
INTERNATIONAL LABOUR ORGANIZATION

PTMC/04/3-1

Report of Committee No. 1

Preparatory Technical Maritime Conference

Geneva, 13-24 September 2004



INTERNATIONAL LABOUR OFFICE GENEVA

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ISBN 92-2-116770-4

First published 2004

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Report of Committee No. 1

1. Technical Committee 1 of the Preparatory Technical Maritime Conference, tasked with addressing the Preamble, Articles, Explanatory note and Title 5 (including appendices) of the Recommended draft consolidated maritime labour Convention, held its first sitting on 14 September 2004. It was originally composed of 88 members (64 Government members, 19 Seafarer members and five Shipowner members). To achieve equality of voting strength, each Government member entitled to vote was allotted 95 votes, each Seafarer member 320 votes and each Shipowner member 1,216 votes. The composition of the Committee was modified four times during the session and the number of votes attributed to each member was adjusted accordingly.¹

2. The Committee elected its Officers as follows:

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| <i>Chairperson:</i> | Mr. B. Carlton (Government member, United States) |
| <i>Vice-Chairpersons:</i> | Mr. Y.W. Jeon (Government member, Republic of Korea) |
| | Mr. S. Hajara (Shipowner member, India) |
| | Mr. B. Orrell (Seafarer member, United Kingdom) |
| <i>Reporter:</i> | Mr. B.M. Shinguadja (Government member, Namibia) |

3. The Committee held 13 sittings.

4. The Committee had before it the Recommended draft consolidated maritime labour Convention (PTMC/04/1) and the Commentary to the recommended draft (PTMC/04/2).

¹ The modifications were as follows:

- (a) 15 September: 78 members (67 Government members entitled to vote with 30 votes each, 6 Seafarer members with 335 votes each and 5 Shipowner members with 402 votes each);
- (b) 16 September: 80 members (69 Government members entitled to vote with 10 votes each, 6 Seafarer members with 115 votes each and 5 Shipowner members with 138 votes each);
- (c) 18 September: 81 members (70 Government members entitled to vote with 3 votes each, 6 Seafarer members with 35 votes each and 5 Shipowner members with 42 votes each);
- (d) 21 September: 82 members (71 Government members entitled to vote with 30 votes each, 6 Seafarer members with 355 votes each and 5 Shipowner members with 426 votes each).

Introduction

5. The Chairperson thanked the Committee for his election and recalled the Committee's mandate, which was to consider the Preamble, Articles, Explanatory note, and Title 5 (including appendices) of the Recommended draft consolidated maritime labour Convention and submit a draft text to the plenary of the Preparatory Technical Maritime Conference for adoption. The time available was very limited and it was important to focus on the essential. Following consultations with the Officers, it had been decided to consider the parts of the recommended draft that came within the Committee's mandate in the following order: Articles III, VI, VII, II, V, X, VIII, XIV and XV; the Preamble; Title 5 and the appendices.
6. The deputy representative of the Secretary-General introduced the documents before the Committee, namely the Recommended draft consolidated maritime labour Convention (PTMC/04/1) and the accompanying Commentary to the recommended draft Consolidated Maritime Labour Convention (PTMC/04/2), and fully explained the procedures the Committee would be following to accomplish its work. The Committee's report would be adopted in a plenary sitting on the penultimate day of the Conference.

General discussion

7. The Shipowner Vice-Chairperson expressed the Shipowners' commitment to the success of the Committee's work, emphasizing that a successful new consolidated Convention would help to create a level playing field and would be beneficial to both shipowners and seafarers. A new instrument had to be easy to understand, ratify, comply with, update and enforce. While agreeing that the level of protection provided under existing standards should not be diluted, it was essential that the new instrument, if it were to be useful at all, be ratifiable by the largest possible number of member States.
8. The Seafarer Vice-Chairperson indicated that the Seafarers' group was broadly supportive of many of the provisions contained in brackets in the recommended draft of the Articles. However, there were a number of problems, some of which gave rise to fundamental concerns, for example Article II, paragraph 6, which dealt with the possible exclusion of many seafarers from the Seafarers' Bill of Rights.
9. The Reporter drew attention to a number of specific concerns raised within the Government group. It was generally felt that Article II, paragraph 4 needed to indicate clearly that it did not cover commercial ships temporarily engaged in military activities or similar activities. With regard to Article II, paragraph 4(a), the question arose as to whether there should be a tonnage limitation and if so what it should be; the question was also related to Title 3 and Title 5. Regarding Article II, paragraph 6, there were concerns about the question of national flexibility and the ability to exclude ships engaged in certain kinds of trade and voyages such as a domestic coasting trade. There were certain concerns about the question of "fundamental rights" in Article III. The issue of regulating recruitment and placement services in Article V, paragraph 5, had also raised certain concerns. It was also related to Regulation 1.4 and the Title 5 appendices. With regard to Article VI, paragraph 4, the question of "substantial equivalence" seemed less controversial than it had before, but further discussion was still needed. Title 5 had been the cause of a number of specific concerns, including: use of classification societies/recognized organizations; the issues that needed to be subject to certification and inspection; onshore complaints procedures; and the need for a clear link between the text and the appendices. Many governments were very concerned about potential administrative burdens and the need for capacity building and training to enable Members to implement the provisions of Title 5.

Preamble²

10. The Seafarer Vice-Chairperson indicated that, in view of the different opinions on the reference to Article 217 of the United Nations Convention on the Law of the Sea because of its link to pollution control, his group would accept its deletion.
11. The Committee agreed that the reference to Article 217 of the United Nations Convention on the Law of the Sea should be deleted, and that a minor editorial change be made to the title of that Convention.
12. Considering the decision that the reference to the ILO Declaration on Fundamental Principles and Rights at Work, 1998, should be moved to the Preamble, the Committee requested the Drafting Committee determine where and how it should be included.
13. In connection with a Recommendation on Article III, the Drafting Committee proposed to insert a new paragraph after the third paragraph of the Preamble – “Mindful of the core mandate ... conditions of work, and” – with the following text: “Recalling the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and”.
14. The Chairperson announced that no amendments had been submitted to the wording suggested by the Drafting Committee. The Committee adopted this text and its placement.

Article II – Definitions and scope of application

Paragraph 1, subparagraph (e)

15. The Shipowner Vice-Chairperson found the suggested text of Article II paragraph 1, subparagraph (e) acceptable and proposed removing the brackets and adopting the text.
16. The Seafarer Vice-Chairperson supported the suggestion to remove the brackets, as the text provided the necessary clarity. This suggestion was also supported by the Government member of Argentina.
17. The Government member of Greece said that he had no objection for the removal of the brackets but he pointed out that the word “Code”, which appeared for the first time in Article II, had not been defined. He therefore proposed that an appropriate definition should be included in the Convention, although not necessarily in Article II.
18. The Government member of Denmark argued that there was no need for such a definition, as this would have consequences in the enforcement part of the Convention.
19. The Shipowner Vice-Chairperson agreed that there was no need for such a definition because of the existence of the “Explanatory note to the Regulations and Code of the maritime labour Convention”. This position was supported by the Government member of the United Kingdom and the Seafarer Vice-Chairperson.
20. The Government member of Spain drew attention to the fact that the word “Code” did not appear in the Spanish version of the text.

² This report follows the order of the recommended draft. It does not necessarily reflect the order in which topics were discussed in the Committee.

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21. The Chairperson proposed that this issue could be resolved by having a reference in Article II, paragraph 1, subparagraph (e) to Article VI (Regulations and Part A and Part B of the Code). He also assured that the Spanish version would be corrected.
 22. The Government member of Greece agreed not to include a definition because it appeared that the majority was satisfied without one. However, he pointed out that the Explanatory note would not be part of the Convention.
 23. The Chairperson, in view of the broad consensus, proposed to remove the brackets from Article II, paragraph 1, subparagraph (e) and not to include a definition for the word "Code" The Committee agreed.

Paragraph 4, subparagraph (a)

24. The Shipowner Vice-Chairperson proposed keeping the text of Article 2, paragraph 4, subparagraph (a) and to limit the scope of the Convention to ships of more than 500 gross tons.
25. The Seafarer Vice-Chairperson said that the rights of seafarers should not be related to the size of the ship they work on; issues such as hours of work and minimum working conditions were not tonnage related. He therefore proposed that subparagraph (a) be removed.
26. The Government member of the United Kingdom agreed. It was of fundamental importance to protect seafarers with this Convention. He suggested introducing size limits of ships in Titles 3 and 5, as the absence of such limits in some cases would create a serious burden to the governments for regular inspection.
27. The Government member of the Netherlands stated that seafarers had rights on small vessels as well but agreed with the Government member of the United Kingdom regarding the burden to the Governments for regular inspection of small vessels.
28. The Government member of Denmark also agreed that the Convention in principle should cover all ships regardless of size, but as the Government member of the United Kingdom had proposed, limits would be necessary in Title 5 except for passenger vessels because of the large number of seafarers that work on these. This position was supported by the Government members of Sweden, Germany and Norway.
29. The Government member of China said tonnage limits were important as there would be problems in fulfilling requirements for small ships. Other ILO Conventions such as the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) as well as IMO Conventions, included tonnage limits and this Convention should contain a limit of 500 gross tons.
30. The Government members of Argentina, Indonesia, Japan, Pakistan, Russian Federation, Singapore and Tunisia agreed with the Government member of China.
31. The Government member of France supported the deletion of subparagraph (a) and suggested that the issue of tonnage limits should be examined in Titles 3 and 5.
32. The Government member of Brazil agreed with the Seafarer Vice-Chairperson and the Government member of the United Kingdom and indicated that the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) would be an interesting basis for discussion because it included a provision that the exclusion of certain sizes of ships could

be permitted in consultation with the most representative organizations of shipowners and seafarers. This suggestion was reiterated by the Government member of the United States.

33. The Shipowner Vice-Chairperson pointed out that he had no conflict with the philosophy of the Seafarer Vice-Chairperson that a seafarer was a seafarer irrespective of the tonnage of the ship. Nonetheless, a practical approach for encouraging maximum ratification was necessary in considering this issue. Further limiting ship size in Title 5, which was the only Title dealing with compliance and enforcement in the Convention, and having no minimum limits in the Articles, did not make sense.
34. The Government member of Liberia supported the deletion of subparagraph (a) and the subsequent inclusion of tonnage limits to other Titles as needed. It might be necessary to examine paragraph 6 to see if it would require rewording to ensure that member States had the right to institute a tonnage limit in certain circumstances. This position was supported by the Government members of Finland, India and Spain.
35. The Government member of the United Kingdom recalled that his position was not that this provision should be deleted completely, and thus not apply to any part of Title 5 on Compliance and enforcement. Rather, while this provision should not apply to obligations of member States under flag State responsibilities of Title 5, the provision should be applied to port state control. This change would only be relevant to Title 3 and Title 5.
36. The Shipowner Vice-Chairperson said the proposal of the Government member of the United Kingdom was completely unacceptable to the Shipowners' group. The Shipowners would rather have no tonnage limits applicable to Title 5 in its entirety rather than apply the provision of port state inspection and control without having flag state inspection and certification.
37. The Government member of the Republic of Korea said that the different existing Conventions had different scopes of application and it was necessary to have a tonnage limit in order to be in line with the present situation, and suggested adding a new paragraph requiring member States to establish seafarers' rights on vessels of less than 500 gross tons, in order to ensure seafarers were not deprived of rights they enjoyed under existing Conventions. To maintain consistency between paragraph 4 and Title 3, there would need to be an additional phrase at the end of paragraph 4 to the effect that "except as provided otherwise, this applies to all ships." This proposal was supported by the Government member of Singapore.
38. The Government member of China said that a number of Government members from the Asia-Pacific group supported the 500 gross tons limit. The Government members of Egypt and Morocco also expressed their support for this tonnage limit.
39. The Government member of Greece said a solution might be to modify paragraph 5 of Article II to give member States the right to determine specific regulations that would not apply to smaller vessels. The word "Convention" in paragraph 5 of Article II would therefore be changed to "Specific regulations" or "Titles."
40. The Government member of South Africa supported the deletion of subparagraph (a), as a limitation of tonnage might violate the South African Constitution and create a barrier to ratification.
41. The Seafarer Vice-Chairperson said it was essential for the Committee to ask itself if it really intended to adopt a Convention to protect seafarers and then proceed to exclude large numbers of seafarers and ships from its scope. In other specific contexts, the Seafarers' group had been willing to concede the need for tonnage limits, such as in Title 3, but in this instance it was important to ensure the provisions applied to all

seafarers. The problems faced by large Asian fleets that operated inshore where it would be difficult to bring conditions up to the required standard was a real issue. But it could not be resolved merely by excluding the large numbers of the seafarers concerned.

42. The Government member of Denmark reported on the deliberations of the Government group as regards paragraph 4, subparagraph (a). They had sought to accommodate the views of the Seafarers' group and the concerns of those governments that would have serious difficulty in ratifying the Convention if the tonnage limit were deleted. A way forward could be to include a flexibility clause in the body of the Convention. Such clauses existed in other Conventions. The tonnage limit would gradually decrease, and all ships would be covered by the Convention in a reasonable period of time. Countries, where the immediate application of the Convention to all ships would cause special and substantive problems in the light of the particular conditions of their maritime sector could, after consulting the social partners, lodge a declaration with the ILO at the time of ratification limiting application to ships of 500 gross tons or above. They would be required to take the necessary steps to reduce and eventually eliminate that limitation within a set period and to include information on such steps in their reports submitted under article 22 of the ILO Constitution. The time frame and exact wording of the flexibility clause had not yet been addressed. This flexibility procedure would include all titles.
43. The Shipowner Vice-Chairperson stated that his group was prepared to go along with the suggestion of the Government group.
44. The Seafarer Vice-Chairperson would seriously consider the proposal for a flexibility clause if the strong link to paragraph 6 were taken into account. Consideration should also be given to the time allowed for full compliance with the Convention, as proposed by the Government group. Examples should be identified rather than a general approach as in the case of the 500 gross tons limit.
45. This issue was not discussed further.

Paragraph 4, subparagraph (d)

46. The Shipowner Vice-Chairperson stated that the text in square brackets in Article II, paragraph 4, subparagraph (d) should be deleted, since the Convention should not apply to oil rigs and drilling platforms. The Government member of Norway agreed, stating that the suggested text would mean that during repositioning, a different legal regime would need to be applied to the same rig.
47. The Seafarer Vice-Chairperson noted that different types of mobile maritime drilling units existed, some with large seafarer crews and others with much smaller seafarer crews. In both cases, seafarers that were not covered by shore regulations needed to be identified and covered by the Convention.
48. The Government member of the United Kingdom stated that fixed rigs were treated as land-based structures and, as such, were not under the jurisdiction of the maritime authority. When rigs were not drilling but were being moved they were treated as vessels. The suggested text should be kept, allowing the provisions to be applied to rigs in movement and excluding fixed rigs.
49. The Seafarer Vice-Chairperson reiterated that seafarers were still present on board mobile maritime offshore units even when fixed, and suggested examining the formulation concerning seafarers serving on maritime mobile offshore units found in Article I, paragraph 2 of the Recruitment and Placement of Seafarers Convention, 1996 (No. 179).

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- 50.** The Government member of the Netherlands drew the attention of the Committee to the dredging sector, which, according to the present definitions for “seafarer” and “ship”, would fall in the ambit of the Convention. Dredgers were seagoing vessels registered as ships and had certificates of seaworthiness. While suction dredgers were not self-propelled, mostly worked in a stationary position in ports and could not navigate, hopper dredgers were self-propelled. Due to their special structure, they would not satisfy the requirements of the Convention relating to accommodation or other provisions. Suction dredgers should, be exempted from the Convention, and appropriate flexibility regarding accommodation requirements should be applied for hopper dredgers.
- 51.** The Seafarer Vice-Chairperson felt that these concerns were sufficiently covered in paragraph 1, subparagraph (i), and paragraph 5.
- 52.** The Government member of Mexico suggested deleting the text in square brackets in paragraph 4, subparagraph (d). The main purpose of drilling platforms was the exploration and production of petroleum, not navigation. If these platforms were treated as ships, any person employed on-board, including drilling and other petroleum specialists, would need to be considered to be a seafarer in accordance with Article II paragraph 1(i). However, provisions such as wages, port state inspection, working conditions and working schedules were not applicable to them. The Government of Mexico would not be able to ratify the Convention if the suggested wording was allowed to remain. The Government members of Denmark and Norway supported the deletion of the text in square brackets.
- 53.** The Government member of the Republic of Korea pointed out that the suggested wording originated from Article I paragraph 4(c) of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Since this wording created a volatile legal situation, the subparagraph (d) should read “permanently fixed oil rigs and drilling platforms”. Personnel on-board platforms other than seafarers could be excluded according to paragraph 3, after consultation.
- 54.** The Seafarer Vice-Chairperson deemed the proposal by the Government member of the Republic of Korea to be helpful, since fixed drilling platforms needed to be distinguished from self-powered mobile platforms. Since his group wanted all seafarers on moveable platforms to be protected, even while these units were anchored to the seabed and drilling, it would only agree with the deletion of the bracketed text, if they were adequately protected as other workers on platforms. A situation where seafarers on moveable platforms would be treated as seafarers under IMO instruments (e.g. the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) and the International Safety Management Code, 1998), but would not fall under this Convention and would not be adequately covered otherwise, needed to be avoided.
- 55.** The Government member of the United Kingdom stressed that moving mobile offshore drilling units were considered ships under IMO regulations, as well as in ILO Conventions Nos. 147 and 178.
- 56.** The Government member of Norway did not support the proposal by the Government member of the Republic of Korea. The act of navigation should not automatically lead to a different legal regime for one and the same activity. Therefore, the concept of temporary application of the Convention needed to be abolished. The Government member of Mexico supported this position.
- 57.** The Government member of Qatar suggested that the whole of subparagraph (d) should be deleted, since working conditions on oil rigs and platforms were generally better than on ships. The Seafarer Vice-Chairperson expressed interest for this proposal.

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- 58.** The Committee set up a tripartite Working Party on this issue comprising Government members from Mexico, Norway and the United Kingdom; Shipowner members from Denmark, France, Mexico and Norway; and Seafarer members from the Netherlands, Norway and Sweden.
 - 59.** The Government member of Norway reported that in its first discussion the Working Party had identified six possible options: (1) adopting the text without the bracketed text; (2) adopting the text with the bracketed text; (3) deleting subparagraph (d) thus rendering the instrument silent on the question of oil rigs and drilling platforms; (4) introducing a clause to the effect that the Convention applied to oil rigs and drilling platforms where a coastal State did not itself regulate in this area; (5) reducing the scope of the term “seafarer” so that persons working on such vessels were no longer defined as seafarers; and (6) removing the square bracketed text and asking the Office to develop a new instrument to cover persons engaged in such offshore activities. The Office had indicated that the sixth option would not be feasible in the short term, while the fourth and fifth options had been rejected by the Seafarers as likely to reopen discussion on unbracketed text that was considered mature.
 - 60.** The Shipowners in the Working Party had wanted to delete the text in brackets, on the grounds that adequate consultations with those engaged in oil exploration and production had not taken place, and that inclusion of persons engaged in work on-board oil rigs and drilling platforms would necessitate a re-examination of all the Titles in this light. The Seafarers wanted the bracketed text included, in accordance with their position that all seafarers should be covered by the instrument, although it did not, in their view, go far enough, since seafarers would be covered only when the vessel was navigating, even though they might be working on-board the entire time. Of the three governments represented, one had wanted the text in brackets to be included, while two favoured deletion of the bracketed text.
 - 61.** He concluded that the Working Party had done as much as had been possible within its remit.
 - 62.** The Shipowner Vice-Chairperson added that the inclusion of the bracketed text would lead to difficulties because of the existence in States of differing regimes to cover workers on-board vessels in these various circumstances.
 - 63.** The Seafarer Vice-Chairperson suggested that the Working Party should re-examine the issue with the participation of the IMO, as it had great experience in the application of maritime instruments in the area of mobile maritime offshore units. Although it was clear that different countries had different regimes, the important thing was to ensure that all seafarers were adequately protected and to recognize that some people employed on offshore rigs were in fact seafarers.
 - 64.** The Government member of Mexico supported this suggestion. The emphasis needed to be on formulating a text that would ensure all seafarers on rigs were covered by the Convention, while excluding all those who were not seafarers.
 - 65.** It was agreed that the Working Party should reconvene, with some written suggestions from the Office. At the suggestion of the Government member of the United Kingdom, it was agreed that one or two additional Government members could participate, in view of the divergent views of the three existing Government members.
 - 66.** The Government member of Norway said that the Working Party had at first not reached a common position. The Seafarers’ group had proposed a new draft, which had not been accepted by the Shipowners and was considered problematic by the Government members. Finally, the Working Party suggested deleting paragraph 4, subparagraph (d) in its

entirety, thereby leaving the Convention silent on this issue. This would mean States could apply the provisions fully, partially or not at all to these vessels, at their discretion.

67. The Chairperson thanked the Working Party for its considerable efforts in resolving successfully what had been a difficult issue.
68. The Committee agreed to delete paragraph 4, subparagraph (d)

Paragraph 6

69. The Shipowner Vice-Chairperson recalled that all existing ILO maritime Conventions excluded from their scope of application vessels engaged exclusively in domestic traffic and suggested following this trend to encourage wide ratification of the new instrument. He therefore proposed keeping Article II, paragraph 6. This proposal was supported by the Government members of Egypt, India and the Russian Federation.
70. The Seafarer Vice-Chairperson objected to restricting the scope of the Convention and excluding large groups of seafarers. In addition, there were difficulties regarding the definition of “international voyages”. There were divergences at the regional level as to what constituted “international” and “domestic” traffic. Some traffic which appeared to satisfy the criteria of international traffic had in fact been legally defined as domestic. The reference to protection of employment and social rights by “national laws and regulations” also raised the problem of “substantial equivalence” and how a Member would actually ensure protection.
71. The Government member of Denmark pointed to the International Convention for Safety of Life at Sea, 1974, as a source for a definition of “international voyages” and suggested the addition of a sentence to define the term “international voyage”. She proposed, as an example, the definition “voyages between two ports in two different member States”.
72. The Government member of the Netherlands suggested that any definition of international voyage should also take into account situations in which ships voyaged between a given country and its distant overseas territories, or in which foreign seafarers were engaged to work on-board vessels under a certain flag and had to be protected under the terms of the proposed instrument. With regard to the phrase in paragraph 6 “[in] [after] consultation with [representatives of] the shipowners’ and seafarers’ organizations concerned”, the term “after” was preferable, as it left the actual decision-making to the national authorities. The use of the term “after” was supported by the Government members of the Russian Federation and the United Kingdom.
73. The Government member of Tunisia said his Government’s concerns were satisfied by Article II, paragraph 1, subparagraph (i), which stated ships used in inland navigation were excluded from the scope of the Convention. Further exclusionary text was not needed as it would only lead to confusion. This was supported by the Government member of Morocco.
74. Noting the strong link between paragraph 6 and paragraph 4, subparagraph (a), the Chairperson referred the matter to group meetings for further clarification.
75. The Government member of Denmark, speaking on behalf of her group recalled that the general view of the group with regard to Article II, paragraph 4(a) was that the issue of tonnage could be resolved under Titles 1-5. While paragraph 6 had not been discussed in depth, most governments would like it to remain. As regards the first sentence, governments’ preference was “after consultation” rather than “in consultation”.

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- 76.** The Shipowner Vice-Chairperson agreed that paragraph 6 should stay for the purpose of widespread ratification.
- 77.** The Seafarer Vice-Chairperson said his group was equally concerned about both subparagraph (a) of paragraph 4 and paragraph 6. While the former excluded ships, the latter excluded trades, and he feared that some governments would excessively avail themselves of paragraph 6. The approach proposed by the Government group in relation to subparagraph (a) of paragraph 4 should be extended to paragraph 6. Thus, if there were reasons to exclude particular categories of seafarers, special arrangements could be made.
- 78.** The Government member of Denmark said that the Government group had considered the suggestion of the Seafarers to include a flexibility clause in paragraph 6. The issue should be referred to a Working Party, which could also attempt to address the Seafarers' concerns regarding social security.
- 79.** The Committee established a tripartite Working Party on this issue, comprising the Government members of China, Greece and India; Shipowner members from Japan and Venezuela and from the ISF; and Seafarer members from France, Greece, India and the United States.
- 80.** After its first meeting, the Government member of Greece announced that the Working Party sought further guidance from the Committee on the matter.
- 81.** The Shipowner Vice-Chairperson felt the position of his group had sufficiently been set out.
- 82.** The Seafarer Vice-Chairperson recalled his group's concerns about the definition of the term "international voyages" and about the exclusion from the Convention of areas of trade not considered international. The Government members of Japan and the Philippines, as well as other developing countries, had indicated that they had difficulties relating to their domestic fleet, which could become obstacles to their desire for ratification. Since in some cases their ships involved in domestic trade would need years to comply with the Convention, flexibility should be provided for these countries. There should be an application for exclusions from the scope of the Convention as part of the ratification process, subject to certain conditions. Domestic trade in the context of the Convention should be trade solely between ports or terminals within the State the flag of which the ship is entitled to fly without entering into the territorial waters of other States. In order to narrow the scope of the exclusions, the concept of ships under 500 gross tons operating in domestic trade should be introduced. Members should only be allowed to avail themselves of the flexibility clause, if they were in a stage of development, and the rights of seafarers referred to in Articles III and IV were protected by national laws and regulations. At the time of ratification of the consolidated Convention, Members should declare their intention to progressively extend the requirements of the Convention to vessels of domestic trade. The Seafarers had abandoned the initially sought timeframe of six or eight years in an effort to reach a compromise. However, Members would have to make annual reports similar to those requested under article 22 of the ILO Constitution on the steps taken for the purpose of progressive extension.
- 83.** The Government member of China expressed his commitment to the consolidation exercise carried out by the ILO. Wide ratification of the consolidated Convention was of vital importance since it was supposed to be an international not a national or a regional instrument. The standard of this consolidated Convention should be reasonably high, and take into account the fact that different countries had varying views in the light of their maritime industries. If the standard of the Convention were set too high, it would be hard to match it with other existing standards concerning other industries, which would make ratification and implementation difficult.

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84. The Government member of the United States commented that a balance needed to be struck between ensuring seafarers' rights and acknowledging the need for flexibility.
 85. The Government member of India requested guidance from the Office on the appropriateness of two elements requested by the Seafarers members of the Working Party. Concerning terminology of the part on the Member's inability to ratify "as a result of its stage of development" she wondered if this phrase was widely used. She also inquired whether Members could make annual reports under article 22 of the ILO Constitution.
 86. After four sittings of the Working Party, the Government member of Greece reported that there was general agreement on the need for flexibility with regard to the possible exclusion of ships undertaking domestic voyages. It had not been possible however, to agree on specific criteria to be used to invoke a flexibility clause. Although specific wording was not proposed, it was hoped the ideas put forward by the Working Party could be used as the basis for discussion at the Maritime Conference.
 87. The Chairperson thanked the Government member of Greece and the other members of the Working Party for their efforts in tackling a very sensitive issue.

Article III – Fundamental rights and principles

88. The Shipowner Vice-Chairperson pointed out that Article III had always been a major concern for the Government group. In consequence, his group was of the opinion that the entire content of Article III should be in the Preamble and not in the Articles.
89. The Seafarer Vice-Chairperson said that the Seafarers absolutely did not support transferring these references to the Preamble. Of the two alternatives, his group preferred the second, which had been agreed upon in preceding consultations. However, both alternatives would be acceptable. In addition, there was a difference between the English and French versions of the first alternative text.
90. The Special Adviser explained that the French version of the first alternative of Article III contained in PTMC/04/1 had a formatting error. The letter "e)" preceding "*tels qu'ils sont* ..." should have been suppressed. In the English version a new line should have started after "... in respect of employment and occupation," so that the words "as referred to in the ILO Declaration on Fundamental Principles and Rights at Work, 1998" referred to all subparagraphs (a) to (d).
91. The Government member of Japan expressed her strong concern regarding paragraph 2 of the second alternative text. Great effort had been made to draft a widely ratifiable instrument and this paragraph would require ratifying States to achieve substantial equivalence to the provisions contained in the Conventions relating to the fundamental rights and principles referred to in the first sentence. It would thus be a serious barrier to ratification. She preferred the first alternative.
92. The Government member of the United States recalled that his delegation had submitted a paper on the first alternative of Article III during the Fourth meeting of the High-level Tripartite Working Group on Maritime Labour Standards, since his Government had had problems with the original version of Article III, which was currently the first alternative. Current reference to the ILO Declaration on Fundamental Principles and Rights at Work, 1998, was vague and problematic in nature. He shared the Government member of Japan's position and added that the second alternative was also problematic. Both alternatives were not acceptable and would need to be amended. Further consultations were needed.

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- 93.** The Government member of Denmark said the first alternative did not create any further obligations for member States, including reporting obligations. The second version had been devised with a view to achieving flexibility in response to the needs of governments which had not ratified all the Conventions referred to in the ILO Declaration on Fundamental Principles and Rights at Work, 1998. Although the Government of Denmark did not have any problems with either text, a solution needed to be found for governments that would view these provisions as major obstacles to ratification. She agreed further consultation was needed. The Government members of France, Netherlands and the Republic of Korea supported this call for further consultation.
- 94.** Several Government members, including those of the Philippines, Singapore, and Spain, indicated that they could accept the first alternative text. Most of them noted that while their respective national legislation was in line with either alternative, they preferred the first in recognition of the concerns expressed by the Government members of Japan and the United States. The Government member of Spain added that he did not support transferring this reference to fundamental rights to the Preamble.
- 95.** The Government member of Pakistan suggested the adoption of the second alternative, after deleting paragraph 2, which was the source of the problems.
- 96.** The Government member of Canada pointed out that the ILO Declaration on Fundamental Principles and Rights at Work, 1998, was a promotional instrument. As members of the ILO, States had already agreed to these principles, even if they had not ratified all relevant Conventions. The suggested inclusion, could, however, create new obligations.
- 97.** The Employer member of the Governing Body of the ILO expressed the deep concern of the Employers' group of the Governing Body over having any reference to the ILO Declaration on Fundamental Principles and Rights at Work, 1998, in any article of the proposed Convention. The inclusion of any such reference would add confusion to the Declaration's objectives, which are different from those of Conventions. It would also make the Declaration itself subject to the scrutiny of the ILO supervisory bodies. Reference to the Declaration could be acceptable in the Preamble. The second alternative was also not acceptable, since it would deter ratification by governments that had not ratified one or more of the core Conventions.
- 98.** The Seafarer Vice-Chairperson drew attention to Comment 4 of PTMC/04/2, which made reference to a similar provision found in Article 2(a) of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). However, governments that had ratified this Convention, were concerned about the same provision in the current context.
- 99.** The Government member of the United States said his Government would accept Article 2(a) as currently found in Convention No. 147. The current text departed from this provision and was radically different from his Government's understanding of Article 2(a). Before ratification of Convention No. 147, the Government member of the United States had requested a legal opinion from the ILO, which was appended to the articles of ratification.
- 100.** The Chairperson noted that all three groups attached great importance to this matter. He proposed to seek the advice of the Steering Committee.

101. The Chairperson of the Steering Committee and President of the Conference reported that after consultations and legal advice the following proposal on Article III had received sufficient support to be brought back before the Committee for decision. The proposed wording read as follows:

Each Member shall satisfy itself that the provisions of its law and regulations respect, in the context of this Convention, the fundamental rights to:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

102. The reference to the ILO Declaration on Fundamental Principles and Rights at Work, 1998, would be moved to the Preamble of the proposed Convention.

103. The Chairperson of the Committee sought Members' views on the new text now before it. He also requested the Legal Adviser to provide his opinion in writing so that it could be included in the Committee's report.

104. This opinion is set out below:

The Legal Adviser has been requested by the Chairperson of the Committee to put in writing his replies to the issues raised concerning Article III³ of the future Convention.

1. With regard to the legal status and the consequences of including the "wording" of the ILO Declaration on Fundamental Principles and Rights at Work in the provisions of Article III, as proposed by the President of the Conference, the Legal Adviser observed that the "wording" of the Declaration was not included in the proposal; rather there was reference to the fundamental rights together with an obligation for Members who ratify the future Convention to satisfy themselves that the provisions of their national legislation respect those fundamental rights in the context of the future Convention. The status of the Declaration and its "wording" reflect, through reference to the fundamental principles and rights, the promotional character of that instrument, which varies significantly from an international labour Convention.
2. The reference to the fundamental rights in the text of Article III of the future Convention would not create any reporting obligations on the content of the Declaration to the ILO supervisory bodies. The two instruments are different and the ILO supervisory bodies have no competence to examine the implementation of the Declaration, which has its own follow-up mechanism.
3. Article III will be, as with all obligatory provisions of the Convention, subject to examination by the bodies responsible for the supervision of the implementation of ILO standards. The important issue is to identify the obligation that will be the focus

³ The text reads as follows:

Each Member shall satisfy itself that the provisions of its law and regulations respect, in the context of this Convention, the fundamental rights to:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

of this supervision. Each Member who ratifies the future Convention will be obliged, in accordance with Article III, to satisfy itself that its legislation respects, in the context of this Convention, the four categories of fundamental rights. As with all obligations arising out of international labour Conventions, this should be carried out in good faith. Subject to what the ILO Governing Body may decide concerning the details to be requested in the report form in the framework of article 22 of the ILO Constitution, examination by the supervisory bodies will concern this specific obligation. This provision does not impose any additional obligation on States that have ratified one or more of the fundamental Conventions, because those Conventions already cover, without exception, the workers who are the subject of the future Convention.

4. With regard to the issue of whether the reference to the four categories of fundamental rights in Article III would create a reporting obligation under the ILO Declaration outside the scope of its follow-up mechanism, the reply is that it would not, as explained above.
5. Finally, on the consequences of including a reference to the Declaration in the Preamble to the future Convention, the Legal Adviser recalled that the inclusion of a preambular clause referring to the Declaration, similar to that which exists in the Preambles to the Worst Forms of Child Labour Convention, 1999 (No. 182), and the Maternity Protection Convention, 2000 (No. 183), would not result in any legal obligation for Members. The Preambles to international labour Conventions do not create any legal obligations.

105. The Shipowner Vice-Chairperson said that the legal doubts concerning the proposal had been resolved by the clear and unambiguous legal opinion of the Legal Adviser. His group supported the proposal.

106. The Seafarer Vice-Chairperson also accepted the proposal.

107. In the absence of any objections from the Government group, the Chairperson concluded that there was consensus on the new wording for Article III. He thanked the President of the Conference for his leadership and effectiveness.

108. The President of the Conference thanked all those who had contributed to this outcome and expressed his satisfaction that his appeal to the spirit of cooperation had not fallen on deaf ears.

Article V – Implementation and enforcement responsibilities

Paragraph 6

109. The Seafarer Vice-Chairperson and the Government members of Denmark, France and the Republic of Korea maintained that the square bracketed text was not necessary and should be deleted. The Government member of Denmark explained that the words “wherever they occur” was a reference to the flag state obligations to enforce the requirements of the Convention on board ships flying its flag, regardless of where violations occur, whereas the port State did not have the same rights or obligations. For these reasons she preferred their deletion. The Government member of the Republic of Korea stated the reasons for his position: that any violation which occurred outside of a given member State would be effectively discouraged by the port State, that paragraph 7 provided for a “no more favourable treatment clause”, and that any violations committed by private recruitment and placement agencies would be inspected by both flag and port State (cf. Appendix A5-III).

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- 110.** The Shipowner Vice-Chairperson declared that his group would go along with the majority view.
- 111.** The Government member of Greece indicated his Government's sensitivity to the potential criminalization of seafarers. The text proposed implied that port States, as well as flag States, would be required to establish penal sanctions for violations of the Convention. That would be in accordance with international law, but he wished to request that the Office, when producing the next draft of the proposed Convention for consideration at the Maritime Conference, include relevant examples of violations of the Convention that could allow port States to impose criminal sanctions in accordance with international law.
- 112.** The square bracketed text in Article V, paragraph 6 was therefore deleted.

Article VI – Regulations and Parts A and B of the Code

Paragraph 4

- 113.** The Shipowner Vice-Chairperson supported the second of the two alternative texts proposed for paragraph 4, because of its statement of substantial equivalence.
- 114.** The Seafarer Vice-Chairperson welcomed a proper definition of substantial equivalence. He preferred the first alternative text particularly if the phrase in the second text "... Member satisfies itself that: ..." was added after the words "... to a provision of this Convention if".
- 115.** The Government member of the United States stated his opposition, referring to the paper presented by his Government during the Fourth meeting of the High-level Tripartite Working Party on Maritime Labour Standards. In the spirit of compromise, his Government would be willing to accept a definition of substantial equivalence. His first preference would be for the definition provided to the Government of the United States by the ILO Legal Adviser in reference to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). If this was not acceptable, the second alternative text could also serve as a starting point. In order to meet the concerns about this text paragraph 4 could be changed from "... substantially equivalent to a provision ..." to "... substantially equivalent to relevant provisions ...". Accordingly, in subparagraph (a) and (b), the word "provision" would become "provisions". In addition he proposed that the word "equivalent" in subparagraph (b) of the second alternate text be changed to "similar" or "comparable".
- 116.** The Government member of Denmark stated that although her Government did not have a problem with the issue of substantial equivalence, a new definition of substantial equivalence could introduce an element of State control. She noted that the first version represented an expert opinion on substantial equivalence while the second was a more general view. Her Government could accept the second version with the changes proposed to it by the Government member of the United States.
- 117.** The changes proposed to it by the Government member of the United States were further supported by the Shipowner Vice-Chairperson and the Government members of Germany, Republic of Korea and Tunisia
- 118.** The Government member of Greece stated that from the beginning of this exercise, the purpose was to provide a framework that would allow for flexibility. Flexibility could be served by defining substantial equivalence as proposed in the second alternative. He

therefore agreed with the changes proposed by the Government member of the United States. Once this Convention became a reality, clear guidelines would need to be developed for inspectors, in order to ensure a level playing field. He pointed out that the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) has such guidelines. The call for guidelines was supported by the Shipowner Vice-Chairperson and the Government member of Tunisia.

- 119.** In response to the changes proposed by the Government member of the United States, the Seafarer Vice-Chairperson asked for clarification from the Special Adviser on the difference between the words “similar”, “comparable” and “equivalent”. He also suggested using the second alternative text, however replacing subparagraph (b) in the second alternative with subparagraph (b) from the first alternative.
- 120.** The Government member of the United States responded that his Government’s position was clearly stated in the abovementioned paper. It was not appropriate to use the term “equivalent” in a definition of equivalence. Furthermore, in subparagraph (b) of the first alternative text, the word “all” should not be used in the sentence “in all material respects”.
- 121.** The Seafarer Vice-Chairperson responded that even when the words “all material respects” were used, it was clear that this was specifically for the requirements of this provision.
- 122.** The Special Adviser said that the word “all” as used in “in all material respects” covered all material respects to achieve the right that was being delivered. In the first alternative text, subparagraph (b), the word “or” provided options to countries that could not comply with the first part of the subparagraph. This subparagraph was very close to subparagraph (b) in the second alternative. The word “equivalent” was used in this definition of substantial equivalence because the part of the term that required clarification was “substantial”, whereas the meaning of the term “equivalent” was clear. The word “comparable” implied some kind of standard of comparison which could mean more or less protection, whereas “equivalent”, as used, was intended to give seafarers equal value. The term “similar” could also refer to less complete protection. He indicated that if a definition was required, the Legal Adviser could be consulted.
- 123.** The Seafarer Vice-Chairperson supported the idea of requesting advice from the Legal Adviser, indicating that subparagraph (b) in the first alternative text was very different from subparagraph (b) in the second alternative text. He concurred with the Special Adviser’s opinion that using the term “similar” could lead to less protection.
- 124.** The Committee sought the advice of the Legal Adviser on the two alternative proposed texts for Article VI, paragraph 4, of the recommended draft. The interpretation of the Legal Adviser is set out below.

Article VI, paragraph 4

1. The Seafarer Vice-Chairperson of Committee No. 1 thought it would be useful to obtain the Legal Adviser’s opinion on the legal implications of the alternative proposals for Article VI, paragraph 4, of the recommended draft.
2. It is important for an understanding of the proposed provisions to recall that the concept of “substantial equivalence” (in French “équivalence dans l’ensemble”) was first introduced in the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

Article VI, paragraphs 3 and 4

3. Paragraph 4 of Article VI of the recommended draft before the Conference is intended to clarify the flexibility clause in paragraph 3, which reads as follows:

3. A Member which is not in a position to implement the principles and rights in the manner set out in Part A of the Code may, unless expressly provided otherwise in this

Convention, implement Part A of the Code through provisions in its laws and regulations or other measures which are *substantially equivalent* to the provisions of Part A.

4. It is clear that the context in which “substantially equivalent” appears in the above paragraph is significantly different from that of Article 2(a) of Convention No. 147. The intention of the new instrument is to ensure the adoption of legislative or other provisions which will be substantially equivalent to those of Part A of the Code, where the Member is not in a position to implement the principles and rights set out in the Regulations “in the manner set out in Part A”.
5. As the Office recalled in its commentary on the recommended draft, it has been thought necessary to provide objective means of assuring the parties concerned that “substantially equivalent” measures will be adequately implemented, and to provide guidance for port state authorities. These objectives determine how paragraph 4 of Article VI should be worded. The questions that need to be answered are as follows: (a) who should be competent to determine that a given measure is substantially equivalent to the provisions of Part A of the Code, and how is that competence to be assessed?; and (b) what is the scope of the substantial equivalence in question?
6. The first alternative text tacitly refers to paragraph 3 as regards who is competent to determine what constitutes “substantial equivalence”. Under the terms of paragraph 3, a Member ratifying the Convention and deciding to invoke the provisions of this paragraph must in good faith adopt measures that meet the criteria of substantial equivalence. The Member’s decision must take into account the elements contained in subparagraphs (a) and (b) of paragraph 4, which will also serve to guide the port state authorities in determining whether, in the event that they invoke this provision, the principles and rights set out in the Regulations are applied through measures that are “substantially equivalent” to the provisions of Part A of the Code. Monitoring of implementation will focus directly on whether or not substantial equivalence is achieved. The element contained in subparagraph (b) is based on the opinion expressed by the Committee of Experts on the Application of Conventions and Recommendations regarding Article 2(a) of Convention No. 147, i.e. in the rather different context referred to above. It comprises two elements: on the one hand, the notion that the measure in question should comply “in all material respects” with the specific requirements of the provision, and, on the other, the idea that its effects “are equivalent to those resulting from such compliance”. It should be noted that the reference to “material respects” introduces a subjective element, which can allow either a rigorous interpretation of “substantial equivalence” as meaning virtually absolute equivalence, or a more permissive interpretation, depending on the interpretation of the term “material”.
7. The second alternative text differs from the first in two respects. First, a Member ratifying the Convention will be obliged to “satisfy itself” that the measures adopted under paragraph 3 of Article VI are equivalent in effect to the provisions of Part A of the Code (and not “to a provision of this Convention”, which is unclear and could lead to confusion). The Member’s obligation is principally to “satisfy itself”, which nevertheless does not imply total autonomy, since it is incumbent on the authorities responsible for monitoring implementation at the national and international levels to determine not only whether the necessary procedure of “satisfying themselves” has been carried out, but also whether it has been carried out in good faith in such a way as to ensure that the objective of implementing the principles and rights set out in the Regulations is adequately achieved in some way other than that indicated in Part A of the Code.
8. The second difference lies in the wording of subparagraph (b). It was hard to maintain that it is less stringent than that of subparagraph (b) in the first alternative. It differs in scope, and in its legal implications. Beyond the difference in translation between the two different versions in French and in English (which in the French version is tautological), the second alternative introduces the notion that the measure adopted in implementation of paragraph 3 must be “equivalent in effect” to the provision of Part A of the Code which it is intended to replace. In other words, it expresses the idea contained in the second part of subparagraph (b) in the first alternative (“effects that are equivalent to those resulting from such compliance”), but is slightly less clear.

125. In response to questions concerning the hierarchy of the terms “similar”, “comparable” and “substantially equivalent”, the Legal Adviser responded that the term “substantial

equivalence” contained a further element going beyond “comparable”, while “similar” introduced a semantic nuance suggesting more than just “substantial equivalence” and implying a slightly lower level of assessment for Members.

- 126.** The Government member of the United States affirmed that the term “equivalent” was at the top of the hierarchy of these terms, with “substantially equivalent”, “comparable” and “similar” coming below it. Since “substantial equivalence” was tautologically defined with reference to “equivalence”, this paragraph only defined the term “substantially” and was, therefore, superfluous.
- 127.** The Seafarer Vice-Chairperson underlined the need for a definition of the term “substantially equivalent”. In view of considerable level of support for the second alternative text, he suggested that the Chairperson consult and submit a new version.
- 128.** The Government member of the United States recommended to the Committee the following text which had been developed after consultations:

For the sole purpose of paragraph 3, any law, regulation, collective agreement, or other implementing measure, shall be considered to be substantially equivalent in the context of this Convention if the Member satisfies itself that:

- (a) it is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A concerned; and
- (b) it gives effect to the provision or provisions of Part A concerned.

- 129.** The social partners supported this recommendation and paragraph 4 was adopted as proposed.

Article VII – Consultation with shipowners’ and seafarers’ organizations

- 130.** The Shipowner Vice-Chairperson had no objections to Article VII and proposed removing the brackets so that the Article could be adopted.
- 131.** The Seafarer Vice-Chairperson noted that, as was highlighted in the Commentary to the draft Convention, Article VII had been originally proposed by the Seafarers’ group and therefore he fully supported the Shipowners’ proposal to remove the brackets. Article VII would enable a pragmatic approach in areas of the Convention that needed flexibility. In cases where some flag States might not have organizations of seafarers or shipowners, consultation and dialogue could still be conducted with the Maritime Committees in order to guarantee the rights of seafarers.
- 132.** Several Government members expressed their support of Article VII and Article VII was adopted.

Article VIII – Entry into force

Paragraph 3

- 133.** The Government member of Denmark, said that the Government group had had a brief discussion on the entry into force of the Convention. The majority of governments had expressed a preference for the Convention to come into force after ratification by 25 Members with a total share of 50 per cent of the world’s gross tonnage. Some governments suggested that the labour-supplying countries should also be taken into

consideration and that a minimum number of seafarers represented by the ratifying Members should be included in the provision.

134. The Shipowner Vice-Chairperson stated that his group would prefer 25 Members and a 50 per cent share in the world's gross tonnage of ships as the threshold figures for entry into force.
135. The Seafarer Vice-Chairperson suggested 30 Members and a 33 per cent share in the world's gross tonnage of ships. A reference should not be made to numbers of seafarers.
136. The Government member of the Netherlands inquired if there was a central administration that measured tonnage.
137. A representative of the Secretary-General stated that the figures for gross tonnage would be attained in the same manner the IMO attained these figures for its Conventions. He believed they originated from the Lloyds Register of Shipping.
138. The Shipowner-Vice Chairperson could agree with the figure of 30 Members suggested by the Seafarer Vice-Chairperson but still adhered to the figure of 50 per cent of gross tonnage. In matters of port state control, ships calling at the port of a ratifying member State, would be affected by the Convention, even if the flag State had not ratified it. Therefore it was important that the Convention only enter into force when a substantial percentage of tonnage had been covered.
139. The Seafarer Vice-Chairperson requested clarification from the Office on whether there was a difference between ILO member State tonnage and world tonnage as calculated by the IMO, in light of the fact that certain States that were not members of the ILO had significant registers. He reiterated his belief that 50 per cent gross tonnage was too high for entry into force. It was double the 25 per cent figure used in the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).
140. The Government member of the Republic of Korea recalled an earlier proposal of his delegation to the effect that this provision should be framed in terms similar to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and the International Convention for the Safety of Life at Sea (SOLAS). While the inclusion of a reference to the labour force would create difficulties in terms of statistics due to the wide definition of "seafarer", the introduction of a limit based on the number of ships would be possible but would lead to delays in ratification. The entry into force requirements of the STCW Convention referred to world gross tonnage with a lower limit of 100 gross registered tons (GRT) for inclusion. As this figure was stipulated in the Articles, it could not be changed in IMO meetings into gross tons (GT). The SOLAS Convention contained no definition of world gross tonnage, but in practice the figure of 100 GT and above was used, since ships of 100 GT had an IMO number. It was important to introduce a definition of world gross tonnage or a provision similar to the STCW Convention. With regard to the actual figures, the Government member of the Republic of Korea insisted on 25 Members and 50 per cent of world gross tonnage, since the proposed Convention, which consolidated all the existing maritime instruments and contained a "no more favourable treatment" clause, put pressure on Members to ratify it.
141. The Government member of the Netherlands recommended that the various suggestions of threshold figures for entry into force should be placed in square brackets and discussion postponed until the next Maritime Conference.
142. The Shipowner Vice-Chairperson pointed out that it could be based on gross tonnage of ILO member States instead of world tonnage and expressed concern that rather than reducing the amount of bracketed text, additional bracketed text was being introduced.

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- 143.** The Chairperson concurred with the suggestion made by the Government member of the Netherlands and in the absence of any objection, the Committee agreed to proceed accordingly.
- 144.** The Chairperson suspended the discussion pending a decision on whether reference should be made to world shipping tonnage or ILO member States shipping tonnage.

Article X – Effect of entry into force

- 145.** The Shipowner Vice-Chairperson requested clarification on the meaning of “This Convention revises the following Conventions:” as stated in the beginning of Article X, and on how to deal with the Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185) which was a stand-alone Convention. Also, while the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) had been included in the list of revised Conventions, the Protocol to Convention No. 147 had not been included.
- 146.** The Special Adviser explained that Article X, as found in the recommended draft, would have two consequences on Conventions it revised: (1) after the Consolidated Convention had been ratified by a Member and had come into force for it, that ratifying Member would be considered as having automatically and immediately denounced all the Conventions, listed in Article X as revised; and (2) on the initial entry into force of the Consolidated Convention, the revised Conventions would cease to be open to ratification by Members. These consequences would apply unless a provision was added to Article X explicitly to state otherwise. Such a provision could totally prevent the automatic denunciations or keep the revised Conventions open to ratification or establish an intermediate solution. The Consolidated Convention would not affect any Convention that was not listed in Article X. Members that did not ratify the Consolidated Convention would remain bound by any Conventions they had previously ratified. Until the Consolidated Convention entered into force, Members would still be able to ratify the revised Conventions. Also, the Protocol to Convention No. 147 should be added since it was dependent on the Convention.
- 147.** The Government member of Liberia asked whether, to encourage ratification, text could be added along the lines of “This Convention revises the following Conventions, which will close to ratification on the date this Convention opens to ratification.”
- 148.** The Special Adviser explained that it was not possible for a Convention, in and of itself, to revise earlier Conventions. Revision of earlier Conventions was possible because, since 1930, all ILO Conventions included specific provisions allowing for revision. For Conventions dating before 1930, a more pragmatic approach would be required, as there were currently no means available to revise them or to close them for ratification. According to international law however, more recent Conventions would prevail over older ones.
- 149.** The Government member of Greece said that the list of revised Conventions could only be finalized at the end of the Maritime Session of the International Labour Conference, therefore the fate of these revised Conventions should also be addressed at that Conference. The Office could prepare background information on the different options and consequences of Article X, to be used as a basis for that discussion. The Government member of the Republic of Korea agreed that this issue should be discussed at a later time.
- 150.** The Seafarer Vice-Chairperson questioned what would happen to relevant Maritime Recommendations when the Consolidated Convention came into force.

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- 151.** The Special Adviser stated that since a Convention only addressed binding obligations of international law, Recommendations were not dealt with. Should provisions found in a Recommendation, however, conflict with any part of the new Convention, these would be seen as superseded.
- 152.** The Government member of Germany pointed to the link between Article X and paragraph 7 of Article V and possible implications resulting from other Members' ratifications of certain instruments, also in relation to pre-1930 Conventions.
- 153.** The Special Adviser stated that if a member State was not ready to ratify the Consolidated Convention, but had ratified a considerable number of the Conventions listed as revised, the State would be subject to very similar obligations since the obligations contained in the Consolidated Convention stemmed from existing Conventions, except for certification, which had not been provided for in preceding Conventions. The Committee might therefore want to deliberate what should happen if a State met all requirements contained in the new instrument, but was not able to issue a certificate, since it was not party to the new Convention.
- 154.** The Government member of India recalled that a member States' reasons for ratification were linked with the expectations that ratification would result in certain advantages related to international cooperation. Considering the explanation given by the Special Adviser, if it was decided under this new Convention that the obligations of member States under preceding Conventions should continue to exist, even if they have not ratified the new instrument, thought should be given as to whether it is possible to give a less favourable treatment to these countries and whether this would be justified in relation to those that had ratified the new Convention, in the realm of international cooperation that the new Convention envisages.
- 155.** The Special Adviser stated that while he could not deliberate on issues of substance, a provision addressing this issue could be included, if the Committee so wished.
- 156.** The Government member of Denmark felt this went against the spirit of the Consolidated Convention. It would not be advisable to establish a new system of fundamental rights and then allow some States to adhere only partially. The global application of the Convention should be examined in the context of discussions on Article VIII.
- 157.** The Seafarer Vice-Chairperson agreed and said that this issue had been discussed previously during meetings of the High-level Tripartite Working Party on Maritime Labour Standards. A comprehensive Convention containing all seafarers' rights was the goal of this exercise. A piecemeal approach as suggested by the Government member of India would be very damaging. The Seafarers supported the draft text and strongly urged the Committee to make a Recommendation regarding Article X during this Conference.
- 158.** The Shipowner Vice-Chairperson agreed: Article V, paragraph 7 ensured that the goal of a level playing field could be achieved. In his understanding, a departure from this basis had not been originally suggested by the Government member of India.
- 159.** The Government member of Tunisia, referring to the remarks made by the Government member of Germany, pointed to the situation of a State that had ratified some Conventions, but would not be able to ratify the new instrument. Clarification was required regarding this country's situation, especially in relation to the question of whether problems could arise from the application of older Conventions. Some States' decisions not to ratify the new Convention might not result from a lack of good will, but might be a question of capacity. In this context, the question of international cooperation raised by the Government member of India might need to be addressed at a later stage.

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- 160.** The Government member of the United Kingdom supported the positions of the Shipowners, the Seafarers and the Government member of Denmark. In order to create a level playing field, the provision on no more favourable treatment needed to be included as found in paragraph 7 of Article V. Furthermore, a partial exception was needed regarding the Accommodation of Crews Convention (Revised), 1949 (No. 92) and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), so that existing ships would continue to adhere to the provisions therein, even if flag States ratified the Consolidated Convention. For construction reasons, existing ships might not be able to comply with Title 3 on crew accommodation. Wording to this effect needed to be added in Article X and Title 3. This was in line with, for example, International Convention for the Safety of Life at Sea (SOLAS), 1974, which featured a similar provision for ships built earlier.
- 161.** The Seafarer Vice-Chairperson agreed that grandfather clauses were generally accepted throughout international instruments. Thought would need to be given, however, to their placement, so that this exception could not be understood to be applicable to other parts of the Convention. This clause should be restricted only to the issue of accommodation. Advice as to the best way of incorporating this idea should be sought from the Drafting Committee, which should try to draft suitable wording for such a narrowly constrained grandfather clause.
- 162.** The Government member of the Republic of Korea agreed with the Government member of the United Kingdom, but indicated there could be difficulties with the scope of application. The Committee should allow time for further consideration of the issue.
- 163.** The Special Adviser suggested that this grandfather clause would be better placed in Title 3.
- 164.** The Government member of Greece stated he was still unsure about what happened with respect to pre-1930 Conventions. The discussion seemed to indicate that individual governments would resolve this through their national legislation. Would the fate of pre-1930 Conventions be decided at the national level? Would member States that adopted this Consolidated Convention be required to continue reporting on pre-1930 Conventions?
- 165.** The Special Adviser reiterated that when a country ratified this Consolidated Convention, post-1930 Conventions would be considered as denounced. Conventions prior to 1930 would not be automatically considered denounced. The Governing Body had discretion as to which reports would be required from member States. He did not believe, however, that a member State would be required to continue to report on a Convention that had been replaced by another.
- 166.** The Committee agreed to remove the brackets from the text and add the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) to the list of revised Conventions and Article X was adopted.

Article XIV – Amendment of this Convention

Paragraph 5

- 167.** The Chairperson highlighted the link between Article XIV, paragraph 5, and Article VIII, since both referred to the number of Members and their total share of world shipping tonnage.

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- 168.** The Shipowner Vice-Chairperson agreed that the figures in the final instrument needed to be harmonized. Following informal consultations on Article XIV, paragraph 5, the social partners had a preference for 12 Members rather than five and for a total share in world shipping tonnage of 12.5 per cent rather than 25 per cent. Any decision in Article VIII as to whether reference should be made to world shipping tonnage or ILO member States shipping tonnage would have an impact on this provision.
- 169.** The Government member of Denmark and Chairperson of the Government group cautioned that, although her delegation did not object to these figures, the Government group should be given the opportunity to consult on this issue. The Government member of the Republic of Korea supported this position.

Article XV – Amendments to the Code

Paragraph 2

- 170.** The Shipowner Vice-Chairperson reported that following informal consultations, the social partners had agreed with regard to paragraph 2, on ten governments and the deletion of the curly brackets.
- 171.** The Government member of Denmark and Chairperson of the Government group cautioned that some governments might find it too high, taking into consideration that an amendment needed the support of ten ratifying Members to be discussed. The Government group should have an opportunity to discuss this provision, which directly affected the ability of governments to put forward amendments to the Code. The Government member of the Republic of Korea supported this position.

Paragraph 7

- 172.** The Chairperson underlined the link between Article XV, paragraph 7, and Article VIII, since both referred to the number of Members and their total share of world shipping tonnage.
- 173.** The Shipowner Vice-Chairperson reported that following informal consultations, the social partners had agreed with regard to Article XV, paragraph 7, on “one-third of the Members which have ratified the Convention” and “50 per cent of the world’s gross tonnage of ships”, with deletion of the curly brackets. Any resolution of the issue regarding world shipping tonnage or ILO member States’ shipping tonnage in Article VIII would also affect this provision.
- 174.** The Government member of Denmark and Chairperson of the Government group cautioned that, although her delegation did not object to these figures, the Government group should have an opportunity to discuss this issue. The Government member of the Republic of Korea supported this position.

Title 5. Compliance and enforcement

General discussion

- 175.** The Chairperson invited the Committee to have a general discussion on Title 5.

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- 176.** The Shipowner Vice-Chairperson considered that a mechanism for compliance and enforcement was essential. One of the main issues for his group related to port state inspection. The “maritime labour certificate” and the “declaration of labour compliance” should be taken as *prima facie* evidence of compliance to the effect that port state inspectors could not go beyond reviewing the certificates. Port state inspections, where required, should be restricted to working and living conditions. The on-board and onshore complaint procedures were problematic from the point of view of widespread ratification.
- 177.** The Seafarer Vice-Chairperson stated that the principal issue in the first part of Title 5 was paragraph 3. This provision should be deleted, since Part A of the Code in Title 5 should be amendable according to the simplified amendment procedure. While the provisions regarding responsibilities of authorized organizations and other requirements were satisfactory, significant problems arose with regard to onshore complaint procedures. Legal advice on this issue would be essential. Appendices A5-I and A5-II also contained matters that would need to be addressed.
- 178.** The Government member of Liberia also sought the deletion of paragraph 3 and indicated that certain areas required careful review such as the responsibilities of organizations and the on-board and onshore complaint procedures. The role of the proposed Convention in advising port state inspectors when a ship from a non-ratifying country arrived at the port was important. He pointed out that the provisions of Part A of Title 5 were essentially new to the ILO maritime procedure and he believed it might be necessary to revise this section expeditiously; thus the tacit amendment procedure was appropriate rather than the explicit procedure.
- 179.** The Government member of Norway stated that there were two points of major concern, which could represent serious obstacles to ratification for Norway. The first was in relation to Regulation 5.2.2 – Onshore seafarer complaint-handling procedures. Under this provision, port States had jurisdiction for settling disputes, whereas jurisdiction for litigation should be regulated by the flag State, for instance through bilateral agreements. The second issue related to Regulation 5.3 – Labour-supplying responsibilities, which implied that the Convention was directly applicable in the courts of all member States, while in Norway the Convention could only be implemented through national law.
- 180.** The Seafarer Vice-Chairperson said it needed to be clear as to whether the term “independence” was related to commercial pressures. Another issue of concern was the period between inspections. In Standard A5.2.1, paragraph 3 (inspections in the case of complaint), an inspector should, if necessary, be able to expand the inspection beyond the scope of complaint. In Standard A5.2.1, paragraph 6 (non-conformity to the Convention), subparagraph (c), it would be necessary to establish the severity of the violation of the requirements of the Convention before addressing the rest of the paragraph. Strong disagreement was expressed to the wording of Standard A5.2.2 – Onshore complaint-handling procedures), paragraph 2, subparagraph (b), clause (i).

Paragraph 3

- 181.** The Shipowner Vice-Chairperson suggested retaining paragraph 3 of Title 5, since various governments wanted to ensure that Part A of Title 5 could not be amended under the tacit amendment procedure. This provision was essential for achieving a maximum number of ratifications.
- 182.** The Seafarer Vice-Chairperson reiterated the necessity of the deletion of paragraph 3. The proposed Convention explored new areas when it came to labour inspection, and the enforcement mechanisms needed to stand the test of time. Should experience suggest that it would be desirable to make quick adjustments, the long periods of time between Maritime Conferences for reviewing the Convention would render such amendments

difficult. These important provisions should not be hastily changed. Article XV, in particular the voting structure in its paragraph 4, provided sufficient protection by conferring on each group a right to veto any decision it might disapprove. The Government member of Liberia supported the deletion of paragraph 3, while stating that this issue was not a point of eminent importance to his Government.

183. The Government member of Denmark wished to keep paragraph 3 of Title 5. As governments were given the leading role in transposing the enforcement mechanisms into national law, they needed to be able to clearly determine the resources and commitments entailed by the ratification of the Convention. Since even minor changes to enforcement procedures or items of inspection would lead to increased expenditures, the appendices to Part A should also be excluded from the simplified amendment procedure. The Government members of Germany, the Republic of Korea and the United Kingdom supported this position. It should not be easier for the social partners to make amendments than for governments.

184. The Government member of the Republic of Korea added that, should paragraph 3 be removed, all other parts of Title 5 would need to be revisited and provisions currently found in Part A would need to be shifted to the Regulations.

185. The Seafarer Vice-Chairperson indicated that his group would not provoke a vote on the issue, and that it was for the Government members to decide.

Regulation 5.1.1 – General principles

Paragraph 1

186. The Government member of Denmark reported that the Government group meeting had accepted the bracketed text in paragraph 1 as it is.

187. The Shipowner Vice-Chairperson agreed and suggested replacing the words “of this Convention” with “of its obligations under this Convention” for editorial purposes.

188. In the absence of any objections to the proposal of the Shipowners, it was decided to remove the brackets and adopt the paragraph as drafted with the suggested change.

Paragraph 3

189. The Committee adopted paragraph 3 as is.

Regulation 5.1.2 – Authorization of recognized organizations

Paragraph 1

190. The Committee agreed to adopt the text in paragraph 1 and delete the brackets.

Paragraph 2

191. The Government member of Denmark, speaking on behalf of the Government group, suggested that, for the purposes of transparency and practicability, it should be clarified at the end of paragraph 2 that the lists of recognized organizations should be communicated to the ILO with a view to their being made publicly available.

192. The Shipowner Vice-Chairperson endorsed this approach.

193. The Seafarer Vice-Chairperson supported the proposal of the Government group.

194. The Committee agreed and referred paragraph 2 to the Drafting Committee.

Paragraph 3

195. The Committee agreed to adopt the text in paragraph 3 and delete the brackets.

Standard A5.1.2 – Authorization of recognized organizations

Paragraph 1

196. The Government member of Denmark outlined the discussions held in the Government group. As for the chapeau, the competent authority should require the recognized organization to demonstrate its expertise only as regards the areas delegated to it. If this were acceptable, her group would agree to remove the square brackets in subparagraph (a) around “and social security protection”. Regarding subparagraph (b) the word “improve” should be changed to “update”, since this formulation was also used in the Guidelines. The Government group had accepted the bracketed text in subparagraphs (c) and (d).

197. The Shipowner Vice-Chairperson agreed with the suggestion regarding the chapeau and added that the review should not only relate to the competency of the recognized organizations, but also to their independence, in line with Regulation 5.1.2, paragraph 1. His group had no objections to subparagraphs (b), (c) and (d). Concerning subparagraph (a), the bracketed words “and social security protection” should be deleted, since Committee 3 had not yet agreed upon this issue, and long-term social protection was provided by the State of residence and not by the flag State. Alternatively, if the reference to social security protection were to remain, the provision should be redrafted so as to signal that the flag State was not solely responsible for social security.

198. The Seafarer Vice-Chairperson agreed with the proposal of the Government group concerning the chapeau. The substitution of “improve” by “update” in subparagraph (b), and the wording of subparagraphs (c) and (d) were also acceptable to his group. As regards subparagraph (a), the Seafarers disagreed with the Shipowners and wanted to retain the language. Firstly, flag States would not delegate areas of social security protection that did not fall under their responsibility. Secondly, social security protection was so important that it could not be omitted from the seafarers’ Bill of Rights, but should Committee 3 decide otherwise, the changes to the text would be consequential. The prevention of accidents should be added to the list in subparagraph (a) which should be consistent with the list of inspectable fields in Appendix A5-I.

199. The Committee agreed to keep the words “and social security protection” in subparagraph (a) and remove the square brackets. The Drafting Committee should review the list it contained. In subparagraph (b) the term “improve” was replaced with “update”. Subparagraphs (c) and (d) were adopted as drafted. As for the chapeau, the Committee decided that the competent authority should review the competency and independence of the recognized organization in relation to the areas delegated to it. The chapeau and subparagraph (a) were referred to the Drafting Committee.

200. The Drafting Committee proposed to replace the chapeau of paragraph 1 and the text of subparagraph (a) with the following text:

1. For the purposes of recognition in accordance with paragraph 1 of Regulation 5.1.2, the competent authority shall review the competency and the independence of the organization concerned and determine whether the organization has demonstrated, to the extent necessary for carrying out the activities covered by the authorization conferred to it that:

- (a) it has expertise in the relevant aspects of this Convention and an appropriate knowledge of ship operations including the minimum requirements set out in Appendix A5-I.

201. The Shipowner Vice-Chairperson fully supported the proposed text.

202. The Seafarer Vice-Chairperson said he thought that while the text of the chapeau was sound, the Drafting Committee had gone beyond its remit in proposing a new subparagraph (a) which appeared to go back on a previous decision to include a reference to “social security protection” in the final text. The Seafarers wanted to retain the original text of the subparagraph with the agreed addition of social security protection and the prevention of accidents.

203. The Shipowner Vice-Chairperson agreed and suggested that the Committee adopt the text that had already been agreed upon for subparagraph (a), rather than the Drafting Committee proposal.

204. The Committee adopted the chapeau of paragraph 1 as proposed by the Drafting Committee. Subparagraph (a) was adopted as originally drafted with the square brackets removed and with the addition of a reference to accident prevention.

Paragraph 2

205. The Government member of Denmark reported on a long discussion in the Government group over the extent of competencies to be given to recognized organizations. Since the formulation “shall” imposed an obligation on member States, some governments preferred “may”, others “should”. Depending on the choice of formulation, the text might need to be moved to the Guidelines. In order to add more precision, the words “in this regard” should be added after “inspections” towards the end of the paragraph. Flag States needed to be contacted before a ship was detained.

206. The Seafarer Vice-Chairperson said the text should remain in the Standard and the word “shall” be retained. A balance between a State’s interest to retain competencies needed to be weighed against the need, in practice, for recognized organizations to be empowered to require the rectification of deficiencies. The Shipowner Vice-Chairperson supported this position.

207. The Government member of Norway described the debate as academic since, when a government delegated authority to issue a certificate, it also delegated the power to withdraw the certificate, which resulted in the ship being prohibited from leaving port, having the same effect as detention. Furthermore, a surveyor from a recognized organization would not issue a certificate until the ship complied with the Standard.

208. The Government member of Singapore found that the text should remain a Standard but the word “may” should be used instead of “shall”.

209. The Government member of the United Kingdom stated that delegated elements had to be agreed upon between flag State and the recognized organization. While some organizations would not want all those responsibilities, others might. Although many governments would not wish to give this power to recognized organizations, the word “shall” could be retained, since the issue of the extent of authorization would be covered by the chapeau, and details would be contained in agreements.

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- 210.** In view of the different opinions expressed, the Chairperson asked for a show of hands from the Government members over the use of either of the words “shall” or “may”. The preference was for the word “shall”.
- 211.** The Shipowner Vice-Chairperson further suggested to delete the text “at the request of a port State”. This wording referring to port state control was misplaced, since Regulation 5.1.2 dealt with flag State responsibilities. The Seafarers also had a query on the matter.
- 212.** The Government member of Denmark explained that if the port State observed that the inspection carried out by the recognized organization was not good enough, then under SOLAS, the port State had the right to request the organization to come on-board immediately. Since there had been disputes, where the recognized organization needed the permission of the shipowners before going on-board, governments should give this power to the recognized organization. Agreement was needed between the port State and the recognized organization when rectifying deficiencies. There were established systems for dealing with this issue in IMO port state schemes and they should not be different in ILO matters. The Government member of Norway supported this position.
- 213.** Paragraph 2 was adopted with the addition of “in this regard” before “at the request of a port State”.

Paragraph 3

- 214.** The Government member of Denmark reported that the Government group meeting had accepted the bracketed text in paragraph 3 as it was.
- 215.** The Shipowner Vice-Chairperson said that paragraph 3 was acceptable but overly detailed for a Convention. Since the responsibility to fulfil these requirements rested with the flag State, all text after “recognized organizations” should be deleted.
- 216.** The Seafarer Vice-Chairperson believed that these details were important since lessons should be learned from the management provisions of SOLAS. The language in paragraph 3 should be retained.
- 217.** The Committee adopted paragraph 3 as is.

New paragraph

- 218.** The Drafting Committee proposed deleting paragraph 2 of Regulation 5.1.2 and inserting a new paragraph after paragraph 3:

“4. The competent authority shall provide the International Labour Office with a current list of any recognized organizations that it has authorized to act on its behalf and it shall keep this list up to date. The list shall include an indication of the functions that the recognized organizations have been authorized to carry out. The Office shall make the list publicly available.”

- 219.** The Committee adopted the proposed text.

Guideline B5.1.2 – Authorization of recognized organizations

Paragraphs 1, 2 and 3

- 220.** Paragraph 1 was adopted with a minor editorial change in subparagraph (a) where the words “scope of” were inserted before the term “application”, and the brackets removed.
- 221.** Paragraphs 2 and 3 were adopted and the brackets removed.

Paragraphs 4 and 5

- 222.** The Government member of Denmark reported that the Government group wished to replace the term “Member” in paragraphs 4 and 5 with “recognized organizations”. It had been felt that it was not for governments, for instance, to develop a system for qualification (paragraph 4).
- 223.** The Shipowners’ group agreed with the suggestions of the Government group.
- 224.** The Seafarer Vice-Chairperson agreed that in paragraph 4 recognized organizations rather than Members should develop systems for qualification, but the wording should be “Members should require recognized organizations to develop a system for qualification ...”. With regard to paragraph 5, the Seafarers did not agree that “Member” should be replaced with “recognized organizations”, as it was the responsibility of governments and their competent authorities to maintain records of the services performed by recognized organizations.
- 225.** The Committee agreed on the wording suggested by the Seafarers’ group for paragraph 4 and, as a compromise, a similar wording was agreed for paragraph 5: “Members should require recognized organizations to maintain records of the services performed by them ...”.
- 226.** Paragraphs 4 and 5 were adopted as proposed and the brackets removed.

Paragraph 6

- 227.** Paragraph 6 was adopted and the brackets removed.

Regulation 5.1.3 – Maritime labour certificate and declaration of labour compliance

- 228.** The Shipowner Vice-Chairperson said that among the amendments his group had submitted to the unbracketed text were several to add “maritime” before “labour” throughout Title 5. The Committee accepted this proposal and asked the Office to take it into account in preparing the next document.
- 229.** The Government member of Denmark, speaking on behalf of the Government group, proposed adding the word “maritime” between the words “of” and “labour” in the title of Regulation 5.1.3 so that it would read “ ... declaration of maritime labour compliance”.
- 230.** In the absence of any objections, the Committee agreed to this proposal.

Paragraph 4

- 231.** The Government member of Denmark, speaking on behalf of the Government group, recognized a record should be kept, but found the bracketed phrase “and register” was too onerous.
- 232.** The Shipowner Vice-Chairperson stated he had no objection to the deletion of the brackets and to retain the text “and register”, nonetheless alternative text that would not cause excessive administrative burdens would be acceptable.
- 233.** The Seafarer Vice-Chairperson stated he had no objection to the deletion of the text “and register” but the text would need to be replaced, since there should be a publicly available listing of ships holding maritime labour certificates.
- 234.** The Committee agreed to send paragraph 4 to the Drafting Committee for its consideration, calling upon it to bear in mind the need to make the relevant records publicly available without placing undue burden on the shipowners.
- 235.** The Drafting Committee proposed replacing “and register” with “and maintain a publicly available record of”, so that the paragraph would read as follows:
4. Where the competent authority of the Member or a recognized organization duly authorized for this purpose has ascertained through inspection that a ship that flies the Member’s flag meets or continues to meet the standards of this Convention, it shall issue or renew, and maintain a publicly available record of, a maritime labour certificate to that effect (modified SOLAS; MARPOL).
- 236.** The Drafting Committee provided a commentary with its proposal, suggesting that the Committee should consider whether paragraph 4 sufficiently covered all situations referred to in Regulation 5.1.1, paragraph 3, as decided by the Committee.
- 237.** The Committee adopted the Drafting Committee’s proposal for paragraph 4.

Paragraph 5

- 238.** The Shipowner Vice-Chairperson noted the need to clarify the reference to the “the Code” as referring only to Part A of the Code, since Part B was not mandatory.
- 239.** In the absence of any objections, this proposal was adopted by the Committee.

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

Paragraphs 1-3

- 240.** In the absence of any objections, the Committee agreed to remove the brackets and adopt the text of each paragraph.

Paragraph 4

- 241.** The Seafarer Vice-Chairperson proposed deleting the second instance of the phrase, “from the date of completion of the renewal inspection”, as it did not add to the meaning of the sentence.
- 242.** The Government member of China said there was a need for harmonization of the wording between paragraph 4 and the preceding paragraph. The phrase “from the date of completion of the renewal inspection” was standard language and necessary to ensure the correct meaning of the sentence. It should be quite clear in the text that the period of renewal commenced from the date of the inspection, not from the date of expiry of the existing certificate.
- 243.** After some discussion, the Committee decided to submit paragraph 4 to the Drafting Committee for clarification and simplification.
- 244.** The Drafting Committee proposed to delete “from the date of completion of the renewal inspection” in paragraph 4 and insert “starting”, so that the paragraph would read as follows:
- “4. When the renewal inspection is completed more than three months before the expiry date of the existing certificate, the new maritime labour certificate shall be valid for a period not exceeding five years starting from the date of completion of the renewal inspection.”
- 245.** The Committee adopted the proposal.

Paragraph 5

- 246.** The Committee agreed to remove the brackets and adopt the text of subparagraph 5(c).

Paragraph 6

- 247.** The Government member of Denmark, speaking on behalf of the Government group, indicated her group’s preference for the six-month period rather than the three-month.
- 248.** The Shipowner Vice-Chairperson supported the view of the Government group.
- 249.** The Seafarer Vice-Chairperson said there should not be interim certificates. If a ship changed hands, proper arrangements should be made so that the seafarers’ rights were respected from the onset. For reasons of practicality, however, a three-month interim certificate would be acceptable.
- 250.** The Government of the United Kingdom said he could not accept a three-month interim certificate period, citing flag States’ responsibility to also carry out inspections for the IMO International Safety Management Code, 1998 (amended in 2002). A three-month interim certificate would mean carrying out three inspections in the space of three months, which was not feasible. It was also important to allow sufficient time to adapt to new procedures. This position was supported by the Government members of Pakistan and the Russian Federation. It was in line with the SOLAS Convention.
- 251.** The Government member of Denmark agreed and said a six-month interim certificate would not free a ship from its obligations under the Convention. This idea was demonstrated by Standard A5.1.3, paragraph 7, subparagraph (c) which stated that “the master is familiar with the requirements of the Convention and the responsibilities of implementation”.

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- 252.** The Seafarer Vice-Chairperson referred to Appendix A5-I, stating that there were many basic rights listed there that needed to be enforced in less than six months.
- 253.** The Government member of Malta proposed adopting six-month interim certificates, but expanding paragraph 7 with relevant items from Appendix A5-I, which would serve as prerequisites for the issuance of an interim certificate. This proposal was supported by the Shipowner Vice-Chairperson and the Government members of Singapore and the United Kingdom. The Seafarer Vice-Chairperson also supported this proposal, noting it would be important to clearly identify which items would be added to paragraph 7.
- 254.** The Committee decided that paragraph 6, along with the closely related paragraphs 7 and 8, would be the subject of further discussion within the Government group, with guidance from the Seafarers' group.

Paragraph 7

- 255.** The Shipowner Vice-Chairperson proposed replacing the phrase "is covered by" with "has" in subparagraph (b) to read "the shipowner has demonstrated to the competent authority or recognized organization that the ship has adequate procedures to comply with the Convention; and". There were no objections to this proposal.

Paragraphs 6, 7 and 8

- 256.** The Government member of Denmark, speaking on behalf of the Government group, indicated the group had re-examined paragraphs 6, 7 and 8, in order to address the concerns of the Seafarers. There was general support to expand paragraph 7 to include the issues in Appendix A5-I. It was suggested that the text of paragraph 7, subparagraph (a) be replaced with the words: "The ship has been inspected, as far as reasonable and practicable, for the matters listed in Appendix A5-I, taking account of the verification of the items under (b), (c) and (d)." The rest of the paragraph would remain unchanged. This modification might then require a consequential change in the part of Appendix A5-II concerning the interim certificate. A consequential modification was also suggested to Standard A5.2.1 – Inspections in port, paragraph 1 after subparagraph (c).
- 257.** The Shipowner Vice-Chairperson supported the language proposed.
- 258.** The Seafarer Vice-Chairperson indicated his appreciation of the efforts made to accommodate the concerns of seafarers. He requested clarification from the Office on whether the words "as far as reasonable and practicable" were appropriate for use in the mandatory part of the Code, as he believed Part A of the Code should contain unambiguous language.
- 259.** The Special Adviser replied that wording such as "reasonable" and "as far as practicable" was standard in binding provisions such as Part A, citing a number of instances of similar wording.
- 260.** The Government member of the United Kingdom said the Government group had made great efforts to accommodate the concerns of the Seafarers. The Governments had carefully examined the items in Appendix A5-I, but noted that requirements would be different for ships in different stages of life: under construction, new and those that had changed flag. The best way to address the concerns of the Seafarers was to refer to Appendix A5-I and inspect as far as was reasonably possible in the particular circumstances.
- 261.** The Seafarer Vice-Chairperson said that in the light of the explanation of the Special Adviser and the comment of the Government member of the United Kingdom, the

Seafarers could agree to the proposed text. Moreover, in light of the consequential modification proposed for Standard A5.2.1 – Inspections in port, paragraph 1, subparagraph (c), the Seafarers could agree to six-month interim certificates.

- 262.** The Government member of Norway said that a distinction must be made between the certification of the ship and documents required of the individual seafarer. There should be no need for additional inspection for the issuance of an interim certificate because the requirements of Title 1 and Title 2 apply, irrespective of the certification of the ship. However, if the Committee adopted an additional requirement for an inspection, the special system in Norway for public supervision before joining the ship should be regarded as fulfilling that requirement, to avoid additional administrative burdens.
- 263.** After further discussion, the Committee agreed to replace the existing text of Standard A5.1.3, paragraph 7, subparagraph (a) with “The ship has been inspected, as far as reasonable and practicable, for the matters listed in Appendix A5-I, taking into account of the verification of the items under (b), (c) and (d)”. It was agreed to delete the bracketed text “three” in paragraphs 6 and 8, and to adopt the bracketed text “six” in these paragraphs. A consequential modification was made to Standard A5.2.1 – Inspections in port, adding a new subparagraph after paragraph 1(b). It was noted that a consequential modification might also be required to the Appendix concerning the certificate.

Paragraph 10

- 264.** The Government group set up a small Working Party to consider the text of paragraphs 10 and 11 and all related provisions and appendices. It comprised the Government members of Canada, Denmark, Liberia and the United States and the latter acted as spokesperson.
- 265.** She reported that in Standard A5.1.3 it was proposed to replace paragraphs 10 and 11 by the following single paragraph:

10. The declaration of 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; it shall 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. It shall also refer to ship-type specific requirements under national legislation. It shall record any substantially equivalent provisions adopted pursuant to paragraph 3 of Article VI of this Convention.
- (b) Part II shall be drawn up by the shipowner. It shall identify the measures adopted to ensure compliance between inspections and the measures proposed to ensure that there is continuous improvement.

Paragraph 11

- 266.** The Shipowner Vice-Chairperson wondered if the reference to recognized organizations in paragraph 11 should be deleted. This issue was a flag State matter and should not be left to recognized organizations
- 267.** The Seafarer Vice-Chairperson supported the text as found in the recommended draft.

Paragraph 12

- 268.** The Government member from Denmark said that the Government group had considered the obligation to make these records available and one Government member had expressed reservations in this regard. The need for the records to share a common language was also

discussed and English had been proposed as the working language, since a similar provision in paragraph 13 also suggested English. The Seafarer Vice-Chairperson and the Government member of Norway agreed that the working language could be English.

- 269.** The Government member of Denmark said some administrations might find it onerous to produce English texts. Memoranda of Understanding often provided standard texts in English. Such a practice could also be established in this case, considerably easing States' concerns.
- 270.** The Government member of Finland said that for certain national traffic routes where a local common language was spoken, there was no need to produce records in English.
- 271.** The Government member of Korea suggested that the provision be changed to specify "English and/or the working language of the seafarers".
- 272.** The Shipowner Vice-Chairperson said the need to make records publicly available (for example to shipowners' and seafarers' representatives) seemed burdensome, since this issue only concerned the individual shipowner. His group, therefore, suggested the deletion of all text after "declaration of labour compliance".
- 273.** The Government member of Norway suggested adding the words "on the ship" after the words "to seafarers" to read " ... or made available in some other way to seafarers on the ship ... ". This would enhance the clarity of the text.
- 274.** The Seafarer Vice-Chairperson said that it was essential for the protection of seafarers' rights, that their representatives had access to these records. This was especially true given that some vessels were subject to rapid changes of owner. In those cases, previous records were of great interest. His group supported the wording of paragraph 12 in the recommended draft.
- 275.** At the suggestion of the Chairperson, the Committee agreed to adopt paragraph 12 as in the recommended draft, adding text indicating that the record should be in English, taking into account that purely local trade could be excluded from this requirement. The Drafting Committee would be asked to produce the additional text.
- 276.** The Drafting Committee proposed replacing paragraph 12 with the following text:

12. The results of all subsequent inspections or other verifications carried out with respect to the ship concerned and any significant deficiencies found during any such verification shall be recorded, together with the date when the deficiencies were found to have been remedied. This record, accompanied by an English-language translation where it is not in English, shall, in accordance with national laws or regulations, be inscribed upon or appended to the declaration of labour compliance or made available in some other way to seafarers, flag state inspectors, authorized officers in port States and shipowners' and seafarers' representatives.

- 277.** The Committee adopted the proposal.

Paragraph 13

- 278.** The Shipowner Vice-Chairperson said that the wording "shall be made available" in the second sentence of paragraph 13 should be deleted. The Shipowners did not take issue with the idea that any inspection certificate should be posted prominently on board a vessel. The Government member of Singapore agreed.

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- 279.** The Seafarer Vice-Chairperson stated it was important that the provision in the second sentence in paragraph 13 be left unchanged. Recent increases in security often made it difficult to board a ship. Also, due to some employment agreements that prohibited contact between seafarers and their representatives, it was imperative that seafarers' representatives be allowed to request copies of these records. He reminded the Committee that the issue here was of "enforcement and compliance", an integral part of which was ensuring access to the relevant information.
- 280.** The Government members of Denmark and France favoured retaining the second sentence requiring that copies of records be made available.
- 281.** The Government member of the Netherlands said the requirement to make available copies of certificates and declarations would be acceptable if this were done at the expense of those requesting them, which would relieve governments of the expense.
- 282.** At the suggestion of the Chairperson, the Committee agreed to adopt paragraph 13, as found in the recommended draft.

Paragraph 14

- 283.** After a discussion, the Committee agreed to ask the Drafting Committee to specify that exemption from requiring English-language translations be extended to the provisions in paragraphs 12 and 13.
- 284.** The Drafting Committee proposed replacing paragraph 14 with the following text:
14. The requirement for an English-language translation in paragraphs 12 and 13 does not apply in the case of ships engaged only in domestic voyages.
- 285.** The Drafting Committee also provided commentary on the term "domestic voyages", noting that the present wording of Article II, paragraph 6 referred to "ships that do not undertake international voyages".
- 286.** The Seafarer Vice-Chairperson could accept the proposal in principle but stated there was still no definition of "domestic voyage". The Drafting Committee's commentary suggested that an appropriate reference might be included, but the definitive wording of Article II, paragraph 6 had not been decided on. One solution might be to change "domestic voyages" to "domestic trade", provided that the wording of Article II, paragraph 6 was eventually harmonized with this.
- 287.** The Shipowner Vice-Chairperson accepted the term "domestic trade".
- 288.** The Committee adopted the Drafting Committee's proposed text, replacing "domestic voyages" with "domestic trade".

Paragraph 15

- 289.** The Government member of Denmark, speaking on behalf of the Government group, suggested introducing the following new cessation of validity clause as subparagraph (e): "when substantial changes have been made to the structure or equipment covered by Title 3". A similar clause might need to be introduced into paragraph 5 on circumstances in which such an interim certificate could be issued.
- 290.** The Shipowner Vice-Chairperson said his group could support the removal of square brackets from subparagraph (d) and the introduction of the new invalidity clause.

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- 291.** The Seafarer Vice-Chairperson suggested also including a reference to the provisions of Standard A4.1, paragraph 3, concerning Members' requirements for on-board hospital and medical care facilities and equipment on ships that fly their flags.
- 292.** The Government member of the United Kingdom said that it was not always necessary to issue an interim maritime labour certificate in all cases of "substantial changes" to the structure or equipment covered by Title 3, thus a similar clause did not need to be introduced to paragraph 5.
- 293.** Paragraph 15 was adopted with the additional subparagraph (e) and the brackets removed.

Paragraph 16

- 294.** The Chairperson drew the Committee's attention to the Government group's suggestion to delete the bracketed two references to a "recognized organization" and to move all text after the first sentence (from "Where both States ... " onwards) to the Guideline. The Seafarer Vice-Chairperson agreed with the this proposal.
- 295.** The Shipowner Vice-Chairperson suggested amending the text to read "new full-term or interim certificate".
- 296.** The Government member of the United States said that the term "certificate" covered both interim and full-term documents. The Seafarer Vice-Chairperson and the Government member of the Netherlands agreed.
- 297.** Paragraph 16 was adopted by consensus, with the changes proposed by the Government group with the consequential addition of a reference to subparagraph (e) and on the transfer of the second sentence to the end of Guideline B5.1.3, the consequential change of "shall" to "should".

Paragraph 17

- 298.** The Chairperson drew the Committee's attention to the suggestion by the Government group to add "substantially" before "comply" to read "... if there is evidence that the ship does not substantially comply with the requirements ...".
- 299.** The Shipowner Vice-Chairperson said that the certificate should only be withdrawn in the case of a serious violation of the Convention.
- 300.** The Seafarer Vice-Chairperson agreed to the thrust of the Government group's suggestion, with some reservations on the use of the word "substantially".
- 301.** The Committee decided to send the issue to the Drafting Committee to examine whether a term such as "substantially complies" should be used or, whether the sense should be changed to infer to a "substantial violation" of the requirements.
- 302.** The Drafting Committee provided the following commentary:

The term "substantially comply" is not used in the Convention and its meaning, as it is not defined, is unclear and may be confused with the concept of substantial equivalence found in Article VI, paragraph 4.

The term "substantial violation" may constitute a significant change in emphasis as the word "violation" is used in connection with port state inspection: see Standard A5.2.1, paragraph 6.

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- 303.** It was concluded that the Drafting Committee would need further guidance before proposing a text.
- 304.** The Seafarer Vice-Chairperson stated his preference for keeping the text as had been proposed earlier, with the brackets and dotted underlining removed. The provision referred to two elements – evidence of non-compliance and failure by a ship to take corrective action. Based on that rationale, the text could be accepted as found in the recommended draft.
- 305.** The Shipowner Vice-Chairperson said that would not be acceptable. The wording had to be formulated in terms of a “substantial violation”, not merely of non-compliance, since withdrawal of a maritime labour certificate was a very serious step.
- 306.** In view of the lack of agreement, the Committee closed discussion on the text in question.

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

Paragraph 2

- 307.** The Government member of Denmark reported on the Government group’s deliberations with regard to paragraph 2. There had been general support to maintain both references. Although the relevance of Regulation 5 of SOLAS Chapter XI-I relating to the ship’s Continuous Synopsis Record had been questioned, the reference had been accepted since it was non-mandatory and was important for the Seafarers’ group.
- 308.** The Shipowner Vice-Chairperson reiterated that the Convention text should be as clean as possible and contain minimal references to other instruments. The text in square brackets should be deleted.
- 309.** The Seafarer Vice-Chairperson pointed out that the provision under discussion was a Guideline and that flag States were only required to give it due consideration. The reference to the International Safety Management (ISM) Code was appropriate and Regulation 5 of SOLAS Chapter XI-I relating to the ship’s Continuous Synopsis Record was a valuable document. The references to these important documents should be retained.
- 310.** The Shipowner Vice-Chairperson recognized the guideline status of the provision and withdrew his comments.
- 311.** The Committee adopted paragraph 2 as drafted and removed the brackets.

Paragraph 3

- 312.** The Government member of Denmark said there had been general support in the Government group for the principle of ongoing compliance in paragraph 3. The wording should be retained and the brackets deleted.
- 313.** The Shipowner Vice-Chairperson found that the concept of continuous improvement was inappropriate and should be deleted, because the real question was one of compliance or non-compliance.
- 314.** The Seafarer Vice-Chairperson agreed with the Government group and reminded the Shipowners that the provision under discussion was non-mandatory.

315. In view of the guideline status of the provision, the Shipowner Vice-Chairperson withdrew his comments.

316. Paragraph 3 was adopted as proposed and the brackets removed.

Standard A5.1.4 – Inspection and enforcement

Paragraph 1

317. The Government member of Denmark indicated that the Government group had agreed on the text of paragraph 1 as drafted, except for the word “regular” in the first line, which should be deleted. It was misplaced and superfluous since the sequence of inspections was already mentioned in paragraph 4 of the Standard. Some Government members had suggested to add the word “unscheduled”, but there had not been sufficient support in this regard, bearing in mind that the text did not prevent unscheduled inspections although such inspections were not mandatory.

318. The Shipowner Vice-Chairperson agreed that the brackets should be removed. The term “regular” should stay in the Standard, as it rationally followed from the wording of Regulation 5.1.4, paragraph 1. However, his group could go along with the majority view on this matter.

319. The Seafarer Vice-Chairperson supported the position of the Government group.

320. The Committee decided to remove the brackets and adopt paragraph 1 with the change proposed by the Government group.

Paragraph 2

321. The Government member of Denmark reported that there had been general consensus in the Government group to retain the text in paragraph 2 as drafted.

322. The Shipowner Vice-Chairperson considered that the text in brackets contained too many details and should be deleted. His group would, however, accept the majority view.

323. The Seafarer Vice-Chairperson agreed with the Government group that the bracketed text should be kept.

324. Paragraph 2 was adopted as proposed and the brackets removed.

Paragraph 7, subparagraph (c)

325. The Government member of Denmark stated that the Government group had not been able to reach a common approach in relation to paragraph 7, subparagraph (c). Most Governments had preferred the first alternative because it was more in line with the Labour Inspection (Seafarers) Convention, 1996 (No. 178) and because the consequences of the language in the second alternative went too far. Some Government members had favoured the second alternative because it contained the words “serious breach of seafarers’ rights”. The Government group felt that the appeal procedure mentioned in both alternatives should be put in a separate subparagraph for the purpose of readability.

326. The Shipowner Vice-Chairperson had a clear preference for the first alternative. The detention of a vessel was a very serious issue for shipowners and could only be justified in the case of a significant danger to the safety or health of seafarers. This Convention was not a Bill of rights for seafarers, rather a consolidation of minimum maritime labour

standards. Paragraph 14 of Standard A5.1.4 on compensation for shipowners in case of wrongful acts of inspectors demonstrated that the Convention was not only concerned with the rights of seafarers, but also with those of shipowners and States. As for the right of appeal, it only applied to subparagraph (c). If it were to be isolated, it would apply to the entire paragraph. However, as regards the appeal procedure, his group could go along with the majority view.

- 327.** The Seafarer Vice-Chairperson emphasized the importance of this provision for seafarers, since it dealt with flag state inspectors visiting ships that were in non-compliance. His group preferred the second alternative. While the first alternative used the term “deficiency”, the second referred to “non-compliance” which was more appropriate when dealing with the rights of seafarers. The second alternative also contained an element missing in the first, namely the words “serious breach of seafarers’ rights as provided for in this Convention”. This wording was essential in view of the fact that flag state inspectors would be dealing with ships that did not comply with the provisions of the Convention. Moreover, he criticized the wording “significant danger to seafarers’ health or safety” in the first alternative according to which the exposure of seafarers to dangers to health or safety remained without consequences except the dangers were considered significant. Governments should give serious consideration to the second alternative. This Convention stipulated seafarers’ fundamental rights and principles and employment and social rights. These rights could not be enforced if flag States would not allow their own inspectors to detain a vessel because of non-compliance on these grounds. However, the serious issue at stake was not the detention but the serious breach of seafarers’ rights. Detention was merely the consequence of such a breach. The Seafarer Vice-Chairperson urged the Governments to reconsider their position. As regards the appeal procedure, he shared the position of the Government group.
- 328.** The Government member of Spain also favoured the second alternative. It dealt with the authority of inspectors to detain a vessel, which was the most effective measure to ensure enforcement of the Convention, due to its strong economic impact. The detention of vessels should not only be possible for reasons of health and safety but also on the grounds of a violation of seafarers’ rights. There was no hierarchy of rights, and in the confined working space of seafarers every right depended on the respect of the other rights, and some deficiencies could have wide-reaching repercussions. For example, repeated violations of seafarers’ rights to rest periods and in the area of working hours were regarded as one of the main causes of accidents. The Government members of the United Kingdom and Venezuela supported this position.
- 329.** The Government member of the United Kingdom further argued that the powers granted to the flag state inspectors by the first version were already granted in the International Convention for the Safety of Life at Sea (SOLAS), 1974. The new Convention should make use of the most powerful tool in a member State’s armoury, the right to detain a vessel. However, taking into account the seriousness of a detention, the word “significant” should be inserted before “danger to seafarers’ health or safety”.
- 330.** The Government member of Venezuela added that choosing the first alternative meant giving preference to the economic situation of a ship over the well-being of seafarers and their rights. Serious breaches of seafarers’ rights were imaginable that did not constitute “significant dangers to seafarers’ health or safety”, but should be reasons for the detention of a ship, for instance child labour or forced labour.
- 331.** The Government member of Denmark preferred the first option. Current regulations already allowed for the detention of ships by flag States. The Committee should stick to the solution found in 1996 for the Labour Inspection (Seafarers) Convention, 1996 (No. 178). The formulation “non-compliance” called for a black or white judgement and was not suitable for the assessment of grey areas. Besides inspection, flag States also had

other procedures that could enforce compliance, for example administrative procedures or court control.

- 332.** The Government member of the Ukraine supported this position and suggested that flag States should deal with a situation where requirements of the Convention were not complied with by withdrawing the maritime labour certificate according to paragraph 17 of Standard A5.1.3.
- 333.** The Government member of Malta suggested, as a compromise, to start off with the second alternative but insert “significant” before “danger” and refer to a “serious breach of the requirements of the Convention” instead of a “serious breach of seafarers’ rights as provided for in the Convention”. The reference to the requirements of the Convention was in line with ILO and IMO Conventions and broader than the wording “serious breach of seafarers’ rights”. The detention of vessels would even be possible, when seafarers’ rights were not affected, for example if a shipowner did not renew the ship’s certificate. The Government members of Bulgaria, the United Kingdom and the Shipowner Vice-Chairperson supported this position as it achieved a balance between the concerns of the Seafarers’ and Shipowners’ groups.
- 334.** The Seafarer Vice-Chairperson stated that flag state responsibilities were wider than paragraph 17 of Standard A5.1.3 and could be found in instruments such as the United Nations Convention on the Law of the Sea (UNCLOS). It was disturbing that words were avoided which related directly to the delivery and enforcement of seafarers’ rights and he objected to the tendency to camouflage seafarers’ rights. A ship that violated the seafarers’ rights provided for in this Convention had to be detained. He agreed to include the word “significant” before “danger to seafarers’ health or safety”. As regards the term “non-compliance”, both terms “non-compliance” and “deficiency” had inherent elements of subjectivity. The judgement of flag state inspectors was on a professional basis and should be trusted.
- 335.** The Government member of the Republic of Korea stated that detention was a very serious sanction, which needed to be carefully considered. To allow detention for every serious breach of the requirements of the Convention went too far. This would make it difficult for the Republic of Korea to ratify.
- 336.** Following informal consultations, the Government member of Denmark, speaking on behalf of the Government group, said they had examined the second alternative text. Most governments could be flexible on the proposed modifications but some held serious reservations about possible repercussions on the port state provision. Concerns were raised with respect to the phrase “the rights” and some governments still preferred the phrasing “the requirements of this Convention”. It was noted that when dealing with enforcement by flag state inspectors, detention was not the only effective enforcement method. Governments had also discussed the issue of the competent authority and the authority granted to an inspector. In some countries, inspectors could not detain a ship without receiving authorization. The text did not interfere with such procedures however, as it did not preclude the existence of supporting internal guidelines that an inspector would follow in carrying out his or her work.
- 337.** The Chairperson indicated there was a cascading process in this provision, which allowed governments the freedom to select a process or to delegate authority, for example, in some countries there were maritime inspectors and in others, labour inspectors, with or without police powers.
- 338.** The Shipowner Vice-Chairperson said that although he preferred the term “requirements”, the Shipowners could accept the term “rights”, as long as the Drafting Committee would still examine the subject of “right of appeal”.

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- 339.** The Government member of Malta stated that although he would have preferred the term “competent authority” he could accept “inspector”. He could not accept, however, the replacement of the term “requirements of the Convention”. This term could include instances of non-compliance as well as the rights of seafarers.
- 340.** The Seafarer Vice-Chairperson proposed modifying the text to read: “... the requirements of the Convention (including seafarers’ rights) ...”. The Government members of Denmark, Malta, Singapore and the United Kingdom supported this text.
- 341.** The Government member of India drew the Committee’s attention to the Regulation and Standard in its entirety, noting that complete provisions dealt with “requirements of the Convention”. This was supported by the Government member of Liberia.
- 342.** The Seafarer Vice-Chairperson expressed concern over what he felt was a continual narrowing of the provisions of the Convention. The issue was stopping ships that violated the rights of seafarers, but this would not be a concern if all protections were in place and complied with.
- 343.** The Government member of the Republic of Korea pointed out that there were many ways to rectify non-compliance; detention was not the only one. Other measures included administrative measures and criminal or civil penalties. The problem with subparagraph (c) was that it dealt with detention as the only means of rectifying non-compliance. Consideration should be given to other industries’ practices when determining the wording in this paragraph. Referring to the list of cases contained in Standard A5.1.3, paragraph 15, the speaker suggested the Committee should develop a list of major and minor cases of non-compliance along with very clearly specified penalties to address these situations.
- 344.** The Government member of Norway supported the suggestion by the Government member of Malta and the Seafarers’ group, and agreed that a reference to seafarers’ rights belonged in the text. A flag State should take the responsibility for conditions on board its ships. Any limitation to the powers of an inspector would seem to be artificial. It was not necessary to specify all different possible penalties in the instrument, since these built upon different legal systems. Only the ultimate measure, detention, needed to be included. The flag State should be the guarantor not only of a vessel’s seaworthiness, but also of its seafarers’ rights.
- 345.** The Government member of Mexico said that one of the basic principles underlying international conventions was the principle of fairness among economic sectors in every country. In this context, that principle implied that labour inspectors for shoreworkers should not be treated differently from labour inspectors working on-board ships. Since shoreworker labour inspectors had access to effective sanction mechanisms, labour inspectors on board ships needed this same access in order to enable such fairness. The proposal by the Government member of Malta was extremely relevant and had his delegation’s support.
- 346.** The Shipowner Vice-Chairperson indicated his acceptance of the proposals made by Malta and the Seafarers. He stated, however, that contents relating to the right of appeal should be transferred and maintained in the separate paragraph.
- 347.** The Committee therefore agreed to adopt the text as follows: “(c) to require that non-compliance is remedied and, where they have grounds to believe that a case of non-compliance constitutes a serious breach of the requirements (including seafarers’ rights) provided for in this Convention, or represents significant danger to seafarers’ health or safety or security, to prohibit a ship from leaving the port until necessary actions are taken.”

Paragraph 12

- 348.** The Chairperson drew the Committee’s attention to the Government group’s preference for the use of the term “inspection” rather than “investigation”.
- 349.** The Shipowner Vice-Chairperson preferred the term “investigation” since an investigation usually followed an incident. The Seafarer Vice-Chairperson and the Government member of France agreed.
- 350.** The Government member of Denmark, speaking on behalf of the Government group, said the text was taken from discussions in Nantes. After an investigation of an incident, an inspection would take place to rectify the deficiency. Investigations were covered under Regulation 5.1.6 – Maritime casualties, and so in this instance it was correct to refer to an inspection.
- 351.** In the absence of any strenuous objections, the Committee agreed to adopt the term “investigation” in both instances in paragraph 12.

Paragraph 14

- 352.** The Government member of Denmark stated that the Government group generally accepted the text in the recommended draft. However, there was a problem with the term “unjustified” which they thought was too harsh and should be deleted.
- 353.** The Shipowner and Seafarer Vice-Chairpersons did not have any objections to the proposal of the Government group.
- 354.** The Committee agreed to remove the brackets and adopt the text of paragraph 14, with the deletion of “or unjustified”.

Guideline B5.1.4 – Inspection and enforcement

Paragraph 8, subparagraphs (g) and (h)

- 355.** The Government member of Denmark, speaking on behalf of the Government group, suggested that the word “or” in the bracketed text of subparagraphs (g) and (h) be substituted by the words “and if applicable”. The remaining bracketed text in both subparagraphs (g) and (h) could be adopted.
- 356.** The Shipowner and Seafarer Vice-Chairpersons agreed.
- 357.** The Government member of Liberia requested clarification from the Government group since he had understood they had agreed to keep the original reference to a “recognized organization” in subparagraph (g), but delete it in subparagraph (h) since it was inappropriate to notify recognized organizations of occupational injuries or diseases. The Government members of France and the United States supported this intervention.
- 358.** The Committee accordingly agreed to remove the brackets and adopt the modified text of subparagraph (g), which would then read “and if applicable the recognized organization”. It also agreed to delete the bracketed text in subparagraph (h).

Paragraph 10

- 359.** The Government member of Denmark, speaking on behalf of the Government group, said that paragraph 10 should be moved to the mandatory provisions of the Code (Part A).

However, the word “penalties” in subparagraph (b) should be replaced with “sanctions”, therefore providing the possibility of applying a wider range of sanctions.

- 360.** The Shipowner and Seafarer Vice-Chairpersons agreed that the paragraph could go into the mandatory Code and had no issue with substituting the word “penalties” with “sanctions”.
- 361.** The Government member of India suggested that there were three elements to the paragraph: (1) ensuring the inspector had no direct or indirect interest in the ship; (2) ensuring confidentiality; and (3) ensuring there were penalties and sanctions. She inquired if the Office, in its next redrafting of this provision, could try more clearly to delineate these three elements.
- 362.** The Committee agreed to replace the word “penalties” with the word “sanctions” and requested the Office to find an appropriate place for it within Part A of the Code.

Regulation 5.1.5 – On-board complaint procedures

- 363.** The Chairperson indicated he wished to postpone discussion on Regulation 5.1.5 until the text was more mature.
- 364.** The Seafarer Vice-Chairperson agreed, but wanted the Committee to be aware that Regulation 5.1.5 did not cover ordinary grievances and complaints, but serious issues regarding non-compliance with the rights and requirements of the Convention. He hoped this differentiation would help the Committee members when they were thinking about this regulation.

Standard A5.2.1 – Inspections in port

Paragraph 1

- 365.** As a consequence of the changes adopted in Standard A5.1.3, paragraphs 6, 7 and 8, and in order to meet the Seafarers’ concern that a ship might change flag in order to avoid meeting the requirements of a full-term certificate, the Government group proposed adding text to Standard A5.2.1 to allow for expanded inspection. The suggested text would come after subparagraph (b): “there is evidence to believe that the ship has changed flag for the sole purpose of avoiding compliance with this Convention”. This change might also require a consequential modification in the part Appendix A5-II concerning the interim certificate.
- 366.** The Shipowner Vice-Chairperson said that Standard A5.2.1, subparagraph (b) covered many of the concerns regarding ships changing flags making the proposed new subparagraph superfluous. Also, “reasonable grounds” should be changed to “clear grounds”, in keeping with the wording used in IMO standards and the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).
- 367.** The Seafarer Vice-Chairperson requested clarification on whether an inspection carried out under Standard A5.2.1 would be the same as for a full certificate or as for an interim certificate. If it were as for a full certificate, then the Seafarers could support this suggestion. The word “evidence” in the proposed new subparagraph was too strong and “reasonable grounds” was suggested as an alternative. Similarly, the word “sole” in the term “sole purpose” should also be removed. While “clear grounds” was a recognized term, “reasonable grounds” allowed for a certain leeway on the part of inspectors and was therefore supported by the Seafarers in this context. In provisions relating to boarding and

searching ships, the term “reasonable suspicion” was currently under discussion, and offered even more discretionary power.

- 368.** The Government member of the United Kingdom suggested that a consequential modification be made to the text of the interim maritime labour certificate set out in Appendix A5-II, particularly its subparagraph (a), which should be changed to “this ship , after inspection, was found to comply with the applicable requirements of this Convention”.
- 369.** The Shipowner and Seafarer Vice-Chairpersons both agreed that the change appeared to present no problem, subject to further discussion when the Committee came to consider the Appendix.
- 370.** In the absence of any strenuous objections, it was decided to adopt the new subparagraph after subparagraph (b) as follows: “there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with this Convention.
- 371.** The Government member of Denmark, speaking on behalf of the Government group, indicated that most governments supported the deletion of the bracketed text at the end of the last sentence of paragraph 1: “or a clear obstacle to the application of the principles or rights provided for in this Convention”, although some had wanted to keep the text in a modified form. If this was accepted, this part of the text should be consistent with the language used in the preceding subparagraphs.
- 372.** The Shipowner Vice-Chairperson said that the Shipowners had always insisted that provisions relating to port state inspection should be restricted to working and living conditions on-board ships, and therefore favoured deletion of the bracketed text.
- 373.** The Seafarer Vice-Chairperson recalled that the bracketed text was important to the implementation of the Convention. The Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) contained provisions allowing for the detention of a ship in cases where it had inadequate food and water for a voyage, unsanitary accommodation, or vermin on-board. The STCW and SOLAS Conventions likewise contained provisions allowing a ship to be detained if the ship’s crew did not understand instructions, or if muster drill were deficient. All this being the case, it seemed that the eventualities provided for in the proposed Convention were no less important and required a clause such as the one in the bracketed text. Changes to the wording however, could be considered.
- 374.** The Shipowner Vice-Chairperson agreed that all the examples of contraventions of various maritime instruments cited by the previous speaker called for powers of detention of ships, but suggested that the subparagraphs preceding the bracketed text in question covered all those examples. Convention No. 147 contained no analogous reference to “clear obstacles to application” and stipulated that, in taking such measures, a Member must not unreasonably detain or delay the ship. The context of the provision under discussion was inspection, and, specifically, the possibility of more detailed inspection under defined circumstances. The subparagraphs, with the addition of the new subparagraph, should cover the concerns expressed by the Seafarers’ group.
- 375.** The Government member of Singapore strongly agreed with the Shipowners that the wording in brackets at the end of paragraph 1 should be deleted, since port state control should be confined to working and living conditions of seafarers. As for the new subparagraph, he raised a point of order, stating that the wording had not been discussed. His delegation would prefer the words “clear grounds” instead of “reasonable grounds”.
- 376.** The Government member of India agreed. This amendment of unbracketed text had not really been consequential. Since the provision dealt with port state control, it should not

use the term “reasonable”, which was too subjective. The word “clear” was less ambiguous.

- 377.** The Seafarer Vice-Chairperson, on a point of order, reminded the Committee that this unbracketed text had been consequentially changed as a result of the agreement reached regarding interim certificates; the discussion was therefore closed. As for the wording in brackets, paragraph 6 was also relevant since it set out the conditions under which a ship could be detained. The matter was also connected to the provisions on onshore complaint procedures, as it determined how these concerns were ultimately dealt with. In view of the strong link, paragraphs 1 and 6 should be discussed together.
- 378.** The Government members of the Bahamas, China, Denmark, Germany, Greece, Japan, Netherlands, Pakistan and the Republic of Korea supported the position of the Government member of Singapore as regards the bracketed text. Since the port state inspector should be as objective as possible, the task to establish “a clear obstacle to the application of the principles or rights provided for in this Convention” was considered too subjective and extremely difficult for port state inspectors to implement. This assessment could entail complex legal issues, which might require judicial review and should not be left to the decision of a single inspector. Regulation 5.2.1 only mentioned working and living conditions and clearly demonstrated the intended scope of inspections. Paragraph 8 provided for the payment of compensation. Should any findings be successfully contested, port state inspectors would face serious problems in proving that they had found a deficiency constituting an obstacle as foreseen in the bracketed text since this assessment could not be made objectively. The bracketed text should be deleted.
- 379.** The Government member of Venezuela opposed the majority view of the Government group. Seafarers’ rights needed to be covered by the detailed inspections, which should not be restricted to issues of safety and health and security. Links to paragraph 6 should not be ignored. The bracketed text could be substituted by “or a violation of the principles or rights provided for in this Convention”.
- 380.** The Chairperson suspended the discussion to allow consultations among the Seafarer members. This issue was not discussed further.

Regulation 5.2.2 – Onshore seafarer complaint-handling procedures

- 381.** The Seafarer Vice-Chairperson stressed that Regulation 5.2.2 was a fundamental issue to his group and touched upon significant international legal issues such as equality before the law, non-discrimination and issues related to conflict of jurisdictions. His group believed that a majority of governments would not be able to ratify the Convention if the access of seafarers to legal forums would be restricted.
- 382.** The Shipowner Vice-Chairperson and the Seafarer Vice-Chairperson believed that the governments should take a position on the issue.
- 383.** The Government member of the Netherlands, speaking on behalf of the Government members of the European Union present in the Committee (Belgium, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovenia, Spain, Sweden and the United Kingdom) indicated that a number of papers would be distributed on this issue and proposed that the discussion be postponed so that these papers could be considered. The Shipowner and Seafarer Vice-Chairpersons said their groups would also be providing papers.

Appendix A5-II

- 384.** The Government member of the United States said that the informal Working Party refining the text in the Maritime Labour Certificate in Appendix A5-II was not doing substantive work but rather form change, in the hope of eliminating redundancies. Paragraph 11 of Standard A5.1.3 had been incorporated into new paragraph 10. Guideline B5.1.3, paragraph 1, had been taken into consideration for the purpose of improving the certificate and achieving clarity on how the document should be used. The existing language in A5-II reading: “This is to certify ...” had been changed to clarify what was to be certified and to provide transparency for shipowners, seafarer’s, flag and port state inspectors. Some proposed changes could lead to consequential changes.
- 385.** A Shipowner member remarked that all the appendices were considered work in progress and that the text in all three documents should remain in brackets.
- 386.** After further deliberations by the Working Party, the Government member of the United States reported that its work remained a work in progress and any final agreement on the form of the certificate might require consequential modifications to other parts of the text. The Working Party had consolidated the Declaration of Labour Compliance into two parts, rather than the original three. The new Part I would be an amalgamation of the old Parts I and II and would set out in clearer terms the competent administration for issuing declarations and the specific items that had to be covered. The 15 items originally specified in Part I had been moved to the new Part II. The intention was to improve transparency regarding the capture of information and to clarify matters with regard to “substantial equivalence” and precise requirements. Provisions in Part II would be invoked following any inspection in order to ensure that a ship was being brought into compliance. As regards the certificate, some changes had been made to the language.
- 387.** A Shipowner member thanked the Working Party and said that the results it had achieved should be kept on the table for further discussion and modification.
- 388.** The Seafarer Vice-Chairperson agreed and said he was confident that the new streamlined approach would lead to the production of a sound text for consideration at the next session of the Conference.
- 389.** The Chairperson thanked the Working Party for its considerable efforts and the Committee took note of its proposals.

Closing remarks

- 390.** The Committee concluded its discussions on the bracketed text in the recommended draft without considering or reaching agreement on certain bracketed text in Articles II, VIII, XIV, XV, Title 5 and the appendices. The Committee did not discuss any of the unbracketed text in any of the provisions before it, apart from a few consequential changes following consideration of bracketed text.
- 391.** The representative of the Secretary-General recalled the mandate of the Preparatory Technical Maritime Conference, which had been to review the draft, recommended by the High-level Tripartite Working Group on Maritime Labour Standards, of a consolidated maritime labour Convention and propose a text, with a view to the adoption of the Convention by the 94th (Maritime) Session of the International Labour Conference.
- 392.** Although substantial progress had been made, there were still a number of issues not resolved by the technical committees. The Steering Committee had decided that any

unresolved bracketed text would not be included in the document to be adopted by the Preparatory Technical Maritime Conference, which would be forwarded to the 94th (Maritime) Session of the International Labour Conference.

- 393.** Following consultations with the social partners, the Government group had proposed a special mechanism to deal with all outstanding issues remaining in brackets, including any bracketed text that might remain from Committees 2 and 3. This mechanism would be a transparent consultative process in the form of a meeting, in which all interested constituents could be involved and/or comment on the results achieved. The process would allow all interested governments to take part and the social partners to determine which and how many of their members would participate. While the Office would provide services, facilities and logistical arrangements, the meeting would have to be at no direct cost to it. The responsibility for proposing any future text that would complement the text adopted by the Preparatory Technical Maritime Conference would rest with the Office. Any concerns that Committee members had on unbracketed text should have been dealt with through the amendment process.
- 394.** A second mechanism, separate from the procedure dealing with unresolved bracketed text, would be put in place by way of a resolution adopted by the Conference to address the amendments submitted to unbracketed text; none of which had been dealt with in the Committees.
- 395.** The Government member of Liberia said that these two mechanisms should be linked so as to avoid having to participate in two processes.
- 396.** Both the Shipowner and the Seafarer Vice-Chairpersons expressed their thanks to the Chairperson for his effective leadership, and to the secretariat for its assistance.
- 397.** The Chairperson stated that the Committee had completed as much work as was possible given the time constraints. It should be proud of the work it had accomplished, while remaining aware that there was still more work to be done. He thanked all the members of the Committee for their dedication and active participation throughout the Conference and thanked the Office for its cooperation.

Geneva, 23 September 2004.

(Signed) B.M. Shinguadja,
Reporter.