846.** Following the discussion of the main issues of concern, the Committee began its examination of specific provisions in Title 5.
- 847.** Title 5, paragraphs 1, 2 and 3, were adopted without amendment.

## **Regulation 5.1 – Flag state responsibilities**

- 848.** The statement of purpose was adopted without amendment.

### **Regulation 5.1.1 – General principles**

- 849.** Paragraph 1 was adopted without amendment.
- 850.** The Chairperson opened a general discussion on the issues raised in amendment D.26, which was sponsored by the Workers' group and sought to insert in paragraph 2 the words "and social security protection" between the words "the working and living conditions" and "for seafarers on ships that fly its flag meet".
- 851.** The Worker Vice-Chairperson stressed that ensuring compliance was key to the protection of seafarers' rights and flag States had major responsibilities in this regard. In light of the diverse nationalities of the seafarers on board, many of whom were migrant workers, it had proved difficult to create a uniform set of social security provisions. Standard A4.5, paragraph 2, therefore gave Members a choice as to which three of the nine areas of social security listed in Standard A4.5, paragraph 1, they would provide. To ensure compliance it was necessary for flag state inspections to verify that only seafarers who enjoyed social security coverage worked on ships flying their flag. Concretely, the Workers' group was requesting flag States not to authorize the recruitment and employment on board their ships of seafarers from countries which failed to provide for the minimum three branches of social security protection.

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- 852.** The Employer Vice-Chairperson could understand the reasons for the Workers' amendment, but expressed uneasiness at reopening the debate on social security, on which agreement had been reached some one-and-a-half years earlier.
- 853.** The Government member of Japan pointed out that during the preparatory discussions, it had been established that flag States were required to inspect and approve only the working and living conditions of seafarers as stated in Appendix A5-I. The amendment sought to extend the scope of required inspection, since Appendix A5-I did not include social security among the items to be inspected. Agreement had been reached that it would be for the seafarer's State of residence, and not for the flag State, to ensure social security protection. Flag States were not in a position to ensure that every foreign seafarer had social security coverage, since the flag State did not provide that coverage. Reopening discussion on this issue would threaten the delicate balance achieved and would not be beneficial to any party. His delegation did not support the amendment.
- 854.** The Government member of Greece said that the amendment was of great concern for practical reasons. Regulation 5.1.1, paragraph 2, referred to inspection on board ships and social security matters could not, in practice, be the subject of ordinary ship inspection.
- 855.** The Government member of Pakistan pointed out that port state inspections were carried out on physical features of the living and working conditions onboard foreign ships. It would be difficult to carry out inspections on non-physical aspects, as the inspector would not be able to verify if social security protection existed.
- 856.** The Government member of Denmark reminded the Committee that after long discussion, a clear choice had been made for the State of residence in social security matters. The suggestion that flag States should examine the seafarers' social security coverage would be difficult in practice, particularly with regard to non-resident seafarers subject to the legislation of other countries. This exceeded what one could expect from inspectors. Her delegation did not support the proposed amendment.
- 857.** The Government member of France said that the amendment would not challenge the agreement reached on social security, since it only addressed the question of verification, not responsibility. The role of flag States in ensuring compliance was very important. Only the social security protection of seafarers who were not covered by the flag State's legislation would need to be examined and this could easily be done in a desk review. Expertise in social security protection was one of the requirements set out in Standard A5.1.2 for the authorization of organizations which would carry out inspection or certification functions. The Convention could not remain silent on the issue of seafarers without social security protection and could not deny the responsibility of flag States.
- 858.** The Government member of Namibia noted that Standard A2.1, paragraph 4(h), on seafarers' employment agreements, expressly referred to social security protection benefits. Since Appendix A5-I comprised seafarer employment agreements among the elements which should be inspected and approved, social security protection could be examined.
- 859.** The Government member of Panama concurred that the Convention recognized the issue of social security in dealing with employment agreements, but she supported the views expressed by the Government members of Greece and Japan.
- 860.** The Government member of Denmark observed that Standard A2.1, paragraph 4(h), required that seafarers' employment agreements indicate health and social security protection benefits to be provided to the seafarer by the shipowner. Her delegation had

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interpreted this provision as relating to Standard A4.2 on shipowners' liability rather than Standard A4.5 on social security.

- 861.** The Government member of Egypt stated that social security was part and parcel of seafarers' working and living conditions and, in this sense, she could not see how the amendment might harm either the letter or the spirit of the Convention.
- 862.** The Government member of Algeria supported the proposal of the Workers' group.
- 863.** The Government member of Norway did not support the amendment. This was not a matter that could be handled on a ship-by-ship basis. Furthermore, some aspects of social security protection could be handled by the flag State and others by the State of residence. Members could not interfere with the national arrangements of the State of residence.
- 864.** The Government member of Australia appreciated the intent of the Workers' proposal, but felt that inserting a reference to social security protection into the section dealing with inspection and certification was not logical. Perhaps in future a "white list" could enumerate those member States that ensured social security benefits to seafarers.
- 865.** The Government member of Japan expressed concern over the Workers' suggestion that if a seafarer resided in a State which did not ratify this Convention and did not provide social security protection, that seafarer should not be recruited. It was not fair to deny a seafarer's right to employment merely by reason of his country's failure to provide sufficient social security protection. Considering that large numbers of seafarers already suffered a miserable existence, this would only add misery to misery.
- 866.** The Government member of Singapore concurred.
- 867.** The Government member of France suggested that there were other options for the flag State than not hiring an unprotected seafarer, such as private coverage.
- 868.** The Government member of the United Kingdom felt that the proposed amendment was redundant. Other means would suffice to ensure that benefits were provided, in particular, Regulation 5.1.1, paragraph 1, read in conjunction with article 22 of the ILO Constitution, which required ratifying States to submit regular and detailed reports on the application of the Convention. He supported the statement of the Government members of Namibia and Panama regarding seafarers' employment agreements.
- 869.** The Government member of the Russian Federation understood the concerns of the Workers' group but did not believe that their proposal would achieve the desired outcome for non-national and non-resident seafarers. It was difficult to carry out verification for those seafarers who were not residents of the flag State.
- 870.** The Employer Vice-Chairperson believed that the majority of Governments was not in favour of the proposed amendment. His group also opposed the amendment.
- 871.** The Worker Vice-Chairperson formally introduced amendment D.26. It was a seafarer's basic right to have social security coverage and it was the responsibility of the flag State to verify compliance. In the case of a seafarer from a ratifying State, the flag State would know that the seafarer was covered by at least three of the nine branches under Standard A4.5. Information would be provided to the ILO as to which three branches each Member had chosen. Unless flag States checked compliance, labour-supplying States would never feel the need to improve their domestic legislation on this issue. For seafarers from countries without national social security systems, alternative methods of coverage could be provided, as the Government member of France had suggested. The speaker did not

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accept the argument that it was not technically possible to create a system whereby flag state inspection could include verification of social security coverage.

- 872.** The Government member of the Philippines described her country's efforts as a major labour supplier to meet its responsibilities in the area of social security. Many seafarers were already covered under the national social security system and others were covered under bilateral agreements with other States. The cost to the social security system was not excessive compared to the protection provided to seafarers and taking into account the contributions of both the seafarers themselves and the shipowners. She cited the ongoing support of the social partners in these efforts. Social security was an important right under the Convention and should be supported by the enforcement system of the Convention.
- 873.** The Government member of Spain observed that the flag state responsibility in this case was not a direct responsibility to provide social security protection but a responsibility to verify compliance, which was substantially different. The ultimate goal was to achieve decent work at sea. The obligation of the State of residence combined with the obligation of the flag State to inspect and certify would strengthen the protection of seafarers. His delegation supported the amendment.
- 874.** The Government member of Portugal considered that member States had obligations both to comply with the requirements of the Convention and to verify compliance by means of inspection. Her delegation supported the amendment.
- 875.** The Government member of the United Kingdom stated that a specific reference to social security protection would change the scope of on-board inspection. The inspection had to be carried out in accordance with Regulations 5.1.3 and 5.1.4; Standard A5.1.3 set out the scope of the inspection by referring to Appendix A5-I, which did not contain a reference to social security. This was correct, since it was not possible to verify social security protection coverage on board ships. The obligations to provide social security protection were on other States; the inspectors were only obliged to check the seafarers' employment agreements which, under Standard A2.1, paragraph 4(h), only included those health and social security benefits to be provided by the shipowner. The other requirements in relation to social security protection were imposed on the seafarer's State of residence and labour-supplying country. These could not be verified on board ships; a system of verification might need to be included in reports in accordance with Regulation 5.1.1, paragraph 5, but the provision on shipboard inspection was not the right context with which to deal with this issue.
- 876.** The Government member of Singapore opposed the amendment, supporting the statement of the Government member of the United Kingdom.
- 877.** The Government member of Japan supported the position of the Government member of the United Kingdom. Seafarers came from many different nations; thus, tremendous work would be required from the competent authority to verify social security coverage of all seafarers, particularly those from non-ratifying States. While Standard A4.5, paragraph 10, provided for a reporting requirement that might be useful for determining the social security protection provided by ratifying States, this information would not be immediately useful at the time of entry into force of this Convention, given the small number of ratifications (30) required for entry into force. The speaker noted that Standard A4.5, paragraph 3, required that the protection provided be no less favourable than that enjoyed by shoreworkers; this was difficult to determine and would create an insurmountable task for the inspectors. The flag State would not be in a position to properly fulfil its obligation.
- 878.** The Government member of Cyprus asked the social partners to clarify whether a flag State should prohibit employment on its vessels of seafarers whose countries of residence

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did not provide social security protection. It had been suggested that doing so would place pressure on governments to implement social security protection and would therefore be beneficial to seafarers. Cyprus' experience from implementing Council Regulation (EC) No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community had had the opposite effect, however. If the proposal were adopted, market forces would react by favouring countries that did not implement such provisions. It was, therefore, impossible to regulate this area effectively.

- 879.** The Government member of Denmark concurred with the views expressed by the Government members of Japan and the United Kingdom. The amendment placed a huge burden on the flag State and required it to judge the social security provisions of other member States, whether or not they had ratified the Convention. It would be difficult for States to accept judgement by other States. It should be recalled that, according to Regulation 5.3, paragraph 3, labour-supplying States were required to establish an effective inspection and monitoring system for enforcing their labour-supplying responsibilities under this Convention, including their obligations concerning social security. While the employment contract belonged to the items to be inspected by flag States, the inspection of social security protection was beyond its scope. The amendment raised difficulties for flag States because there was neither a provision stating that the flag States could oblige the country of residence to provide social security protection nor a provision according to which seafarers not covered by social security protection should not be employed by the flag State. Her delegation rejected the amendment.
- 880.** The Government member of Portugal supported the amendment. It did not require the flag State to inspect the social security systems of other member States. The employment agreement could be checked to see whether three of nine branches were actually applied. With reference to Regulation 5.2.1, paragraph 1, every foreign ship calling in the port of a Member may be the subject of inspection for the purpose of reviewing compliance with the requirements of the Convention (including seafarers' rights) relating to the working and living conditions of seafarers on the ship. She raised the question as to whether, given that seafarers' rights included the right to health protection, medical care, welfare measures and other forms of social protection, port state control inspections did not already cover social security protection.
- 881.** The Government member of South Africa questioned whether this was the appropriate place for the amendment. There were two types of social security protection: that provided by the State and that provided by the shipowner. In the case of social security provided by the shipowner, the amendment would be redundant, since this was already regulated in Standard A2.1, paragraph 4(h). It should not be the responsibility of shipowners to ensure that States met their obligations in terms of maritime labour conditions. Rather, shipowners should be compelled to meet their own obligations in this regard. His delegation did not support the amendment.
- 882.** After further reflection, the Government member of Panama concurred with the views expressed by the Government member of the United Kingdom and opposed the amendment. The inspection of social security protection would raise major difficulties, since there were many different social security systems in the world and seafarers of various nationalities on board the ships of a flag State, including nationals of States that had not ratified the Convention. The proposed Convention dealt with the working and living conditions of seafarers on board vessels and these matters were already covered by the Convention.
- 883.** The Government member of Argentina supported the amendment. Although the Convention mainly dealt with working and living conditions of seafarers, it also contained

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a Title concerning social security. As for the arguments regarding the difficulty of inspecting social security, she felt that such inspection was feasible, since it involved verifying documents. Such verification would be relatively easy for seafarers from countries that had ratified the Convention, since Members were required to state at the time of ratification which branches of social security protection they would apply, as specified in Standard A4.5, paragraph 10. Regarding the issue of potential denial of the right to work to seafarers of non-ratifying States without social security protection, she believed that seafarers did not merely have the right to work but had the right to decent work. The aim should be social security protection for all in line with national conditions. The Committee seemed to agree on social security protection but not monitoring compliance. Without inspection, the effective application and implementation of social security protection could not be ensured.

- 884.** The Government member of Malta cautioned that flag state inspectors could not effectively carry out orders to inspect for social security coverage on board vessels.
- 885.** The Government member of the Russian Federation stated that the amendment extended the scope of inspection. Inspectors did not have the time, skills or documents present on board to verify social security coverage. The amendment would make it impossible to implement Regulation 5.1.1, paragraph 2, in practice.
- 886.** The Government member of Germany opposed the amendment. States could not possibly inspect the social security systems of other States. Flag state inspection could only cover social security protection provided by shipowners; such inspection, however, was already provided for in the Convention and there was no need for further reference. He cautioned that this was a sensitive area and that the fragile compromise reached in the area of social security should not be endangered.
- 887.** After further reflection, the Government member of the Philippines withdrew her delegation's support for the amendment. Flag States had no obligations with regard to long-term social security protection and would encounter tremendous difficulties in inspecting for compliance. To the extent that this would seriously prejudice the jobs of Philippine seafarers, and considering that in establishing a system of social security to seafarers, the Philippines was exercising an act of sovereignty, her delegation could no longer support the amendment.
- 888.** The Government member of Egypt also withdrew her delegation's support for the amendment.
- 889.** The Government member of Algeria indicated that his delegation had previously accepted the amendment, since it was important to provide social security for seafarers. Nonetheless, he recognized the difficulties faced by the national social security system due to non-payment of contributions by foreign shipowners. The amendment was, therefore, not appropriate since it required the flag State to ensure that all seafarers had the required protection and that this they could not do.
- 890.** The Government member of Pakistan opposed the amendment as being ineffective and impossible for inspectors to implement in practice.
- 891.** The Government member of Brazil stated that flag state control could only be carried out with regard to items to which national laws and regulations applied. Social security was just one aspect of working conditions. Others included occupational safety and health, manning and repatriation. Either all working conditions had to be listed, which was clearly not possible, or the provision should make reference only to "working conditions".

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- 892.** The Government member of Nigeria opposed the amendment. His Government would experience difficulties in the implementation of the Convention, if the amendment were to be adopted.
- 893.** The Government member of the Libyan Arab Jamahiriya supported the amendment, noting it did not undermine the sovereignty of member States. Social security constituted a fundamental labour right. The amendment was in conformity with the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equality of Treatment (Social Security) Convention, 1962 (No. 118).
- 894.** The Government member of Cyprus opposed the amendment. It was simplistic to assert that others should provide social security protection, if the country of residence did not. Cyprus provided social security protection to foreign seafarers, however, such seafarers were required to contribute to the scheme. Given that contribution levels were relatively high (over 16 per cent) and a long period of contributions was required to ensure reasonable benefits, the system did not actually work in favour of the seafarers. The creation of a separate social security scheme for foreign seafarers was prohibited by the European Union and the proposed Convention.
- 895.** The Government member of the United Arab Emirates opposed the amendment, although he understood the concerns of the Workers' group. However, the responsibility of the flag State was to ensure that its own seafarers were covered by social security. Depriving a seafarer of employment simply because his country of residence did not provide him with social security only added to his agony. Instead of decent employment, there would be no employment. This practice would also be provocative towards labour-supplying countries that did not provide social security to seafarers.
- 896.** The Government member of Turkey understood the concerns of Governments opposed to the amendment. Inspection of social security would be difficult, especially in the case of seafarers insured in their country of residence. Perhaps a compromise could be found in Guideline 4.5, which cited three "short-term" branches that were of particular importance to seafarers. These three branches (medical care, sickness benefit and employment injury benefit) were usually paid for in part or in whole by the employer and so it would be easy to verify their existence. If the amendment could be modified to make specific reference to these three branches, perhaps this would cover the concerns of seafarers, without creating significant burdens for the inspecting State.
- 897.** The Employer Vice-Chairperson opposed the amendment, stating that the Employers shared the reservations expressed by several Government members regarding flag state responsibilities for inspection in this domain. The main problem arose when dealing with the social security systems of foreign seafarers. The difficulties of this issue were evidenced by the fact that the Social Security (Seafarers) Convention (Revised), 1987 (No. 165) had received only three ratifications. Social security was an extremely complex matter and its laws were constantly changing. It was difficult enough to know one's own national social security legislation, let alone that of other countries. The Employers' group recognized social security had to be included in employment agreements.
- 898.** The Worker Vice-Chairperson drew the Committee's attention to subparagraph (d) of Article III of the proposed Convention, arguing that a State's failure to ensure that all seafarers on ships that flew its flag enjoyed social security protection was discriminatory, particularly in the light of paragraph 4 of Article IV of the proposed Convention. Moreover, paragraph 4(h) of Standard A2.1 stipulated that seafarers' employment agreements must contain particulars of the health and social security protection benefits to be provided to the seafarer by the shipowner. He was therefore unable to see how countries could fail to endorse an inspection system that ensured that persons working in the most



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globalized of occupations were covered under three of the nine branches of social security, as was required under paragraphs 1 and 2 of Standard A4.5. It was true that, under the Convention, States of residence that had no social security scheme would have to provide seafarers with coverage of three of the nine branches. Among them were labour-supplying countries that benefited so much in financial terms from their seafarers' employment on foreign ships. There was no requirement that coverage had to be provided by a national system. A separate scheme could be set up to offer the required coverage. It was soul-destroying to hear that, for bureaucratic reasons, some countries refused to deliver on rights which they were committed to respecting under Article 94 of UNCLOS. Governments were only being asked to verify that the seafarers employed on their ships were covered under three of the nine social security branches. Because of time constraints, the Workers' group would not insist on a record vote on the proposed amendment. A vote by show of hands was called for however.

- 899.** A vote on amendment D.26 was held by show of hands. The result of the vote was as follows: quorum: 11,376 votes; votes cast: 26,400; in favour 11,280; against: 15,120; abstentions: 960. The motion did not carry.
- 900.** Amendment D.26 was not adopted.
- 901.** The Government member of Spain explained that his delegation had voted in favour of the amendment because the amendment would help to avoid the use of clandestine work on board ships. Every worker on board should be protected in case of illness, accident or invalidity. In the 21st century, basic social security was a human right. The amendment would only have required flag States to ensure that all seafarers on board were covered by social security. This would have helped put an end to the informal economy and to social dumping, which was a goal of the ILO's Decent Work Agenda.
- 902.** Paragraphs 2, 3, 4 and 5 were adopted without amendment.
- 903.** The Chairperson opened a general discussion on the issues raised in amendment D.27, which was sponsored by the Workers' group and sought to add the following new paragraph after paragraph 5: "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."
- 904.** The Worker Vice-Chairperson explained that the amendment related to the right of seafarers to exercise their rights before the law and to take their complaints ashore, for example to a port state control officer, since some ships never returned to their home port. Title 5 contained a carefully balanced provision to facilitate the filing of complaints, but additional clarity was necessary. The proposal's reference to "shipowners" was in relation to the fact that the shipowners had reserved for themselves the right of redress in the case of unjustified seizure of their ships. Seafarers also had this right of redress. The proposal's reference to "other persons" underscored the fact that this right was universal and enshrined in Articles 7 and 8 of the Universal Declaration of Human Rights. Although the Preamble of the proposed Convention made reference to this instrument, it was necessary to go further and mention this right in the provisions on compliance and enforcement. Precedents existed in other ILO Conventions for such a provision, for example in the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and in the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). It was important that this right be clearly stated in the proposed Convention as many seafarers were not familiar with other international instruments. The speaker indicated his willingness to consider alternative language, should the amendment be formally introduced.

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- 905.** The Employer Vice-Chairperson did not believe the proposal added value to the Convention. It repeated rights that already existed and went against a prior decision to remove all references to access to the courts. The Employers' group did not support the amendment in its current form, but if the Workers were amenable to a subamendment, a compromise might be possible.
- 906.** The Government member of Indonesia supported the proposal, since it related to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- 907.** The Government members of Australia and Ghana also supported the proposal.
- 908.** The Government member of Panama considered it prudent to include such a principle in the Convention, but thought the issue should not be confined to a single title. For this reason, it would be better placed in the Articles, perhaps in Article IV, paragraph 5.
- 909.** The Government member of Sweden recalled that the principle was already covered by the International Covenant on Civil and Political Rights 1966, which had been ratified by 150 States. As such, the principle did not need to be included in this Convention.
- 910.** The Government member of the United Kingdom, speaking for the Austrian presidency of the European Union on behalf of the Government members of the Committee Member States of the European Union, as well as for the Government members of Bulgaria, Iceland, Norway and Romania, did not support the amendment, which caused potential confusion regarding legal venues provided for in other international instruments.
- 911.** The Government member of Spain understood the Workers' concern with discrimination in access to the law and suggested that the wording should read "right of access" rather than just "access".
- 912.** The Government member of South Africa, speaking also on behalf of the Government member of Namibia, supported the amendment, noting that seafarers might not be aware of some of the other international conventions that had been mentioned.
- 913.** The Government member of Japan said that the proposed new paragraph appeared to conflict with Article III(d), which referred to the fundamental right to the "elimination of discrimination in respect of employment and occupation". Subparagraph (d) was narrower in scope than the amendment, but a Regulation could not supersede an Article. A conflict in phrasing could have negative effects on ratifiability.
- 914.** The Government member of Pakistan observed that Article III referred to the elimination of discrimination in respect of employment and occupation, whereas the proposal referred to discrimination in respect of access to the law. The proposal might need to be redrafted, but the speaker did not object to its intent.
- 915.** The representative of the Secretary-General expressed the opinion that Article III, subparagraph (d) dealt with the broad principle of non-discrimination in respect of employment and occupation. The proposed text was a subset of this broader principle and dealt only with discrimination on the basis of profession. The proposal did not create any rights that did not already exist. As such, there should be no conflict between the two provisions.
- 916.** The Employer Vice-Chairperson suggested rewording the proposed text to begin: "This Convention shall be implemented bearing in mind that seafarers and shipowners, like all other persons".

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- 917.** The Worker Vice-Chairperson accepted the wording proposed by the Employer Vice-Chairperson.
- 918.** The Government member of Liberia said that, initially, it had appeared that the implications of this proposal could be implicitly assumed, since access to the law was a basic right covered in other instruments. Having been persuaded however, that the proposed text could serve to make seafarers aware of their rights, he now supported the proposal as reworded by the Employer Vice-Chairperson.
- 919.** The Government member of the Bahamas observed that Regulation 5.1 dealt with flag state responsibilities. It was not clear whether the proposed amendment referred to the protection of the law in general or to the law of the flag State, and whether access to courts referred to the courts of the flag State or the port State.
- 920.** The Worker Vice-Chairperson, in response to the comment of the Government of the Bahamas, suggested that the text could be better placed as a fourth paragraph under Title 5.
- 921.** The Government member of the United Kingdom, speaking for the Austrian presidency of the European Union on behalf of the Government members of the Committee Member States of the European Union, as well as for the Government members of Bulgaria, Iceland, Norway and Romania, said that the difficulty with the proposal was that it had implications as to the venue for seafarers to take up their rights in other countries. It was a question of legal jurisdiction and had to be compatible with existing instruments. After consultations, however, the Government members of the Committee Member States of the European Union had been unable to find a resolution to this difficulty and did not share a common position.
- 922.** The Government member of the United Kingdom, speaking on behalf of his own delegation, was unable to support the amendment.
- 923.** The Government member of Norway could not support a text that would allow a seafarer to take a complaint to court in any port State. Legal venue had to be predetermined to prevent a person from seeking redress in any court of their choosing. This was a basic principle that could not be set aside. It was regrettable that there had not been a discussion to create rules within the proposed Convention for legal venue. However, a Convention that allowed for free choice of legal venue might mean Norway would be unable to ratify the Convention.
- 924.** The Government member of Denmark understood the reasons behind the amendment. However, the question of legal venue was essential. She therefore suggested amending the proposal so it clearly stated that the provision did not establish legal venue.
- 925.** The Government members of Cyprus, Ghana and Malta supported the suggestion made by the Government member of Denmark.
- 926.** The Worker Vice-Chairperson noted that the proposal did not establish a seafarers' right to seek redress in the country of their choice. The amendment dealt with the right of access to courts. It was simply a statement of fact that seafarers were equal before the law. Changes to the wording of the proposal, such as that suggested by the Government member of Denmark, could be considered.
- 927.** The Government member of Canada did not have a problem with the intent of the proposal, but questioned as to the wording and placement. The implications of these would need to be examined and would require legal advice, were the issue to go to a vote.

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- 928.** The Government member of Namibia agreed with the Government member of Canada that the placement of the proposal was not appropriate. Given that the Preamble had already been adopted, however, it was not clear where such a proposal should be placed. In addition, the speaker was unsure if the proposal would be truly practicable. Under certain legal systems, individual employees were not entitled to seek remedies on certain matters, and he doubted whether many legal systems would be able to deliver the rights contained in the proposal.
- 929.** The Government member of the Russian Federation wondered why the proposal was being made as an addition to Regulation 5.1.1, which dealt with flag state obligations. A more suitable place for such wording might be Regulation 5.1.5, concerning on-board complaint procedures. A reference to legal venue or access to courts could be included in Regulation 5.1.5, paragraph 3.
- 930.** The Government member of the United States noted that “jurisdiction” and “venue” were distinct concepts and that it would be necessary to clarify precisely what was being covered by the proposal.
- 931.** Following consultations, the representative of the Secretary-General read the following wording which, in her understanding, reflected the various proposals of the Committee. The text would be included as a new paragraph 4 in the chapeau of Title 5 and would read as follows: “The provisions of this Title shall be implemented bearing in mind that seafarers and shipowners, like all other persons, are equal before the law and are entitled to equal protection of the law and shall not be subject to discrimination in their access to courts, tribunals or other dispute resolution mechanisms. The provisions of this Title do not determine legal jurisdiction or legal venue.”
- 932.** The Employer and Worker Vice-Chairpersons supported the proposed wording.
- 933.** The Government members of Argentina, Bahamas, Belgium, Brazil, Bulgaria, Cyprus, Denmark, Ecuador, Egypt, France, Ghana, Japan, Kenya, Mexico, Namibia, Netherlands, Nigeria, Norway, Pakistan, Panama, Russian Federation, South Africa, Sweden and Turkey accepted the proposal.
- 934.** The amendment was formally submitted to the Committee and adopted.
- 935.** Regulation 5.1.1 was adopted as amended.
- 936.** Standard A5.1.1 and Guideline B5.1.1 were adopted without amendment.

### **Regulation 5.1.2 – Authorization of recognized organizations**

- 937.** Regulation 5.1.2 was adopted without amendment.
- 938.** Standard A5.1.2 and Guideline B5.1.2 were adopted without amendment.

### **Regulation 5.1.3 – Maritime labour certificate and declaration of maritime labour compliance**

- 939.** The Chairperson opened a general discussion on the issues raised in amendment D.29, which sought the deletion of the word “toneladas” in the Spanish text of subparagraphs (a) and (b) of paragraph 1.

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- 940.** The Government member of the Bolivarian Republic of Venezuela said that the term “arqueo bruto” in Spanish meant “gross tonnage”, and indicated size rather than weight. The word “toneladas” should be deleted from the Spanish version. He drew attention to the terminology used in the International Convention on Tonnage Measurement of Ships, 1969, and to IMO Assembly resolution A.453, which provided specific guidelines on the use of this term to ensure clarity and coherence. It was important that the proposed Convention use the same terminology, in order to avoid any confusion.
- 941.** The Government member of Argentina supported the position of the Government member of the Bolivarian Republic of Venezuela and reiterated the need to bring the Spanish version of the text into line with IMO Assembly resolution A.453.
- 942.** The Government member of Spain expressed uncertainty as to whether the proposal concerned a drafting or a substantive change and wondered if deletion of “toneladas” would in fact solve the problem. The provision should be sent to the Drafting Committee to find language consistent with other instruments.
- 943.** The Employer Vice-Chairperson said that the Spanish-speaking members of the Employers’ group agreed that the Spanish version needed to be corrected. However, Article II, paragraph 1(c), of the proposed Convention defined gross tonnage and the Drafting Committee must use that definition.
- 944.** The Worker Vice-Chairperson agreed.
- 945.** Amendment D.29 was referred to the Drafting Committee, with the request that it ensure that the three language versions of Regulation 5.1.3, paragraph 1, were aligned and the Spanish version corrected.
- 946.** In the absence of its sponsor, amendment D.34, submitted by the Government member of India, was not considered.
- 947.** Paragraph 1 was adopted as amended.
- 948.** Paragraphs 2, 3, 4, 5, 6 and 7 were adopted without amendment.
- 949.** Regulation 5.1.3 was adopted as amended.
- 950.** Paragraph 1 of Standard A5.1.3 was adopted without amendment.
- 951.** The Chairperson opened a general discussion on the issues raised in amendment D.32, which was sponsored by the Government members of Finland and the Russian Federation and sought to insert, between the second and third sentences of paragraph 2, the following new sentence: “Anniversary date means the day and month of each year which will correspond to the date of expiry of the maritime labour certificate”.
- 952.** The Government member of the Russian Federation explained that several dates were specified on the maritime labour certificate, as contained in Appendix A5-II, namely the date of issue of the certificate, the date of the expiry of the validity of the certificate, and the completion date of inspection on which the certificate was based. It was therefore unclear which of these dates should be used as the anniversary date referred to in Standard A5.1.3, paragraph 2. The same problem had been encountered when drawing up the ISM Code and the solution proposed was based on the wording of that Code. The purpose of the proposal was therefore to clarify the text and avoid any confusion in relation to the various dates mentioned in the certificate, particularly for example in cases in which

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a certificate was first issued on a provisional basis subject to further inspection. The anniversary date would correspond to the date of expiry of the maritime labour certificate.

- 953.** The Employer Vice-Chairperson supported the amendment, but indicated that the Spanish version might need some attention.
- 954.** The Worker Vice-Chairperson also supported the amendment.
- 955.** The Government member of the United Kingdom, speaking on behalf of the Government members of the Committee Member States of the European Union, supported the amendment, which aligned the Convention with standard IMO procedures.
- 956.** The Chairperson noted that the amendment was adopted and referred the text to the Drafting Committee, with a request to correct the Spanish version.
- 957.** Paragraph 2 was adopted as amended.
- 958.** Paragraphs 3, 4, 5, 6, 7, 8 and 9 were adopted without amendment
- 959.** The Chairperson opened a general discussion on the issues raised in amendment D.36, which was sponsored by the Government members of Liberia, the Netherlands and the United Kingdom and sought to insert in paragraph 10(a), after the words “paragraph 3 of Article VI”, the following new sentence: “It shall be issued by the competent authority or recognized organization duly authorized for this purpose, based on the information supplied by the competent authority.”
- 960.** The Government member of the United Kingdom, speaking for the Austrian presidency of the European Union on behalf of the Government Members of the Committee Member States of the European Union, as well as for the Government members of Bulgaria, Iceland, Liberia, Norway and Romania, noted that it was the task of the competent authority to draw up the declaration of maritime labour compliance. However, the competent authority might delegate the task of issuing the certificate to a recognized organization duly authorized for that purpose. It was therefore necessary to introduce additional language to the provision to authorize the recognized organization to carry out this task.
- 961.** The Employer Vice-Chairperson supported the proposal.
- 962.** The Worker Vice-Chairperson did not oppose the proposal in principle, but suggested that it might be more clear to amend the first sentence of subparagraph (a) so that it referred to both the competent authority and recognized organization right at the beginning, rather than near the end of the text.
- 963.** The Government member of the United Kingdom indicated that the sponsors had initially considered the solution proposed by the Worker Vice-Chairperson. However, a distinction needed to be made between the acts of drawing up and of issuing the declaration. It was the responsibility of the competent authority to draw up the declaration and to indicate to any recognized organization duly authorized to issue the declaration, the matters which would need to be inspected as a basis for issuing the declaration. The purpose of the amendment was therefore to clarify that only the authority to issue the declaration would be delegated to the recognized organization.
- 964.** The amendment was formally submitted to the Committee and adopted. The text was referred to the Drafting Committee to review the Spanish wording.

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- 965.** The Chairperson opened a general discussion on the issues raised in amendment D.38, which was sponsored by the Government members of Australia, China, Indonesia, Japan, Malaysia, New Zealand, Oman, Philippines, Republic of Korea, Saudi Arabia, Singapore and United Arab Emirates, and sought to add the following new sentence: “Any exemption granted by the competent authority as provided in Title 3 shall be clearly indicated” at the end of paragraph 10(a).
- 966.** The Government member of the Republic of Korea said that it was important to clearly indicate the exemptions made by the competent authority in accordance with Title 3, for ships of less than 3,000 GT. This could be indicated either by issuing an exemption certificate or by including such an exemption in Part I of the declaration of maritime labour compliance. Although SOLAS opted for the issuance of exemption certificates, the speaker recommended indicating these exemptions in Part I of the declaration of maritime labour compliance. He noted that due to the adoption of amendment D.36, the best place to insert the proposed text needed to be reconsidered, in particular, because only the competent authority could grant exemptions.
- 967.** The Employer and Worker Vice-Chairpersons supported the proposal and suggested that the Drafting Committee should take a decision on where best to place the proposed text.
- 968.** The Government member of the United Kingdom remarked that this amendment had implications with regard to the model of a declaration of maritime labour compliance in Appendix A5-II. He suggested amending its section on substantial equivalencies to include language that referred to exemptions.
- 969.** The Government member of the Republic of Korea formally introduced the amendment and agreed with the suggestion made by the Government member of the United Kingdom.
- 970.** The Committee adopted the amendment. It requested that the Drafting Committee determine whether any consequential amendments were necessary in Appendix A5-II and provide a proposal for the Committee’s consideration.
- 971.** The Drafting Committee proposed the following wording for Standard A5.1.3, paragraph 10:

10. The declaration of maritime labour compliance shall be attached to the maritime labour certificate. It shall have two parts:

- (a) Part I shall be drawn up by the competent authority which shall: (i) identify the list of matters to be inspected in accordance with paragraph 1 of this Standard, (ii) identify the national requirements embodying the relevant provisions of this Convention by providing a reference to the relevant national legal provisions as well as, to the extent necessary, concise information on the main content of the national requirements, (iii) refer to ship-type specific requirements under national legislation; (iv) record any substantially equivalent provisions adopted pursuant to paragraph 3 of Article VI; and (v) clearly indicate any exemption granted by the competent authority as provided in Title 3, and
- (b) Part II shall be drawn up by the shipowner and shall identify the measures adopted to ensure ongoing compliance with the national requirements between inspections and the measures proposed to ensure that there is continuous improvement.

The competent authority or recognized organization duly authorized for this purpose shall certify Part II and shall issue the Declaration of maritime labour compliance.

- 972.** The Employer and Worker Vice-Chairpersons supported the proposal.

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- 973.** The Government member of Spain indicated that for the sake of consistency in the Spanish version, the word “organización” should be used instead of the word “entidad”.
- 974.** The Government member of the United Kingdom drew attention to the fact that by way of consequential amendment, the expression “Seal or stamp of the authority, as appropriate” should be used throughout Appendix A5-II and should replace the wording used in the last line of the model declaration of maritime labour compliance – Part II. The same should also be added to the last line of paragraph 14 of the model declaration of maritime labour compliance – Part I.
- 975.** The Chairperson said that the Drafting Committee would look closely into this suggestion.
- 976.** The Committee adopted proposal C.R./D.3 from the Drafting Committee.
- 977.** The Chairperson opened a general discussion on the issues raised in amendment D.37, which was sponsored by the Government members of Liberia, the Netherlands and the United Kingdom and sought to insert the words “or recognized organization duly authorized for this purpose” after the word “competent authority” in paragraph 10(b).
- 978.** The Government member of the United Kingdom said that this amendment would bring paragraph 10(b) into conformity with the amendment previously adopted for paragraph 10(a).
- 979.** The Employer and Worker Vice-Chairpersons supported the amendment.
- 980.** The amendment was formally submitted to the Committee and adopted. The Committee asked the Drafting Committee to ensure that the word “organización” was used in the Spanish version rather than “entidad”.
- 981.** Paragraph 10 was adopted as amended.
- 982.** Paragraph 11 was adopted without amendment.
- 983.** The Chairperson opened a general discussion on the issues raised in amendment D.39, which was sponsored by the Government members of Australia, China, Indonesia, Japan, Malaysia, New Zealand, Norway, Oman, Philippines, Republic of Korea, Saudi Arabia, Singapore and United Arab Emirates, and sought to insert the words “a copy shall be” between the words “and” and “posted” in the first sentence of Standard A5.1.3, paragraph 12.
- 984.** The Government member of the Republic of Korea explained that this amendment concerned the duty of posting the maritime labour certificate and declaration of maritime labour compliance in a conspicuous place on board (Standard A5.1.3, paragraph 12). The present wording did not make it clear whether the original or a copy should be posted. In keeping with practice under the SOLAS and MARPOL Conventions, a copy should be posted to prevent damage to or loss of the original.
- 985.** The Government member of the United Kingdom, speaking for the Austrian presidency of the European Union on behalf of the Government members of the Committee Member States of the European Union, as well as for the Government members of Bulgaria, Iceland, Norway and Romania, supported the amendment.
- 986.** The amendment was formally submitted to the Committee and adopted.
- 987.** Paragraph 12 was adopted as amended.



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- 988.** Paragraph 13 was adopted without amendment.
- 989.** The Chairperson opened a general discussion on the issues raised in amendment D.35, which was sponsored by the Government members of Finland and the Russian Federation, and sought to replace Standard A5.1.3, subparagraph 14(d) by the following new text: “When a shipowner transfers responsibility for the operation of the ship to another shipowner;”.
- 990.** The Government member of the Russian Federation noted that subparagraph 14(d) and paragraph 5(c) of the same Standard used identical language. However paragraph 5(c) was related to the issuance of a maritime labour certificate, whereas paragraph 14(d) was related to the cessation of validity of a certificate. The relevant fact in paragraph 14(d) was that the original shipowner had stopped being the owner and passed on the responsibility. For this reason, it was appropriate to make reference to a shipowner transferring responsibility, rather than assuming it. This was a well-established practice in the delivery of ship documents. The maritime labour certificate did not cease to be valid because a new shipowner had assumed responsibility; it ceased to be valid because the old shipowner had ceased to act as such. The aim of the proposal was to distinguish between the two separate processes of cessation of responsibility and assumption of responsibility.
- 991.** The Employer Vice-Chairperson supported the proposed text, since it provided additional clarity.
- 992.** The Government member of the United Kingdom said that the text found in Standard A5.1.3, paragraph 5(c), stemmed from language used in the ISM Code. This very wording was later also used in Standard A5.1.3, paragraph 14(d). Since the latter related, however, to the cessation of the maritime labour certificate, its emphasis was wrong. It should focus on the ship leaving the company. He therefore supported the amendment.
- 993.** The Worker Vice-Chairperson questioned the advisability of changing the existing text. The speaker acknowledged the point raised by the Government member of the United Kingdom, but using different language in paragraph 5(c) and paragraph 14(d) could cause inconsistency. The current text was consistent with Standard A5.1.3, paragraph 5. Also, the Workers’ group had always understood that once Part II of the declaration of maritime labour compliance had been drawn up and certified, the onus was on the new shipowner who assumed responsibility. The Workers’ group preferred the Office text.
- 994.** The Government member of Singapore supported the Workers’ group.
- 995.** The Government member of Norway stated that the current wording of the proposed Convention would cause difficulties if a ship were reacquired by a company that had owned it previously. In such a situation, the words “a ship which is new to that shipowner” could allow the company to say it did not need a certificate since the ship was in fact not new to it. The proposed text removed this possibility.
- 996.** The Government member of the Bahamas agreed with the comment of the Government member of Norway. The use of the word “new” in the original text opened the possibility for unintended situations.
- 997.** The Government member of Cyprus recognized the issue raised by the Government members of Norway and the Bahamas. Unlike statutory certificates, the certificates under discussion here were linked to the real management of a vessel. For this reason the proposed text was preferable.

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- 998.** The Government member of Australia also preferred the proposed text. The current wording of the proposed Convention could lead to a situation where a shipowner had sold a ship and handed over responsibility, but the certificate remained valid even though the new shipowner had not assumed responsibility. Trading certificates should follow the practice established under the SOLAS and MARPOL Conventions, which did not permit the ship to trade unless the certificate was valid. There was a need for an automatic invalidation mechanism which would force a new shipowner to acquire a certificate.
- 999.** The Government member of the United States preferred the current wording in the proposed Convention. It was important to indicate there was an actual assumption of responsibility, not just a transfer.
- 1000.** The Government members of Egypt and Greece concurred. “Assumes responsibility” implied that a transfer had taken place; “transfers responsibility” did not necessarily mean that the responsibility had been assumed however.
- 1001.** The Worker Vice-Chairperson noted that although both versions of the text would be adequate, there was a difference between transferring and assuming. He suggested merging the two versions of text so that a reference was made to both transferring and assuming responsibility.
- 1002.** The Government member of the Russian Federation said that a situation could arise where the former shipowner had ceased to exercise his functions, while the new shipowner had not yet assumed his responsibilities. In these cases, according to the proposed Convention, the certificate would not lose its validity, although that had been the original intent. In order to avoid this situation, the basis for cessation of validity should be the cessation of the exercise of the old shipowner’s responsibility.
- 1003.** Upon further reflection, the Worker Vice-Chairperson supported the proposal.
- 1004.** The Government member of Cyprus requested clarification in the event that the following situation were to arise: a shipowner gave management of a ship to a management company. The management company cancelled its agreement with the shipowner, however, because it had not been provided with the necessary resources by the shipowner. No other company assumed responsibility, but since no transfer had taken place, the certificate would remain valid. This was certainly not the intent of the Convention.
- 1005.** The Government member of the United Kingdom introduced an alternative proposal, which tried to shift the focus away from a shipowner transferring responsibilities. It read: “when the responsibility for the operation of the ship transfers from one shipowner to another”.
- 1006.** The Government member of the Russian Federation supported the United Kingdom’s proposal on the whole. Nevertheless, it did not resolve the problem raised by the Government member of Cyprus. In the case of a cessation of contract, the company managers would be the persons on the certificate as having full responsibility and would retain it.
- 1007.** The Government member of Cyprus said that the United Kingdom’s proposal covered straightforward cases of transfer of ownership. It did not, however, cover all scenarios. It was important that the language would reflect that once a ship manager had denounced the agreement and no new ship manager been appointed, the certificate would no longer be valid.

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- 1008.** The speaker suggested the following simplified wording to replace subparagraph (d): “When a shipowner ceases to have responsibility for a ship” – in other words, when a certificate ceased to be valid. That wording would also cover a situation where a ship’s manager ceased to have responsibility for a ship.
- 1009.** The Government member of China, speaking on behalf of the Government group, proposed a slightly modified wording that read: “When a shipowner ceases to assume the responsibility for the operation of a ship.”
- 1010.** The Employer and Worker Vice-Chairpersons supported the proposal of the Government group and suggested that the Drafting Committee might be asked to consider whether the word “assume” was the best term in that context.
- 1011.** Amendment D.35 was formally introduced and adopted as subamended.
- 1012.** Standard A5.1.3, paragraph 14(d), was adopted as amended, and referred to the Drafting Committee.
- 1013.** Paragraphs 15, 16 and 17 were adopted without amendment.
- 1014.** Standard A5.1.3 was adopted as amended.
- 1015.** Guideline B5.1.3 was adopted without amendment.

#### **Regulation 5.1.4**

- 1016.** Paragraphs 1 and 2 were adopted without amendment.
- 1017.** Regulation 5.1.4 was adopted without amendment.
- 1018.** Standard A5.1.4, paragraphs 1, 2 and 3, were adopted without amendment.
- 1019.** The Chairperson opened a general discussion on the issues raised in amendment D.30, which was sponsored by the Government members of Australia, China, Japan, Singapore and the United States, and sought to insert the words “where applicable” after the words “Standard A5.1.3” in the first sentence of Standard A5.1.4, paragraph 4.
- 1020.** The Government member of Japan proposed an editorial change for the first sentence of Standard A5.1.4, paragraph 4. This paragraph, as currently drafted, could be understood to mean that all ships needed to be inspected in accordance with the intervals set out in Standard A5.1.3. However, those intervals were only applicable to ships that required a maritime labour certificate under Regulation 5.1.3, paragraph 1 – namely, ships of 500 GT or over, engaged in international voyages. In order to reflect the decision taken at the Intersessional Meeting to exclude the smaller ships from the certification requirement, it was found necessary to add the words “where applicable” after the reference to the declaration of maritime labour compliance in Standard A5.1.4, paragraph 1, as not all ships were subject to certification. For the sake of consistency, it was important that the words “where applicable” should also be added at an appropriate place in the first sentence of Standard A5.1.4, paragraph 4, to make it clear that the intervals referred to in this sentence applied only to ships requiring certification.
- 1021.** The Employer Vice-Chairperson supported the proposed amendment.

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- 1022.** The Worker Vice-Chairperson asked the Office for clarification as to whether under the proposed amendment, inspection would still be required for ships without certificates.
- 1023.** The representative of the Secretary-General explained that Standard A5.1.4, paragraph 1, applied to all vessels and, consequently, paragraph 4 referred to inspection intervals for all vessels irrespective of whether they were subject to the certification regime. The change introduced by the amendment only concerned the certification system and it did not purport to alter States' obligations and responsibilities with regard to inspection.
- 1024.** Following these explanations, the Worker Vice-Chairperson supported the proposed amendment.
- 1025.** Following its formal introduction, amendment D.30 was adopted by the Committee.
- 1026.** Standard A5.1.4, paragraph 4, was adopted as amended.
- 1027.** Standard A5.1.4, paragraphs 5, 6, 7 and 8, were adopted without amendment.
- 1028.** The Chairperson opened a general discussion on the issues raised in amendment D.23, which was sponsored by the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom, and sought to delete the second sentence of Standard A5.1.4, paragraph 9.
- 1029.** The Government member of the United Kingdom said that the first sentence of paragraph 9 was sensible advice and well-established practice. The need to record such instances, however, created a number of difficulties. It seemed difficult to distinguish between a breach of standard which fell under Standard A5.1.4, paragraph 9, and one that did not. It was accepted practice that in cases where breaches were unintentional and a quick discussion led to immediate correction, no further action need be taken. True breaches needed to be recorded, along with actions taken to remedy them. Requiring inspectors to record every exercise of discretion would lead to unnecessary paperwork and follow-up on matters of minor deficiencies. The second sentence imposed a heavy obligation on inspection services with no real gain in terms of the health and safety of seafarers.
- 1030.** The Employer Vice-Chairperson supported the proposed amendment.
- 1031.** The Worker Vice-Chairperson strongly opposed the proposed amendment. Inspectors were professionals and they should have the discretion to give warnings and advice instead of instituting or recommending proceedings. However, paragraph 9 only allowed for such discretion where there was no prior history of similar breaches. When warnings were issued, a record was necessary. If no record were kept, there would never be a prior history of similar breaches. He recalled the balanced compromise agreement that had been reached in Standard A5.2.1, paragraph 6(b), regarding the detention of ships when non-conformity constituted a serious or repeated breach of the requirements of the Convention. The Workers' group believed that this issue was one of substance and preferred to retain the second sentence, since keeping a record of warnings was no great burden.
- 1032.** The Government member of the Bahamas concurred with the view expressed by the Government member of the United Kingdom. Responding to the point raised by the Worker Vice-Chairperson in relation to Standard A5.2.1 on port inspections, he noted that port state control inspectors only had access to records of breaches found during port state control inspections. In order to access flag state records, port state control inspectors would

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need to make a specific request to the flag State, which they would only do in case of problems. There was, thus, no likelihood that port state control inspectors would even be aware of the existence of any recorded exercise of discretion.

- 1033.** The Government member of Egypt said that the text in question referred to flag state obligations and pointed out that record-keeping was equally important for the flag State and the port State.
- 1034.** The Government member of Spain noted that the Labour Inspection Convention, 1947 (No. 81) did not provide for record-keeping in cases of discretion. However, the Workers' argument carried weight. He suggested compromise wording based on the text of Convention No. 81.
- 1035.** The Government member of Germany supported the deletion of the second sentence, since the obligation represented a tremendous administrative burden which would serve as a disincentive for inspectors to exercise discretion at all. The time inspectors spent on administrative tasks would not be available for inspection.
- 1036.** The Government member of Egypt supported the aim of the proposed amendment, which was intended to reduce the workload of inspectors and avoid bureaucracy. Instead of recording every single detail, inspectors should rather be able to check the actual working and living conditions of seafarers. Nonetheless, a record of any inspection of the ship at the last port of call should be kept on board, so that it would be available at its next port of call.
- 1037.** The Government member of Norway supported the amendment. A captain normally did not wish to be in breach of standards, but might simply not be aware of the problem and would be pleased if the inspector signalled it. The obligation was overly strict, formalistic and embarrassing. It would not encourage cooperation between captains and inspectors.
- 1038.** The Government member of the United Kingdom pointed to the need for a clear distinction between port state control and flag state control. Speaking only on behalf of the United Kingdom, he explained that there were three types of breaches: serious breaches which called for prompt action; minor breaches which would be covered by A5.2.1, paragraph 4; and what one might call "trivial" or "insignificant" breaches, that is to say, unintentional deficiencies which would be immediately rectified. Having listened to the Workers' view, he suggested a compromise wording to replace in the first sentence after "when", the word "the" by the words "there is no clear or significant".
- 1039.** The Government member of Spain objected to the use of the words "trivial" or "insignificant", since this would create legal uncertainty. He suggested taking up the language of Convention No. 81, which comprised the principal ILO standard in matters of inspection. The new Convention should not allow for a broad scope of legal interpretation. Therefore, he opposed the proposed amendment.
- 1040.** The Government member of Brazil agreed. Recalling Convention No. 81 and the Labour Inspection (Seafarers) Convention, 1996 (No. 178), which specifically applied to the maritime sector, she noted that a record of exercises of discretion would go against the provisions of Convention No. 81.
- 1041.** The Government member of France endorsed the alternative wording suggested by the Government member of the United Kingdom. Even if the second sentence were deleted, inspectors would not be prevented from putting their comments in writing. The professional judgment of inspectors should be trusted. In the future, there might be a need for a code of practice to provide guidance to ship inspectors.

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- 1042.** The Government member of Japan pointed out that discretion was only provided for where there was no prior history. Otherwise, inspectors would be required to institute or recommend proceedings. The last sentence should therefore be retained for the sake of legal certainty.
- 1043.** The Government member of the Republic of Korea felt that there were two ambiguities. One concerned the issue of who kept the records and the other was the content. Keeping a record of all deficiencies would represent a very heavy workload for the flag state administration. He therefore supported the proposed amendment.
- 1044.** The Government member of the Bolivarian Republic of Venezuela noted that inspectors required a degree of flexibility, since systems differed across the globe. Inspectors' reports might be used for other purposes and by other parties, such as by those responsible for the investigation of accidents. Therefore, the Convention should afford sufficient flexibility to member States in implementing their obligations with respect to inspection.
- 1045.** The Government member of Nigeria associated himself with the Workers' view and stated that the reference in Standard A5.1.4 to "prior history of similar breaches" made it clear that so-called trivial breaches might not be so trivial after all. A record should be established on all breaches without distinction, otherwise a ship might continue to sail from port to port without rectifying detected problems.
- 1046.** The Government member of Pakistan suggested replacing the word "shall" with "may" in the second sentence of paragraph 9. This would permit further discretion in determining the level of breach to record.
- 1047.** The Government member of Singapore, recalling that inspections were often carried out not by competent authorities but by recognized organizations, said that it was preferable to establish a report of all warnings and advice provided. He was therefore in favour of the text in its current reading. The suggestion of the Government member of Pakistan might provide a way forward.
- 1048.** The Worker Vice-Chairperson shared the concern raised by the Government member of Spain regarding the possible use of the terms "trivial" or "insignificant". The proposal of the Government member of the United Kingdom was useful. In addition, he proposed to delete the word "warnings" in the first line of the first sentence.
- 1049.** The Government members of Argentina, France and the United Kingdom, as well as the Employer Vice-Chairperson, agreed with the proposal made by the Workers' group.
- 1050.** The Chairperson proposed that without formally introducing amendment D.23, the entire text of Standard A5.1.4, paragraph 9, should be referred to the Drafting Committee with a view to incorporating the proposed language. The Drafting Committee would consider as well amendment D.28, which only affected the Spanish text.
- 1051.** It was so agreed.
- 1052.** The Drafting Committee proposed the following wording for Standard A5.1.4, paragraph 9: "Inspectors shall have the discretion to give advice instead of instituting or recommending proceedings when there is no clear breach of the requirements of this Convention that endangers the safety, health or security of the seafarers concerned and where there is no prior history of similar breaches."
- 1053.** The Employer and Worker Vice-Chairpersons agreed with the proposal.

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- 1054.** The Committee adopted proposal C.R./D.5 from the Drafting Committee. As a result, amendments D.23 and D.28 fell.
- 1055.** Paragraph 9 was adopted as amended.
- 1056.** Standard A5.1.4, paragraphs 10, 11, 12, 13, 14, 15, 16 and 17, were adopted without amendment.
- 1057.** The Government member of the United States withdrew amendment D.21.
- 1058.** Standard A5.1.4 was adopted as amended.
- 1059.** Guideline B5.1.4, paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9, were adopted without amendment.
- 1060.** The Chairperson opened a general discussion on the issues raised in amendment D.24, which was sponsored by the Government members of the Netherlands and the United Kingdom, and sought to delete subparagraph (d).
- 1061.** The Government member of the United Kingdom indicated that, although the provision in question only consisted of a guideline, it was his Government's wish to be able to follow the guidelines as closely as possible. However, subparagraph (d) would require all competent authorities in the various member States to include in their annual reports statistics on all seafarers subject to their national laws and regulations. The problem lay with the broad scope of the Convention. As the wording referred to seafarers subject to national laws and regulations, it was not confined to seafarers on ships flying the flag of the member State, but to all residents of the country concerned working on any ship, whatever the flag State. While it might be practical for a country to compile statistics on the STCW certificates issued or the number of seafarers working on ships flying the flag of that country, the provision as currently worded was much wider, covering all nationals and residents of the country working on ships flying any flag. Such statistics would also have to cover, for example, part-time and occasional workers, who might just work for one or two months a year, such as students on vacation jobs. In his view, it would be nearly impossible to collect such statistics, which would not in any case be reliable. The provision should be deleted.
- 1062.** The Employer Vice-Chairperson indicated that as recent studies had demonstrated, it was very difficult to obtain reliable statistics of the type specified by the provision, even from countries with well-developed administrative systems. The burden of producing such statistics would be heavy and his group therefore supported the proposal for the deletion of the subparagraph.
- 1063.** The Worker Vice-Chairperson recalled that the provision in question was only a guideline. He added that UNCLOS already established a requirement for flag States to ensure effective jurisdiction over vessels flying their flags, among other matters in relation to the social conditions of seafarers. As flag States generally had national laws and regulations applicable to their ships, they needed to know which seafarers were working on those ships. With regard to the nationals of a country who worked as seafarers on ships flying the flags of other countries, they came under the laws and regulations of that flag State, and were not therefore concerned by the statistics required by the provision under review. As flag States normally wished to know the numbers of seafarers employed on vessels flying their flag, for example, for security reasons, he believed that there should be no difficulty in retaining the provision.
- 1064.** The Government member of the United Kingdom replied that, as currently worded, the provision appeared to include all types of workers, including for example part-time

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workers, as well as seafarers working on ships flying the flags of other countries. It would be more judicious if it applied only to seafarers working on ships flying the flag of the country concerned.

- 1065.** The Government member of Egypt noted that it would be very difficult for a country to keep track of all the seafarers to whom it had issued certificates, as it was common for them to change ships frequently and to have periods when they were not working, even though they maintained their seafarers' certificates. The statistics available might not provide an accurate picture.
- 1066.** The Government member of Cyprus indicated that his country kept records of all seafarers working on ships flying its flag, whatever their nationality. However, it would not be able to compile statistics of Cypriot seafarers who worked on foreign vessels. If the provision were to be limited to all seafarers working on flag state ships, the data compiled would be useful.
- 1067.** The Government member of Singapore concurred.
- 1068.** The Government member of Norway drew attention to the fact that the whole of paragraph 10 referred to the information to be contained in the annual report published by the competent authority (i.e. maritime directorate), which would essentially cover the activities of that authority over the previous year. The statistics called for went far beyond the activities of the competent authority and would need to be obtained from central statistical agencies, tax authorities, immigration services, etc. Although such data could be obtained, their compilation would involve a very heavy burden for the maritime directorate. Moreover, despite the burden involved, the reliability of the statistics might leave much to be desired and there would in any case be little benefit to be drawn from their compilation.
- 1069.** The Government members of Germany and the Netherlands expressed similar views.
- 1070.** The Government members of Australia, China, Indonesia, Libyan Arab Jamahiriya and Portugal supported the proposal to delete the subparagraph.
- 1071.** The Government member of France drew attention to the fact that the provision in question was contained in a part of the Convention which related to the responsibilities of flag States. He therefore supported retaining the subparagraph, as it was important for countries to have information on the number of seafarers employed on the ships flying their flag.
- 1072.** The Government member of Malaysia indicated that such statistics would provide important information for national studies and the development of seafarers' careers.
- 1073.** The Government member of Denmark commented that many Government members appeared to be giving a broader meaning to the provision than that understood by her Government. In her view, the statistics in question only concerned seafarers working on ships flying the flag of the country, whatever their nationality. It did not apply to nationals of a member State working on ships flying the flag of another country. Information on seafarers working on the national fleet was important for purposes of monitoring. Agreement should therefore be reached on this narrower reading.
- 1074.** The Government member of Greece proposed that the issue be referred to the Drafting Committee with a request to ensure that the statistics required were limited to seafarers working on ships flying the flag of the country concerned.
- 1075.** The Government members of Mexico and the Republic of Korea agreed.



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- 1076.** The Worker Vice-Chairperson believed that the discussion had highlighted certain misunderstandings. The subparagraph formed part of a section dealing with the responsibilities of flag States. The statistics in question therefore covered the seafarers working on ships flying the flag of the member State concerned. He had no doubt that all governments wished to know who was sailing on ships flying their flags. Indeed, once the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) had been widely ratified, such statistics would in any case exist as a result of the process of issuing identity documents.
- 1077.** The Employer Vice-Chairperson observed that it was very difficult to gather such data on a worldwide basis. If, however, Guideline B5.1.4, paragraph 10(d), referred only to seafarers on ships flying the reporting State's flag, the provision would not be problematic and should accordingly be referred to the Drafting Committee.
- 1078.** The Government member of Denmark suggested adding the words "for ships flying its flag" to the chapeau of Guideline B5.1.4, paragraph 10, since this qualification should also apply to the other statistics mentioned in paragraph 10.
- 1079.** The Chairperson considered that there appeared to be consensus in favour of limiting the reporting requirements to seafarers under the flag of the reporting State and proposed sending Guideline B5.1.4, paragraph 10(d), to the Drafting Committee.
- 1080.** The Government member of the Bahamas strongly objected. For historical reasons, the Bahamas did not gather any of the statistics required by Guideline B5.1.4, paragraph 10(d). To establish such a system would require a major increase in the resources of the competent authority, which would make it difficult for the Bahamas to ratify the Convention. He also questioned the usefulness of the information as it would only be possible to provide a "snapshot" of which seafarers were on a ship under their flag at a given point in time.
- 1081.** The Chairperson suggested that the number of berths already provided a good indication of the size of the workforce.
- 1082.** The Government member of the Bahamas replied that such a requirement could certainly be met, but the current draft did not reflect this and should be amended accordingly.
- 1083.** The Worker Vice-Chairperson said that the Convention's aim was to guarantee that flag States would ensure decent work on board ships flying their flag and expressed his astonishment that some States were not in a position to collect statistics on the working population on their ships. If comprehensive statistics were not available, information such as that suggested by the Chairperson could be useful. The current draft was already very flexible and was in any case a non-mandatory guideline on how States should report annually.
- 1084.** The Chairperson considered that a broad agreement existed in support of the suggestion put forward by the Government member of Denmark. The Drafting Committee would be asked to draw up language that would restrict reporting requirements to ships flying the reporting State's flag and suggested that the Committee would reconsider the issue once a new draft had been drawn up.
- 1085.** It was so decided.
- 1086.** The Drafting Committee proposed the following wording for Guideline B5.1.4, paragraph 10: "The annual report published by the competent authority of any Member, in respect of ships that fly its flag, should contain:".

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- 1087.** The Employer and Worker Vice-Chairpersons agreed with the proposal.
- 1088.** The Committee adopted proposal C.R./D.6 from the Drafting Committee. As a result, amendment D.24 fell.
- 1089.** Paragraph 10 was adopted as amended.
- 1090.** Guideline B5.1.4 was adopted as amended.

### **Regulation 5.1.5**

- 1091.** Regulation 5.1.5 was adopted without amendment.
- 1092.** Standard A5.1.5 was adopted without amendment.
- 1093.** Guideline B5.1.5 was adopted without amendment.

### **Regulation 5.1.6**

- 1094.** Regulation 5.1.6 was adopted without amendment.
- 1095.** Standard A5.1.6 was adopted without amendment.
- 1096.** Guideline B5.1.6 was adopted without amendment.

### **Regulation 5.2**

- 1097.** Regulation 5.2 was adopted without amendment.

### **Regulation 5.2.1**

- 1098.** The Government member of the United States withdrew an amendment (D.40), prior to its discussion.
- 1099.** Regulation 5.2.1 was adopted without amendment.
- 1100.** Paragraphs 1, 2 and 3 of Standard A5.2.1 were adopted without amendment.
- 1101.** The Chairperson opened a general discussion on the issues raised in amendment D.41, which was sponsored by the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and the United Kingdom, and sought to replace paragraph 4 by the following paragraph:

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 forthwith bring the deficiencies to the attention of the master of the ship, with the required deadlines for their rectification; and, when considered appropriate by the port State, shall:

- (a) notify a representative of the flag State; and/or

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- (b) provide the competent authorities of the next port of call with the relevant information; and/or
  - (c) bring the deficiencies to the attention of the appropriate seafarers' and shipowners' organizations in the Member in which the inspection is carried out.

**1102.** The Government member of the United Kingdom, speaking on behalf of the Government members of the Committee Member States of the European Union, as well as on behalf of the Government members of Bulgaria, Iceland, Norway and Romania, underlined the importance of the proposed amendment. The proposal sought to ensure the appropriate balance in the practical implementation and enforcement of the Convention between ensuring the proper and full provision of rights and protection to seafarers and shipowners, and the need to ensure that the work of inspectors in ensuring the effective, uniform and global implementation of the requirements of the Convention did indeed add value and did not have the overall consequence of being an unwanted, ineffective and costly administrative burden. The current text of Standard A5.2.1, paragraph 4, did not provide this proper balance by a very large margin. Many Governments considered the proposal necessary to convince ministers and parliaments that public resources were being effectively deployed in implementing this Convention. The reporting of serious breaches was not at all problematic, but the reporting requirement in paragraph 4 would apply to all inspections that raised as little as one deficiency. By way of illustration of the scale of the reporting burden, the speaker noted that in the Paris MOU port state control region some 8,659 deficiencies were raised last year. Some typical examples of these were air-conditioning units without an air filter, damaged fluorescent lights without a cover, missing rubber mats in front of a switchboard, damage in the galley, signs of parasites, dirty fridges, dirty galley floors, no thermometers to measure fridge temperature, etc. All these minor deficiencies would nevertheless require the port state control officer to follow the procedure set out in paragraph 4(a)-(c) even for ships having five or fewer deficiencies. The existing port state control systems of Paris and Tokyo MOU and the United States Coast Guard had excellent reputations for the effective enforcement of IMO and ILO requirements relating to maritime safety, security, protection of the marine environment and seafarers' living and working conditions. Indeed, much of Title 5 of the Convention was based on the best practices developed over many years within these port state control systems. None required reporting after every inspection to the next port of call, the flag State and the seafarers' and shipowners' organizations. This reporting requirement would divert valuable inspection services away from important ship inspection work. As resources were allocated for both inspections and follow-up to inspections, inspectors would have less time available for inspection of ships. Deficiencies would also be identified in the absence of the reporting requirement. The three regions that had concluded Memoranda of Understanding on port state control recorded all deficiencies in a computer database that could be checked in subsequent ports. Inspections could thus be targeted based on the number of deficiencies and the last inspection and carried out on a priority basis in case of serious offenders. If flag States, seafarers or shipowners wished to consult the inspection history of a particular ship, they could use the web site [www.equasis.org](http://www.equasis.org) which was set up by the maritime administrations of France, Japan, Singapore, Spain, United Kingdom and United States. The purpose of this web site was to collate existing information from public and private sources and to make it freely available. Substandard shipping was detrimental to its customers, seafarers, the environment, ship safety and fair competition. The requirements of the proposed Convention should not be a disincentive to its effective, uniform and global implementation and enforcement. These concerns had been raised previously and should be taken seriously. The complete removal of professional judgment in the Office text did not benefit anyone – the seafarer, shipowner or flag State.

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- 1103.** The Employer Vice-Chairperson supported the proposal, but noted that by using the expression “and/or” in subparagraphs (a) and (b) of the proposal, the shipowners might be the only ones to receive the information, which was probably not the intent of the sponsors.
- 1104.** The Worker Vice-Chairperson recalled that at the Intersessional Meeting some 67 Governments had agreed to the importance of this sensitive provision, which was the only one to deal with situations not calling for the ship’s detention. Detention represented the ultimate sanction, and there were many instances where the follow-up action would not be the ship’s detention. Standard A5.2.1, paragraph 4, dealt with the situation where, following a more detailed inspection, the working and living conditions on the ship were found not to conform to the requirements of this Convention, but the detention of the ship was not envisaged. In this case, the flag State, the next port of call and the shipowners’ and seafarers’ organizations should be informed. It was wholly appropriate that seafarers’ organizations in the port should be informed of the breach in order to assist in resolving problems. The proposal would allow inspectors to notify the flag State, the next port of call and the shipowners’ and seafarers’ organizations, only if they considered it appropriate. Furthermore, the three notification requirements were connected by the word “and/or”, which did not make sense. Paragraph 4 could deal with serious as well as less serious deficiencies. If there were no water, no stores or no heating on board, it should not be at the discretion of the inspector to notify or not. The speaker reminded the Committee that detailed inspections were carried out for clear reasons, as indicated in paragraph 1. The notification procedure set out in the current text of paragraph 4 was balanced and appropriate.
- 1105.** The Government member of Australia stated that, as a country actively engaged in port state control, Australia supported the proposal. Appropriate wording should be found to provide that no immediate reporting on minor deficiencies was required.
- 1106.** The Government member of Singapore shared the rationale behind the proposed amendment which aimed at rendering the inspection process more practical.
- 1107.** The Government member of Spain, referring to the Spanish text of the proposed amendment, preferred the words “más detallada” instead of the words “más pormenorizada” which would also be in line with a similar expression used in Appendix A5-III.
- 1108.** The Government member of New Zealand endorsed the views of the previous speakers. The proposed amendment was fully consistent with established procedures under port state control regimes such as the Tokyo and the Paris MOUs.
- 1109.** The Government member of the Bahamas agreed with the thought behind the proposed amendment and found the current Office wording overly prescriptive, leaving no room for discretion for port state control officers.
- 1110.** The Government member of the Russian Federation supported the amendment.
- 1111.** The Government member of the United States agreed with the intent of the proposed amendment and stressed the importance of the availability of the information through public databases. She was not entirely satisfied with the language used in either the Office text or the proposed amendment.
- 1112.** The Government member of the United Kingdom stated that the proposed formulation was essentially correct, although the Drafting Committee might be asked to improve it. In essence, it would be for the port state control officer to choose any or all of the three options (a), (b) or (c) referred to in the amendment for communicating information.

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- 1113.** The Worker Vice-Chairperson stressed that there was a graduated scale of deficiencies that went from the trivial to the life-threatening. The issue was how to manage a graduated response to breaches of increasing seriousness. Seafarers' organizations demanded notification on breaches, whether or not shipowners or flag States wished to be informed.
- 1114.** The Chairperson suggested the establishment of an informal working group to resolve the issues raised during the discussion on the original text and the amendment.
- 1115.** The Government member of the United Kingdom believed that there was no need to set up an informal working group and preferred the text of the amendment to be sent to the Drafting Committee. He was prepared to consider any proposal the Workers' group might wish to submit under the Guidelines.
- 1116.** The Worker Vice-Chairperson agreed with the idea of an informal working group and opposed any suggestion that the issue should be dealt with in non-mandatory Code B. He understood the Government members' concerns with regard to minor deficiencies and felt sure that compromise wording could be found. Title 5 was critically important in terms of delivering seafarers' rights.
- 1117.** The Employer Vice-Chairperson and the Government member of Greece supported the idea of setting up an informal working group.
- 1118.** The Chairperson indicated the issues raised during the discussion would be referred to an informal working group of reasonable size, which would be requested to report back to the Committee of the Whole as soon as possible.
- 1119.** The Government member of Norway reported to the Committee on the work of the informal working group established to address issues raised in connection with amendment D.41. The informal working group had considered amendment D.41 and the proposed Convention, taking into account the related administrative burden. It had agreed that minor matters should not be covered by the reporting requirement and that the professional judgment of inspectors should be respected. However, matters of concern needed to be reported, as this issue was of particular interest to the social partners. The suggested text agreed upon read as follows:

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 forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification. In the event that such deficiencies are considered by the authorized officer to be significant, or relate to a complaint made in accordance with paragraph 3, the authorized officer shall bring the deficiencies to the attention of the appropriate seafarers' organization in the Member in which the inspection is carried out and the shipowners' organization of the flag State, and may:

- (a) notify a representative of the flag State,
- (b) provide the competent authorities of the next port of call with the relevant information.

- 1120.** The Government member of Norway recalled that an informal working group had been set up to consider the changes that might be made to paragraph 4, taking into account the views expressed during the discussion of amendment D.41. Following his earlier presentation of the text proposed by the informal working group, there had been further consultations, during which agreement had been reached on the following text:

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 forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification. In the event that such deficiencies are considered by the

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authorized officer to be significant, or relate to a complaint made in accordance with paragraph 3 of this Standard, the authorized officer shall bring the deficiencies to the attention of the appropriate seafarers' and shipowners' organizations in the Member in which the inspection is carried out, and may:

- a) notify a representative of the flag State;
- b) provide the competent authorities of the next port of call with the relevant information.

- 1121.** The speaker explained that the changes to the text were intended to take into account the real administrative burden on States. The changes consisted of the addition of the phrase “in accordance with paragraph 3 of this Standard”. A further change concerned the phrase “in the Member in which the inspection is carried out”, to provide guidance as to the shipowners' and seafarers' organizations which were to be informed. He added that the first level of notification was with the master of the ship, which was considered to be appropriate for the type of deficiencies addressed in paragraph 4.
- 1122.** The Employer and the Worker Vice-Chairpersons accepted the text of the revised amendment.
- 1123.** The Government members of Egypt, Japan, Republic of Korea, Nigeria and Pakistan accepted the text proposed by the informal working group.
- 1124.** The Government member of the United Kingdom, speaking on behalf of the Government members of the Committee Member States of the European Union, stated that the proposal of the informal working group differed significantly from the original amendment and would involve an additional burden for seafarers, shipowners, flag States and port States. However, his delegation had participated in the deliberations of the informal working group in a constructive frame of mind. In that spirit, he was prepared to agree reluctantly to the proposed text.
- 1125.** The Government members of Malaysia and Singapore indicated that, although the proposed text departed from current PSC practices, they could support it.
- 1126.** The Government member of France, while supporting the text, drew attention to the French translation of the term “more detailed inspection”, which occurred on several occasions in the instrument. The correct term in French would be “inspection plus détaillée”.
- 1127.** The Government member of Benin also supported the text and drew attention to a drafting error in the French version.
- 1128.** The Government member of Argentina supported the proposed text and drew attention to two drafting points in the Spanish version, including the translation of the term “detailed inspection” and the inclusion of the word “and” between subparagraphs (a) and (b).
- 1129.** The text proposed by the informal working group was adopted and amendment D.41 consequently fell.
- 1130.** Standard A5.2.1, paragraph 4, was adopted as amended.
- 1131.** Standard A5.2.1, paragraph 5, was adopted without amendment.
- 1132.** The Chairperson opened a general discussion on the issues raised in amendment D.31, which was sponsored by the Government members of Australia, China, Japan, Republic of Korea, Russian Federation and Singapore and sought, in the last sentence of

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Standard A5.2.1, paragraph 6, after the words “shall also inform”, to delete the word “forthwith”.

- 1133.** The Government member of Japan recalled that the paragraph covered cases in which authorized officers uncovered breaches during their inspections which were grave and required the ship to be detained in port and the types of procedures to be followed in such cases. The term “forthwith” was used on two occasions. In the first case, if the ship was prevented from sailing, the authorized officer was under the obligation to notify the flag State forthwith and to request it to reply within a prescribed deadline. In such cases, immediate notification was justified. The second time the term was used, however, it related to the authorized officer’s informing the appropriate shipowners’ and seafarers’ organizations in the port State. The question was one of timing and amount of information. If information were provided immediately, it would be incomplete and would not include, for example, elements contained in the reply of the flag State. Bearing in mind that paragraph 4 already required the appropriate seafarers’ and shipowners’ organizations to be duly notified of observed deficiencies, the obligation under paragraph 6 constituted a second notification, for which fuller information would naturally be required. It was therefore proposed that the second “forthwith” should be deleted.
- 1134.** The Employer Vice-Chairperson supported the proposal.
- 1135.** The Worker Vice-Chairperson recalled that the present provision had been discussed at great length at the PTMC and again at the Intersessional Meeting in 2005, where the present wording of the paragraph had been proposed by the Government members present, including the Government member of Japan. He therefore believed that the proposed amendment constituted a serious breach of an agreement that had been reached on a delicate package of provisions and was therefore provocative.
- 1136.** The Government member of the United Kingdom, speaking on behalf of the Government members of the Committee Member States of the European Union, supported the comments made by the Workers’ group and accordingly opposed the proposed amendment. Paragraph 6 concerned very serious cases justifying the ship’s detention and was therefore very different from cases of non-conformity covered by paragraph 4.
- 1137.** The Government members of Benin, Canada, Ghana, Namibia, New Zealand and South Africa preferred the Office text.
- 1138.** The Government member of Japan denied that the proposal was intended to be provocative. The concern of the sponsors was that full and reliable information be provided to the organizations concerned. There might be cases in which the detention of a ship was based on erroneous information which, if provided forthwith to shipowners’ and seafarers’ organizations, would tend to aggravate the situation.
- 1139.** The Employer Vice-Chairperson withdrew his support for the proposal.
- 1140.** The Government members of Australia and Singapore, as co-sponsors of the amendment, withdrew their support.
- 1141.** The Government member of Japan, noting that there was little support for the proposal, withdrew amendment D.31.
- 1142.** Standard A5.2.1, paragraph 6, was adopted without amendment.
- 1143.** Paragraphs 7 and 8 of Standard A5.2.1 were adopted without amendment.

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- 1144.** Standard A5.2.1 was adopted as amended.
- 1145.** The Government member of the Russian Federation withdrew amendment D.33.
- 1146.** Guideline B5.2.1, paragraph 1, was adopted without amendment.
- 1147.** Guideline B5.2.1 was adopted without amendment.
- 1148.** Regulation 5.2.2 was adopted without amendment.
- 1149.** Standard A5.2.2 and Guideline B5.2.2 were adopted without amendment.

### **Regulation 5.3**

- 1150.** Paragraphs 1 and 2 were adopted without amendment.
- 1151.** The Government member of Australia, on the basis of the clear advice provided by the Office that paragraph 3 would not require the establishment of a specific regulatory framework, withdrew amendment D.22.
- 1152.** The representative of the Secretary-General explained that Regulation 5.3, paragraph 3, did not include an obligation for a Member to establish a specific regulatory framework where it did not have specific recruitment and placement services for seafarers.
- 1153.** Regulation 5.3, paragraph 3, was adopted without amendment.
- 1154.** Paragraph 4 was adopted without amendment.
- 1155.** Regulation 5.3 was adopted without amendment.
- 1156.** Standard A5.3 and Guideline B5.3 were adopted without amendment.
- 1157.** Title 5 was adopted as amended.

### **Appendices A5-I, A5-II, A5-III and B5-I**

- 1158.** Appendices A5-I and A5-II were adopted without amendment.
- 1159.** The Chairperson opened a general discussion on the issues raised in amendment D.25, which was sponsored by the Government members of Norway, Portugal and Sweden, and sought to delete the words “Payment of wages” from Appendix A5-III.
- 1160.** The Government member of Norway signalled the sponsors’ intention to withdraw the amendment, but wished to explain its reasoning. The amendment was not about the payment or non-payment of wages, but rather about port state control. Appendix A5-III provided a list of general areas that were subject to port state inspection. With the exception of “payment of wages”, all the items on that list could either be inspected on board or were documented on board. Seafarers’ wages did not fall into this category of items however. Seafarers’ wages went into bank accounts on shore and while seafarers might keep monthly bank statements on board, these were private documents that they could not be obligated to share. Companies’ accounts confirming the transfer of wages were not available on the vessel either. This made it difficult to find confirmation on the vessel that wages had been paid. In addition, the wide scope of the definition of “seafarer”



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created problems. A number of seafarers covered by the proposed Convention were not employed by the shipowner. It would, therefore, be impossible to require that their information should be shared with the captain or the shipowner. Non-payment of wages was a serious problem, but it was addressed through the Convention's complaint procedures. Therefore, the speaker's delegation wished to state, for the record, that when implementing the Convention, Norway would understand that ships would not be required to carry wage accounts on board for all seafarers. Norway would implement the Convention nationally on the understanding that ships were not required to carry wage accounts on board, and in doing so would cooperate with other Paris MOU States. On a separate issue, the speaker noted that Appendices A5-I and A5-III were identical. The Committee might wish to ask the Drafting Committee to combine them into a single appendix.

- 1161.** The Worker Vice-Chairperson noted that non-payment of wages was a serious issue and needed to be addressed. The International Transport Workers' Federation (ITF) had recovered tens of millions of dollars of back pay annually in recent years and these sums represented only the tip of the iceberg. Therefore, the speaker was pleased that the amendment would be withdrawn and appreciated the recognition given to this issue. Referring to the proposal to combine Appendices A5-I and A5-III, it would be best to keep them separate. Although the appendices were identical at this time, they might evolve separately in future.
- 1162.** The Government member of Norway withdrew amendment D.25.
- 1163.** Appendices A5-III and B5-I were adopted without amendment.
- 1164.** All Appendices were referred to the Drafting Committee for its consideration.
- 1165.** The representative of the Secretary-General indicated that the Drafting Committee, in its review of Appendix A5-II, had noted that the Declaration of Maritime Labour Compliance – Part II included only the signature of the certifying authority and sought to know whether Part II of the Declaration had also to be signed by the shipowner responsible for drawing up the measures contained therein.
- 1166.** The Employer Vice-Chairperson was in favour of including the signature of the shipowner, or the shipowner's authorized representative, such as the master. The Worker Vice-Chairperson and the Government member of the United Kingdom agreed.

## **Closing remarks**

- 1167.** Recalling the task that the President of the Conference had given to the Committee of the Whole at the start of the session, the Chairperson was pleased to report to the President of the Conference that the Committee had proved itself equal to the task. It had successfully produced the final text of a proposed consolidated maritime Convention.
- 1168.** The Employer Vice-Chairperson said it was a miracle that a group as large as the Committee of the Whole, dealing with issues that covered the entire working life of a seafarer, had been able to complete its work in the time allotted. It had been a truly remarkable series of meetings. The expertise demonstrated throughout the discussions had been exceptional. The Committee had been successful in finding consensus among Governments, Employers and Workers on charting the direction the maritime industry should take in the decades to come. The speaker thanked his Government and Worker colleagues for their contributions.

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- 1169.** The Worker Vice-Chairperson thanked the Office for its work. Although the Workers' group had been ready to adopt the proposed Convention two weeks earlier, the work of the Committee had made the text even better. The first judgment of the text would come from Governments as they considered ratifying the Convention. Ultimately, however, it was seafarers who would judge the Convention, which the Workers' group still regarded as a seafarers' bill of rights. In thanking his colleagues on the Committee, the speaker expressed his special appreciation of the contribution of the Employer Vice-Chairperson, to whom much of the success of the drafting of the proposed Convention could be attributed. Finally, the speaker stated he was confident of a favourable vote on the adoption of the Convention.
- 1170.** The Government member of Greece compared the consolidation exercise to the voyage of Odysseus. Now, the Committee found itself only metres away from the home port of Ithaca. He added that as long as the maritime industry existed, Greece would continue to be present and active in efforts to improve the industry.
- 1171.** The Government member of the United Kingdom expressed what he believed were the sentiments of a great many European countries in paying tribute to the strong leadership, enthusiasm and endurance of the Chairperson. He also thanked his colleagues, the Employer and Worker Vice-Chairpersons.
- 1172.** The Government member of Argentina stated that 30 years ago her country's Minister of Labour had come to this city to work towards the adoption of Convention No. 147. This Argentine delegation was proud to have participated in the work preceding the adoption of the new consolidated Convention. She expressed the hope that the hard work accomplished by the Committee would benefit that important group of workers who were the focus of the Committee's concern – the seafarers of the world.
- 1173.** The Government member of the Philippines expressed her heartfelt thanks to the President of the Conference, the Chairperson and Friends of the Chair, her fellow Committee members, as well as to the representative of the Secretary-General and all the members of the secretariat, who had heard the concerns of her delegation and had provided assistance in seeking a solution to meet those concerns.
- 1174.** The Government representative of Cyprus noted the strong alliance that had formed between the Employers and Workers during the Committee's work. He hoped this alliance would continue.
- 1175.** The Chairperson recalled that at the beginning of the Conference he had felt himself at the start of a "long and winding road". Later, he felt that it was more of a "magical mystery tour". He thanked the Office for the excellent preparation of the Conference, and thanked his colleagues for having given him the opportunity to serve as Chairperson of the Committee. It had been a pleasure, an honour and a privilege. He expressed his particular appreciation for the Employer Vice-Chairperson's consummate professionalism, and for the extraordinary talent, leadership and personality of the Worker Vice-Chairperson. He was grateful, too, for the valuable contributions of the Chairperson and Vice-Chairperson of the Government group, and voiced his great respect for the President of the Conference. Finally, to the representative of the Secretary-General, who had approached him four years earlier to request his assistance in this consolidation exercise, he wished to say most sincerely: "Thanks for bringing me along."
- 1176.** The report of the Committee is submitted to the Conference for consideration.

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Geneva, 22 February 2006.

*(Signed)* Bruce Carlton,  
Chairperson.

F. Abdel Hamid Elsayed,  
Reporter.

D. Bell,  
Reporter.

G. Boumpopoulos,  
Reporter.

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# Report of the Drafting Committee of the Tenth Maritime Conference

## General

The Committee noted and took action, as appropriate, on all requests of the Committee of the Whole pertaining to specific drafting changes in the French text and the Spanish version of the Convention.

In all provisions in which the term “the competent authority” appeared as the sole referent for “ships that fly its flag”, the Drafting Committee replaced the term “competent authority” with words referring to the Member whose flag was being referred to, such as “the competent authority of the Member”.

The Drafting Committee decided not to replace the term “sex” with “gender” in the English text given the context and use of the former term in existing ILO instruments as well as in the Convention, in particular in relation to freedom from discrimination and equal access (Guideline B2.2.2, paragraph 4(a); Standard A4.4, paragraph 1; and Guideline B4.4.2, paragraph 7) and to maritime labour market information (Guideline B1.4.1, paragraph 1(e)).

## Articles

### *Article II*

#### Paragraph 1(a)

In response to a request by the Committee of the Whole relating to paragraph 1(a) of Article II of the English text, the Drafting Committee decided that it was not necessary to replace the word “authority” with “authorities” since the term “other authority” already in the text had a generic meaning which could be applied in either the singular or plural sense.

#### Paragraph 1(j)

At the request of the Committee of the Whole, the Drafting Committee prepared a wording for the definition of “shipowner” in accordance with the terms of reference provided by the Committee of the Whole. In particular, the Drafting Committee was asked to ensure the identification of a single person as the responsible shipowner in respect of all of the obligations imposed on the shipowner under the Convention, irrespective of any subcontracting or other such arrangements.

#### Paragraph 4

In paragraph 4 of Article II, the Drafting Committee was requested to review the French text and the Spanish version of amendment C.PI/D.10 relating to Article II, paragraph 4, for alignment with the English text. It was decided to replace the term “affectés à la navigation maritime commerciale” with the term “affectés à des activités commerciales” and in Spanish the phrase “la navegación marítima comercial” with the phrase “las actividades comerciales”.

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At the end of paragraph 4 of Article II, the Drafting Committee added the sentence “This Convention does not apply to warships or naval auxiliaries” in response to a request of the Committee of the Whole to add wording similar to that in Article III(a) of the STCW-95 Convention, namely “warships and naval auxiliaries”.

## **Article XV**

In paragraph 2 of Article XV, the Drafting Committee added the words “of Members” after “five governments” and before “that have ratified the Convention” since it is member States, not governments, that, strictly speaking, ratify Conventions. The Committee decided it was not necessary to clarify the provision on proposal or support by “at least five governments of Members that have ratified the Convention” since, in the context of the first sentence and Article XIII, it was sufficiently clear that, when a government of a Member that has ratified the Convention has proposed an amendment, only four additional governments that have ratified the Convention are needed to further support or join in the proposal; conversely, when a government of a Member that has not ratified the Convention has proposed an amendment, five governments that have ratified the Convention are needed to support or join in the proposal.

## **Explanatory note**

The Drafting Committee noted that the term “ratifying Member” defined in Article XV, paragraph 6, had a specific and narrow meaning which was not the same as that intended in paragraphs 9 and 10 of the explanatory note. It therefore replaced the term “ratifying Member” in those paragraphs with the term “Member which has ratified this Convention”, which it considered more appropriate, especially in view of the use of the latter term elsewhere in the Convention.

## **Title 1**

### **Standard A1.2 – Medical certificate**

In paragraph 10 of Standard A1.2 in the English text, the term “ships ordinarily engaged in international trade” was replaced by “ships ordinarily engaged on international voyages” in view of the use of the term “international voyage” elsewhere in the Convention, including a definition provided for the purpose of Regulation 5.1.3 (Standard A4.1, paragraph 4(b); Regulation 5.1.3, paragraph 1(a); Standard A5.1.3, paragraph 13). The Committee considered that the replacement gave effect to the intent expressed in the proposed term “international trade” which was not otherwise used or defined within the Convention.

### **Regulation 1.3 – Training and qualifications**

At the request of the Committee of the Whole, the Drafting Committee included a new paragraph 4 in Regulation 1.3, and clarified the intent that the date of entry into force of mandatory provisions covering the subject matter, if adopted by the International Maritime Organization, was the first date referred to.

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## **Title 2**

### ***Guideline B2.5.2 – Implementation by Members***

In Guideline B2.5.2, the Drafting Committee added a reference in paragraph 2(a)(ii) to the “State of nationality or State of residence, as appropriate” and a reference in paragraph 3 to the State of residence of the young seafarer in order to align those paragraphs with paragraph 1 of the same Guideline as adopted by the Committee of the Whole.

### ***Standard A2.8 and Guideline B2.8.1***

Noting that paragraph 2 of Guideline B2.8.1 contained essentially the same meaning as paragraph 3 of Standard A2.8, the Drafting Committee decided to delete paragraph 2 of that Guideline and consequentially to replace the term “competent authority” in paragraph 3 of the Standard with the words “each member State” from the Guideline.

## **Title 3**

### ***Standard A3.1 – Accommodation and recreational facilities***

In paragraph 2 of Standard A3.1, in order to give effect to the intention that advance consultation was to take place in both situations contemplated by subparagraphs (a) and (b) of paragraph 2, the Drafting Committee moved the reference to consultation into the chapeau, thus aligning the French and English versions.

### ***Guideline B3.1.11 – Recreational facilities, mail and ship visit arrangements***

In paragraph 4(j) of Guideline B3.1.11, the word “any” before charges was added in order to avoid the possible implication that there should always be charges for the services concerned.

## **Title 5**

### ***Standard A5.1.3 – Maritime labour certificate and declaration of maritime labour compliance***

In paragraph 10 of Standard A5.1.3, as requested by the Committee of the Whole, the Drafting Committee placed an additional provision stating that any exemption granted by the competent authority as provided in Title 3 was to be clearly indicated on Part I of the declaration of maritime labour compliance, and restructured the paragraph accordingly.

### ***Guideline B5.1.3 – Maritime labour certificate and declaration of maritime labour compliance***

As a consequence of the change made to Standard A5.1.3, paragraph 10, a sentence was added by the Drafting Committee at the end of paragraph 1 of Guideline B5.1.3,

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which read: “Where an exemption is granted by the competent authority as provided in Title 3, the particular provision or provisions concerned should be clearly indicated.”

In paragraph 2 of Guideline A5.1.3, the words “drawn up by the shipowner” were added to align the text with the description of the measures referred to in Part II of Appendix A5-II.

#### ***Standard A5.1.4 – Inspection and enforcement***

At the request of the Committee of the Whole, the Drafting Committee revised paragraph 9 of Standard A5.1.4 by deleting the word “warnings” in the first sentence, replacing the words “the breach of the standard does not endanger” with the words “there is no clear breach of the standard that endangers”, and by deleting the second sentence in accordance with the amendment adopted.

In paragraph 13 of Standard A5.1.4, the Drafting Committee added the words “not exceeding six months” after the words “reasonable time” in order to comply with a request of the Committee of the Whole.

#### ***Guideline B5.1.4 – Inspection and enforcement***

As requested by the Committee of the Whole, the Drafting Committee clarified the wording of paragraph 10 of Guideline B5.1.4 by adding after “published by the competent authority” the words “of any Member in respect of ships that fly its flag”.

#### ***Standard A5.2.1 – Inspections in port***

In paragraph 4 of Standard A5.2.1 in the English text, the Drafting Committee added the words “if they” before “relate to a complaint” to clarify the intention of the Committee of the Whole that the authorized officer shall take the required action if the deficiencies relate to a complaint made in accordance with that paragraph 3.

#### ***Guideline B5.2.1 – Inspections in port***

In paragraph 2 of Guideline B5.2.1, the Drafting Committee replaced the term “serious breach” with “breaches referred to”, in view of the content of the paragraph and the order of the terms “serious or repeated breach” in the text of paragraph 6(b) of Standard A5.2.1 as adopted.

#### ***Guideline B4.4.6 – Seafarers in a foreign port***

In paragraph 1(a) of Guideline B4.4.6, a reference to the State of residence of the seafarer was added as a consequence of the addition of such a reference to paragraph 1 of Guideline B2.5.2 as adopted by the Committee of the Whole.

### **Appendix A5-II**

In the section in Appendix A5-II identifying the issuing authority at the beginning of the maritime labour certificate and the interim maritime labour certificate, the Drafting Committee replaced the word “person” with the word “authority” and added “recognized” before “organization” to align the content of the certificate with Standard A5.1.3, paragraph 1.

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In Part I of the declaration of maritime labour compliance, the Drafting Committee added a new section (d) stating “any exemptions granted by the competent authority in accordance with Title 3 are clearly indicated in the section provided for this purpose below” and inserted a new section concerning “Exemptions in accordance with Title 3” following the section concerning “Substantial equivalencies”. As requested by the Committee of the Whole, these revisions aligned the declaration with Regulation 5.1.3, paragraph 10, as amended.

In accordance with a request agreed on the floor of the Committee of the Whole, the words “seal or stamp of the authority, as appropriate” were added at the bottom of the applicable sections to the Declaration.

In the declaration of maritime labour compliance, Part II, the Drafting Committee, following a clarification of the Committee of the Whole which it had requested, added a section for signature of the shipowner or its authorized representative certifying that the measures drawn up were adopted to ensure ongoing compliance, between inspections, with the requirements listed in Part I.

In all relevant parts of the certificate, declaration and interim certificate, to facilitate ease of use, the Drafting Committee replaced the reference to Article II, paragraph 1(j), of the Convention with a footnote incorporating the definition of “shipowner” as found in that provision of the Convention.

## **Appendix B5-I**

In the example provided in Appendix B5-I, the Drafting Committee incorporated the changes required as a consequence of the corresponding revisions to the model found in Appendix A5-II (see above).



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