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INTERNATIONAL LABOUR ORGANIZATION

PTMC/04/3-3

**Report of Committee No. 3**

**Preparatory Technical Maritime Conference**

**Geneva, 13-24 September 2004**



INTERNATIONAL LABOUR OFFICE GENEVA

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## Report of Committee No. 3

1. At its first sitting on 14 September 2004, the Preparatory Technical Maritime Conference constituted three technical committees, including Committee No. 3 to address the draft provisions of the Consolidated Maritime Labour Convention under Title 4: Health protection, medical care, welfare and social protection (Committee No. 3). Committee No. 3 was originally composed of 85 members (62 Government members, 18 Seafarer members and five Shipowner members). To achieve equality of voting strength, each Government member entitled to vote was allotted 45 votes, each Seafarer member 155 votes and each Shipowner member 558 votes. The composition of the Committee was modified two times during the session, and the number of votes allocated to each member was adjusted accordingly.<sup>1</sup>
2. The Officers of the Committee were as follows:  

<i>Chairperson:</i>	Ms. R.D. Baldoz (Government member, Philippines)
<i>Vice-Chairpersons:</i>	Mr. J.J. Cox (Shipowner member, United States)
	Ms. J. Smith (Seafarer member, Norway)
	Ms. M. Lewandowska (Government member, Poland)
<i>Reporter:</i>	Ms. F.A. Elhamid (Government member, Egypt)
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).

## Introduction

5. In her opening address, the Chairperson stressed the importance of the Committee's work in the context of her own country, and her country's commitment to the emergence of a historic and powerful instrument providing an efficient legal framework for the maritime profession. She highlighted the importance of the work in seeking to achieve the universal goal of social justice. She noted that the provisions before Committee No. 3 had been the most difficult to draw up, particularly those relating to social security, and that they had been the subject of intense discussions during a High-level Tripartite Working Group in Nantes in January 2004, and the provisions currently under review were the result of a subsequent meeting in April 2004 of the Working Group on Social Security Protection for Seafarers (April 2004 Meeting of Experts).. She introduced the manner in which the Committee would address its work, as determined by the Steering Committee, namely to begin with the most controversial provisions first.

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

- (a) 15 September: 74 members (63 Government members entitled to vote with 10 votes each, 6 Seafarer members with 105 votes each and 5 Shipowner members with 126 votes each).
- (b) 16 September: 75 members (64 Government members entitled to vote with 15 votes each, 6 Seafarer members with 160 votes each and 5 Shipowner members with 192 votes each).

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6. The deputy representative of the Secretary-General of the Conference introduced the documents before the Committee: the recommended draft and the accompanying Commentary, as well as the unique procedures that had been developed to help facilitate the work of the Committee. He then pointed to some of the key issues before it. Committee No. 3 had been charged with addressing the most important and challenging issue of social security, as well as the issue of medical care: text concerning hospital accommodation aboard ships still required further discussion. There were also issues related to shipowners' liability on which agreement had not been reached and new text on health and safety protection and accident prevention. The issue of the scope of application of some of the provisions in the regulations and standards would also be open for the Committee to discuss.

## General discussion

7. The Shipowner Vice-Chairperson acknowledged that the issues before Committee No. 3 were of great importance to seafarers, and that shipowners recognized and appreciated this. However, his group had three main concerns regarding Title 4. First, the scope of application was too broad, since a "seafarer" was defined to include everyone who comes on board a ship. The scope of application needed to be considered with respect to each title of the recommended draft. The second major issue was social security. The concern of his group was linked to the fact that the Social Security (Seafarers) Convention (Revised), 1987 (No. 165) had only been ratified by two member States. His group sought a Convention that would ensure high standards, and be able to be ratified and enforced. The third issue concerned medical care. The Shipowners would oppose the notion of being required to have full occupational safety and health programmes on board ship.
8. The Seafarer Vice-Chairperson underlined the fact that the work of the Committee addressed an important aspect of seafarers' employment conditions. The responsibility for providing health protection, medical care, welfare and social protection was a shared one between States, Shipowners and Seafarers; it was important that all parties lived up to their obligations. She stated that social security protection for seafarers was particularly complex due to the nature of shipping where international seafarers worked in a global industry and sailed on board ships flying different flags. The task before the Committee was to ensure that seafarers were adequately covered despite the complexities involved. A key issue was the role that flag States had to play as only they had the ability to ensure that the social protection needs of seafarers on their ships were met. This involved providing access to their social security systems if necessary, as well as ensuring that employers met their responsibilities, and working with them and resident States to address the longer term social protection needs of seafarers. The Seafarers did not accept a restriction on the scope of the term "seafarer" with regard to Title 4.
9. The Government member of Egypt noted that for seafarers, the issues of social protection and social welfare were the most important issues before the Committee, and that there should be divided responsibility for providing protection. In order for the rights to be implemented, she stressed the importance of ensuring the texts finally adopted would be very clear.
10. The Government member of Germany stressed the magnitude of the work before the Committee in attempting to regulate social protection at a global level, since harmonization had not even been possible in this area for the European Union. He underlined the importance of reaching a common understanding in this area.

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## **Title 4. Health protection, medical care, welfare and social protection <sup>2</sup>**

### **Standard A4.1 – Medical care on board ship and ashore**

#### Paragraph 4(a)

- 11.** The Shipowner Vice-Chairperson supported maintaining the text in curly brackets reading:

... ships {carrying {15} or more seafarers and engaged in a voyage of more than three days' duration} shall provide separate hospital accommodation to be used exclusively for medical purposes.

- 12.** The Seafarer Vice-Chairperson stated that the requirement to provide separate hospital accommodation should be linked to the duration of the voyage, and specifying a duration of more than three days was acceptable. The threshold of 15 seafarers was considered too high. The number needed to be revised, since it had its origins in the Accommodation of Crews Convention (Revised), 1949 (No. 92), and was not relevant to the modern context.
- 13.** The Government member of the Bahamas, speaking on behalf of the Government members of the Committee, stated that the governments had generally not expressed any strong views concerning the figures in brackets. A view had been expressed, however, that three days was perhaps too short, and that the availability of airlifting facilities was important.
- 14.** The Shipowner Vice-Chairperson acknowledged that there was a need for medical personnel on small crafts for voyages of more than three days, even with a crew of less than 15. But it would not be practical to have hospital facilities on board where there was a small number of crew members. It might be preferable to defer to national law to delineate the appropriate threshold requiring small crafts to have hospital accommodation.
- 15.** The Seafarers' group opposed leaving the determination of the minimum number of seafarers to national law, since it was the role of the Convention to set the minimum requirements. In their view, the number of people on board was not relevant, since there would in all cases be a need for medical care and to avoid the spread of infectious diseases.
- 16.** The Government member of Japan, supported by the Shipowners' group, noted that the minimum figure of 15 had been included in the Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164), and that conditions had not changed substantially since that time. There was, therefore, no reason to change the figure of 15.
- 17.** In response to a question from the Shipowners' group regarding the link between the provision under discussion and the accommodation provisions of the instrument, the representative of the Secretary-General stated that these issues were linked. The Committee would thus need to consider the issue of the placement of the appropriate provisions. He also noted that the spirit of the older Conventions was to provide for different accommodation requirements for different sized vessels. Moreover, crews on cargo vessels have become smaller.

<sup>2</sup> 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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18. The Seafarer Vice-Chairperson proposed to decrease the number from 15 to ten. This was rejected by the Shipowners' group and the Government members of Denmark, Japan and Malta.
  19. The Government member of Argentina was prepared to support the proposal to decrease the number to ten. Consultations with the Argentine Maritime Authority and the Merchant Marine suggest that the average crew for the type of voyages described in paragraph 4(a) ranged from 14 to 20 seafarers.
  20. The Government member of Malta said that access to emergency airlift facilities was important for a voyage of more than three days. The Seafarer Vice-Chairperson suggested that a reference to emergency airlifting facilities could be included in paragraph 4(c).
  21. The Shipowner Vice-Chairperson noted that such a proposal to change unbracketed text would need to be submitted as part of the formal amendment process; however, his group would not support its inclusion as a mandatory requirement.
  22. The Chairperson noted that there was agreement to keep the text in paragraph 4(a) as set out in the recommended draft.

#### Paragraph 4(c)

23. The Shipowners' group, supported by the Seafarers' group, proposed changing the reference to 100 or more "seafarers" in paragraph 4(c) to 100 or more "persons". The Chairperson noted the consensus, and referred the provision to the Drafting Committee.
24. The Drafting Committee acknowledged the decision taken by Committee No. 3 to amend paragraph 4(c) of the recommended draft as follows:
  - (c) ships carrying {100} or more persons and ordinarily engaged on international voyages of more than three days' duration shall carry a qualified medical doctor who is responsible for providing medical care. National laws and regulations shall also specify which other ships shall be required to carry a medical doctor, taking into account, inter alia, such factors as the duration, nature and conditions of the voyage and the number of persons on board;
25. The Committee agreed to remove the curly brackets from the Drafting Committee text and it was adopted.

### **Guideline B4.1 – Medical care on board ship and ashore**

#### ***Guideline B4.1.1 – Hospital accommodation and provision of medical care***

26. The Seafarer Vice-Chairperson suggested that since the first four paragraphs of the Guideline were relevant to design issues, consideration should be given to including a cross-reference to Title 3 of the instrument, or to transferring paragraphs 1 to 4 to Title 3.
27. The Shipowners' group and the Government group, represented by the Government member of the Bahamas, agreed that the provisions should be moved to Title 3. The Government member of the Bahamas, speaking on behalf of the Government members of the Committee, specified that the provisions should in any event retain their status as guidelines.



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28. Given the general consensus, the Chairperson submitted the following direction to the Steering Committee: “The Committee recommends that paragraphs 1 to 4 should be transferred to Title 3. The Steering Committee is requested to take the appropriate action.”
  29. The Steering Committee approved the transfer of paragraphs 1 to 4 to Title 3.
  30. Following the decision of the Steering Committee, the Drafting Committee moved paragraphs 1-4 of Guideline B4.1.1 to Title 3, Guideline B3.1. Consequently, the Drafting Committee proposed that the title of Guideline B4.1.1 should read “Provision of medical care”.
  31. The Committee adopted the proposal of the Drafting Committee to change the title of Guideline B4.1.1 to “Provision of medical care”.

#### Paragraph 1

32. The Shipowner Vice-Chairperson, supported by the Seafarers’ group, requested that the words “preventing the spread of infectious diseases” be changed to “take all reasonable measures to prevent the spread of infectious diseases” since it would be impossible to prevent such spread in all cases. The Government member of the Bahamas, on behalf of the Government members of the Committee, generally supported the principle of paragraph 1, and had no objection to small drafting changes.
33. Given the general consensus, the Chairperson forwarded the provision to the Drafting Committee with the following instructions:

The Committee suggests that the words “preventing the spread of infectious diseases” be made less stringent as it would be impossible in all cases to prevent the spread of infectious diseases. The Committee suggests that the wording should be along the following lines: “measures are taken with a view to preventing the spread of infectious diseases”.

#### Paragraph 2

34. There was consensus to retain the text of the recommended draft of paragraph 2.

#### Paragraph 3

35. No change to the recommended draft of paragraph 3 was proposed.

#### Paragraph 4

36. The Seafarer Vice-Chairperson suggested that the reference to “water closet” be updated. The Government member of the Bahamas, speaking on behalf of the Government members of the Committee, submitted that the term used in Title 3, namely “sanitary facilities” should be used instead of “water closet” for the sake of consistency.
37. The Government member of the Bahamas, supported by the Government member of the Ukraine, suggested deleting the words “in close proximity thereto” thus requiring sanitary facilities to be incorporated in hospital accommodation. His Government was of the view that this would avoid the spread of infectious diseases.
38. The Government member of Denmark, supported by the Government members of Egypt, Germany and Venezuela, objected to the deletion of “in close proximity thereto”. The Government member of Italy suggested that the words could be retained, but preceded by “if this is not possible”.

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- 39.** Paragraph 4 was forwarded to the Drafting Committee with an instruction that the term “water closet” should be replaced by “sanitary facilities”.

#### Paragraph 5

- 40.** The Shipowner Vice-Chairperson submitted that paragraph 5 did not belong in Guideline B4.1, since the previous paragraphs dealt with design, while this paragraph addressed training. In addition, the language could restrict or interfere with the Seafarers’ Training, Certification and Watchkeeping Code (STCW Code). He asserted that the distinction made between ships falling under paragraph 5(a) and those covered by paragraph 5(b) was unnecessary and undesirable since the STCW Code should apply in all cases. It was sufficient that the STCW Code had been referred to in general terms in Standard A4.1.4(d). The Shipowners’ group, supported by the Government member of Venezuela, proposed the deletion of paragraph 5.
- 41.** The Seafarers’ group, supported by the Government members of Japan and the Philippines, opposed the deletion of paragraph 5, on the ground that it was appropriate to refer generally to the STCW Code in the Standard, with more detailed recommendations in the guidelines. The Government member of the Philippines added that the main subject of the paragraph was not training but the persons qualified to carry out the medical care. In the view of his Government, the link with Standard A4.1.4 remained important.
- 42.** The Government member of the Bahamas, supported by the Government members of Egypt and the United Kingdom, agreed with the Shipowners’ group that duplication with and possible contradiction of the STCW Code should be avoided.
- 43.** The Government member of the United Kingdom, supported by the Government members of Egypt, France and Malta, proposed that the details on training be deleted, leaving a general reference to medical training being provided in accordance with the STCW Code.
- 44.** The Government member of Georgia recalled that the paragraph concerned the level of training. This needed to be viewed in the light of paragraph 4(d) of Standard A4.1 on “Medical care on board ship and ashore”, which would need to be modified to state “at least one officer” rather than “at least one seafarer”, and replacing “or” with “and” in the third line.
- 45.** The Government member of France noted an inconsistency between the French and English texts, with the English referring to “the level” of training and the French only stating “training”.
- 46.** The Seafarer Vice-Chairperson expressed concern that if the paragraph were deleted or modified to refer only to the STCW Code, requirements and specifications going beyond the STCW Code would be lost.
- 47.** The representative of the Secretary-General stated that paragraph 5 was not primarily about the content of training, but rather gave guidance on what type of medically qualified persons would be needed on different voyages, thus providing a safety net. He also noted that as the STCW Code was amended, the amended version would apply to the Convention.
- 48.** The Shipowner Vice-Chairperson could accept the general reference to the STCW Code as a compromise, but felt it was unnecessary duplication. With respect to the content of training courses, member States of the International Maritime Organization (IMO) ratifying the STCW Code were responsible for determining the syllabus. Model courses were, however, provided through the IMO.

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49. The representative of the Secretary-General informed the Committee that the ILO, IMO and the World Health Organization (WHO) were planning to discuss training requirements, and were looking to revise the medical guide for ships, which goes beyond what is provided in the STCW Code.
  50. The Committee agreed to defer discussion of paragraph 5 until the Seafarers' group could consult further on the paragraph and its relationship with the STCW Code, and to provide the Office an opportunity to provide further clarification to the Committee on this issue.
  51. The representative of the Secretary-General confirmed that paragraph 5 was intended to complement the STCW Code. This Code dealt with the contents of the training of seafarers including medical training. The essence of this paragraph was to ensure a minimum number of medically qualified seafarers on all vessels.
  52. The Seafarer Vice-Chairperson called for paragraph 5 to be retained in its entirety. She was supported by the Government member of Denmark, who stressed that it was a Guideline and therefore provided sufficient flexibility for a variety of different arrangements.
  53. The Shipowner Vice-Chairperson, supported by the Government member of the United Kingdom, expressed the reservation that paragraph 5 might contain less stringent requirements than the STCW Code. The Government member of the Russian Federation cautioned that problems may arise when deciding which should take precedence.
  54. On receiving clarification from a number of government members that medical care and medical first-aid training courses are subject to approval by governments, the Shipowner Vice-Chairperson suggested inserting "approved" before "medical first-aid training" in paragraph 5(a) and before the first reference to "training" in paragraph 5(b). He was supported by the Seafarers' group.
  55. The Shipowner Vice-Chairperson proposed deletion of the words "including partial training in the emergency/casualty department of a hospital where practicable and training in life-saving techniques such as intravenous therapy". He argued that this wording had been drawn from ILO Convention No. 164, which was adopted prior to the revision to the STCW Code, and would appear outdated if included in the Convention. The Government members of the Bahamas, Egypt, Norway and the United States supported this proposal.
  56. The Government member of France proposed to retain the reference to "practical training" but delete the words "in the emergency/casualty department of a hospital where practicable". He was supported by the Seafarers' group.
  57. The Shipowners accepted this proposed change, but called for reflection prior to the Maritime Session of the International Labour Conference on other life-saving techniques to be more appropriately reflected in the text than intravenous therapy.
  58. Paragraph 5(a) was adopted to read in part as follows: "... ships which ordinarily are capable of reaching qualified medical care and medical facilities within eight hours should have at least one designated seafarer with the approved medical first aid training required by the STCW Code ..."
  59. Paragraph 5(b) was adopted to read in part as follows: "... all other ships should have at least one designated seafarer with approved training in medical care required by the STCW code, including practical training and training in life-saving techniques such as intravenous therapy ..."

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## Paragraph 9

60. The Shipowner Vice-Chairperson drew the Committee's attention to the need for a consequential amendment in Guideline B4.1.1, paragraph 9, due to the discussion and decision taken pursuant to Regulation 4.3 to delete the reference to "safety and health management systems". His group proposed deleting the last sentence in paragraph 9 since, in their view, it was redundant, and its deletion would not result in any loss of substance in the safety and health section.
61. The Seafarer Vice-Chairperson agreed that there would need to be a consequential amendment in the paragraph, and that the reference to management systems would need to be removed; however, her group opposed the deletion of the entire last sentence of paragraph 9.
62. The Shipowner Vice-Chairperson stated his group's preference for the deletion of the bracketed text in paragraph 9. However, he stated that due to time constraints and in the spirit of compromise, they were willing to agree to an amended text that would take out the reference to management systems, in line with earlier decisions of the Committee. The last line of paragraph 9 would then read as follows: "This information should be integrated with the ship's policies and programmes on occupational safety and health."
63. The Seafarers' group expressed general support for the proposed text, but with the addition of the final phrase in the recommended draft, namely "described in Regulation 4.3 and related Code provisions."
64. The Committee adopted the following text to replace the last sentence of paragraph 9 of the recommended draft: "This information should be integrated with the ship's policies and programmes on occupational safety and health described in Regulation 4.3 and related Code provisions."

## Regulation 4.2 – Shipowners' liability

65. The Government member of Malta asked whether the Fifth Session of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers had concluded the discussions described as "still under way" in the Commentary to the recommended draft (document PTMC/04/2).
66. The representative of the Secretary-General explained that at the time of the Commentary going to press, the conclusions of the Fifth Session of the Ad Hoc Working Group (12-14 January 2004) had not yet been submitted to the ILO Governing Body or to the IMO Legal Committee. These executive organs had now both approved the Working Group's recommendations, which included authorizing the group to proceed with the development of a longer term sustainable solution of a mandatory nature to address the problems of financial security with regard to compensation in case of death and personal injury of seafarers.
67. The Government member of the United Kingdom pointed out that the next meeting of the Expert Working Group was not until May 2005, and that it was not likely that the group would manage to develop such a longer-term sustainable solution before the 94th (Maritime) Session of the International Labour Conference, to be held in about one year.

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68. The representative of the Secretary-General agreed that the outcome of the discussions of the Working Group were unlikely to be available to the Maritime Conference and that delegates should bear this in mind.
  69. The Government member of Norway expressed her support for the major part of the text of Regulation 4.2 on the grounds that a flag State's responsibility with regard to social protection should be to enact laws and regulations which require shipowners to provide for social security coverage.
  70. The Government member of Denmark considered Regulation 4.2 to be highly significant and expressed the view that seafarers' social protection while serving on board ship should primarily be the responsibility of shipowners.
  71. An observer representing the International Christian Maritime Association (ICMA) pointed out that the aim of Regulation 4.2 and Standard A4.2 was to safeguard the basic right of seafarers to medical care. This right was ancient, dating from the thirteenth century, and had long been accepted as an obligation by shipowners. The right was purposefully simple, to ensure that it could be rapidly applied without the need for recourse to judicial interpretation. The right implied that where a seafarer was sick or injured, whether or not the illness or injury was connected to his or her employment, the shipowner was under an obligation to provide care until such a time as it was clear the seafarer's health would not improve. The only exceptions to this liability were in cases of concealment of an existing illness at the time of employment, or of injury caused by wilful misconduct. Use of language such as "arising from their employment", or "occupational" disease, implied the need to demonstrate a link between the illness or injury and employment.

#### Paragraph 1

72. The Shipowner Vice-Chairperson felt that the Regulation as currently drafted would cover individuals on board ships for whom shipowners should not have long- or interim-term responsibilities. He provided an indicative list of persons who could not be considered seafarers in the context of the proposed Convention, and who should not be covered by its provisions on shipowners' liability with respect to health and medical care.
73. The Seafarer Vice-Chairperson noted that Regulation 4.2, paragraph 1, referred to protection of seafarers "employed on" ships flying the flag of member States and with respect to a right to material assistance and support from the shipowner with respect to the financial consequences of sickness or injury or death occurring "while they are serving under a seafarers' employment agreement". This wording would exclude many of the individuals on the Shipowners' list and therefore responded to their concern. The Seafarers' group wished to retain the text in square brackets as it broadened shipowners' responsibility. The Seafarers' group was supported by the Government member of Norway.
74. The Government member of Denmark suggested replacing "or arising from their employment under such agreement" with "or arising from their service on board." The bracketed text in the recommended draft was too broad and the shipowner should be liable only for sickness, injury or death arising from periods during which the individual was on board the ship. Other periods would be covered by Regulation 4.5.
75. The Government of Japan emphasized the need to ensure that Regulation 4.2 and its standard would be as practicable and enforceable as possible. Because seafarers frequently moved from ship to ship, it was often difficult to determine which shipowner was responsible for a sickness or injury, especially since they might manifest themselves a long time after the seafarer had left the vessel. He stated that this could jeopardize seafarers

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obtaining a rapid remedy. The language in paragraph 1 should therefore not be too broad, and the bracketed text should be deleted.

- 76.** The Government members of Egypt and Singapore supported the deletion of the bracketed text.
- 77.** The Shipowner Vice-Chairperson did not dispute that the shipowners have some responsibility for providing medical coverage. He understood that the bracketed text in paragraph 1 aimed at protecting seafarers from a disease or injury that manifested itself after the end of the period covered by the employment agreement. The connection of this disease or injury to a specific period of employment would be difficult to prove, but this was presumably the reason for the inclusion in Regulation 4.2, paragraph 2, of a reference to “legal provisions providing for liability”. The Shipowners’ group could accept the proposal put forward by Denmark. Wording should be found to enable the seafarer to make a claim after the end of the agreement, though clearly this would require a mechanism to prove the validity of the claim.
- 78.** The Government member of Japan felt that proving the cause of illnesses which manifested themselves after the end of the employment agreement and determining which employer should be responsible for payment, would be an excessively complicated process; the bracketed text in paragraph 1 should be deleted.
- 79.** The Shipowners’ group suggested that the inclusion of the words “arising from employment” meant that the provision covered the entire duration of the employment agreement. If an agreement were to cover vacation periods, it would thereby cover sickness, injury or death occurring during that period.
- 80.** The Seafarer Vice-Chairperson said that the bracketed text in paragraph 1 referred to sickness, injury or death “arising from,” rather than “arising during” employment and that it therefore covered only those which resulted from the employment.
- 81.** The Shipowner Vice-Chairperson said that the words could be interpreted both ways and that clarification was needed.
- 82.** The Government member of the United Kingdom pointed out that paragraph 1 was aimed at covering two sets of circumstances: the financial protection of seafarers from the consequences of sickness, injury or death which arose during the duration of the employment agreement, and for disease or injury which manifested itself after the period of employment, but was connected to it. He supported maintaining the bracketed text.
- 83.** The Shipowner Vice-Chairperson did not agree that there should be coverage of sickness and accidents which occurred during vacation periods. Shipowners would not generally cover seafarers for eventualities which occur outside their employment, but had a clear liability with regard to service-related illness or accidents.
- 84.** The Government member of Denmark noted that in his country, seafarers could be employed under an employment contract for an indefinite period, sometimes as long as 30 years, by the same company, although they worked on different ships. In these circumstances, when the seafarers were not on board ship, the shipowners still covered them for sickness benefit and, in special cases, medical treatment.
- 85.** The Government member of the Netherlands suggested that the significant distinction was not in the nature of the employment contract but between short-term sickness and long-term invalidity or illness. A seafarer who was not able to work should be compensated whether or not the disability was caused by his or her work. If the seafarer was

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permanently disabled, it would be important to identify the cause of the disability in order to compensate him or her under civil law.

- 86.** The Government member of Italy also felt that certain distinctions had to be drawn in the text, in her view between occupational diseases and accidents arising during employment, on the one hand, and sicknesses which occurred, for example, during vacation periods, on the other. In her country, two different social security regimes covered each type, and this kind of system would need to be captured by the Convention.
- 87.** The Government member of the Bahamas asked the ILO to clarify the phrase “serving under a seafarers’ employment agreement” as to whether it covered periods during which a seafarer is not working on board.
- 88.** The representative of the Secretary-General observed that Article II, paragraph 1(g) defined a seafarers’ employment agreement to include both a contract of employment and articles of agreement, thereby, in effect, rendering it a matter for national law and practice. She added that irrespective of regimes such as that in operation in Denmark, seafarers “serving” under an employment agreement would generally be covered while on board, while travelling to the ship or when being repatriated. During vacation periods, generally applicable social security schemes would cover them rather than shipowners’ liability. The bracketed text would cover injury or illness arising out of or in connection with employment on board ship, or while travelling to the ship or being repatriated.
- 89.** The bracketed text was retained and the Committee requested the Drafting Committee to review the text to ensure that the current wording reflected the views of the Committee that the text should ensure that the financial consequences of sickness or injury or death of the seafarer should be restricted to consequences arising from or in connection with employment on board ship or while the seafarer is travelling to and from the ship.
- 90.** The Drafting Committee, rather than proposing a revised version of paragraph 1, put forward a new paragraph with the aim of clarifying paragraph 1. The following commentary was received from the Drafting Committee:

The existing text of Regulation 4.2, paragraph 1, would be considered consistent with the views of the Committee if the square brackets are deleted and the concept of “serving under a seafarer’s employment agreement” is defined in the Standard.

A provision such as below could be inserted in Standard A4.2 as a new paragraph 1:

1. For the purposes of paragraph 1 of Regulation 4.2, a seafarer shall be considered to be serving under a seafarer’s employment agreement when the seafarer is employed or engaged on an agreement, is in transit to or from a ship and in other circumstances specified in the seafarer’s employment agreement, including periods where a seafarer may be ashore for medical treatment.

- 91.** The Shipowners’ group expressed concerns with a number of elements of the Drafting Committee’s text and concluded that paragraph 1 of the recommended draft was preferable. It was supported by the Seafarers’ group, who further called for the bracketed text of the recommended draft to be retained.
- 92.** An observer from the International Christian Maritime Association expressed the view that the bracketed text of paragraph 1 in the recommended draft referred to the timeframe of eligibility, not to the causation of the injury or illness.
- 93.** The Seafarer Vice-Chairperson clarified her group’s view that the unbracketed text refers to responsibilities with regard to the consequences of sickness, injury or death which occurs during the employment agreement; and the bracketed text refers to sickness or

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injury in connection with, or arising from, work, but which did not manifest itself until later.

94. The proposal to remove the brackets and retain the text was agreed by the Committee and paragraph 1 of the recommended draft was adopted.

#### Paragraph 2

95. The Shipowner and Seafarer Vice-Chairpersons and the Government members of Norway and Singapore supported the retention of Regulation 4.2, paragraph 2, in the recommended draft.
96. The Government member of Japan questioned whether there were strong reasons specific to this case retain the paragraph.
97. The Drafting Committee was requested to review the text of Regulation 4.2, paragraph 2, to ensure that it left unfettered the application of Members' national law governing liability.
98. The Drafting Committee proposed replacing paragraph 2 with the following text:
2. This Regulation does not affect any other legal remedies that a seafarer may seek.
99. The Shipowners' group suggested that the Drafting Committee's proposed text be agreed, the Seafarers accepted this proposal, and it was adopted by the Committee.

### **Standard A4.2 – Shipowners' liability**

#### Paragraph 1(a)

100. The Shipowner Vice-Chairperson observed that national laws varied in the manner in which they addressed shipowners' liability for sickness and injury of seafarers addressed in Standard A4.2, paragraph 1(a).
101. The Seafarer Vice-Chairperson noted that in the Commentary, Comment 31 (on Regulation 4.2), paragraph 2, stated that paragraph 1(a) was in square brackets pending the outcome of discussions within the framework of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation and regarding Death, Personal Injury and Abandonment of Seafarers. She asked for clarification from the Office of the connection between paragraph 1(a) and the work of the Working Group.
102. The representative of the Secretary-General reminded the Committee that the ILO Governing Body and the IMO Legal Committee had both authorized the Working Group to proceed with the development of a longer term sustainable solution of a mandatory nature to address the problems of financial security with regard to compensation in case of death and personal injury of seafarers. The next meeting of the Working Group was scheduled for May 2005, and its outcome would almost certainly not be available for the 94th (Maritime) Session of the International Labour Conference. The Committee should bear this in mind in framing instructions to the Drafting Committee. The outcome of the Working Group was relevant to both paragraphs 1(a) and 1(b), since both concerned the period of liability during which financial security must be ensured.
103. The Government member of Norway could support the inclusion of any of the three bracketed texts.



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104. The Government member of Denmark preferred the first bracketed text in paragraph 1(a), which referred to the “date upon which they are deemed duly repatriated”.
  105. The Government member of Japan preferred to retain the second bracketed text (“and the termination of the engagement”) and to delete the first (“date upon which they are deemed duly repatriated”) and third (“or arising from their employment between those dates”).
  106. The Government member of Egypt felt it would be preferable to be informed of the outcome of the Working Group’s deliberations.
  107. The Government member of Singapore proposed that the first bracketed text should be retained and the others deleted.
  108. The Seafarer Vice-Chairperson felt that the brackets should be kept so as not to prejudice the work of the Working Group.
  109. The Shipowners’ group agreed in principle. However, the Working Group was not expected to reach a conclusion for two or three years and the Convention should be finalized before then.
  110. The representative of the Secretary General reminded the Committee that there was a need for consistency with the work of Committee No. 2 on Title 2.

#### Paragraph 1(b)

111. The Shipowner Vice-Chairperson proposed that Standard A4.2, paragraph 1(b), be changed so as to permit shipowners to ensure they had the necessary financial resources to cover their liability, without specifically requiring that they take out insurance cover.
112. The Seafarer Vice-Chairperson noted that in the Commentary, Comment 31 (on Regulation 4.2), paragraph 2, states that subparagraph (b) of paragraph 1 is in square brackets pending the outcome of discussions within the framework of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation and regarding Death, Personal Injury and Abandonment of Seafarers. Her group would like to retain the bracketed text pending the outcome of the Working Group’s discussion.
113. The Government member of Japan recommended keeping the wording of paragraph 1(b) except for the deletion of “date they are deemed duly repatriated upon and”.
114. The Government member of Egypt felt it would be preferable to be informed of the outcome of the Working Group.
115. The Government member of Singapore proposed that the first part of paragraph 1(b) should be amended to read: “shipowners shall obtain insurance coverage to provide compensation set by national law in the event of the death or (...)” and that the rest of the text should remain as drafted between brackets.

#### Paragraph 1(a) and (b)

116. The Shipowner Vice-Chairperson, supported by the Seafarers’ group, requested that the Committee retain the text of Standard A4.2, paragraph 1(a) and (b) in brackets, in order to avoid prejudicing the deliberations of the Joint IMO/ILO Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, despite the fact that Committee No. 2 had decided to address issues being considered by the IMO/ILO Working Group.

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**117.** The Committee referred the following to the Steering Committee:

The Committee considered these two subparagraphs, being aware that the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation and Regarding Claims for Death, Personal Injury and Abandonment of Seafarers would not be likely to complete its work in time for the Maritime Session of the International Labour Conference. The Committee was of the view that it was not in a position to make a decision on these subparagraphs and recommends that these texts be kept between square brackets. The Steering Committee is requested to take the appropriate action.

#### Paragraph 4

**118.** The Seafarer Vice-Chairperson preferred a minimum of 16 weeks of liability of the shipowner to pay wages in respect of a seafarer no longer on board, as provided for under Convention No. 55, rather than the alternative of 12 weeks minimum liability. Convention No. 165, which provides for 12 weeks, has only two ratifications, compared to 16 ratifications for Convention No. 55.

**119.** The Government member of Norway preferred the 16 week minimum period as did the Government member of Egypt, Japan, Singapore and the United Kingdom.

**120.** The Government member of Denmark would have favoured a 12-week minimum period, but could accept the social partners' proposal.

**121.** In response to a request for clarification from the Shipowners' group, the representative of the Secretary-General explained that the word "may" had been included in paragraph 4 in order to avoid any impediment to ratification and provide flexibility for member States.

**122.** The Chairperson concluded that the 16 week minimum was acceptable to the Committee and the Drafting Committee was requested to delete the reference to [12].

**123.** The Shipowners' group suggested that the final sentence of paragraph 4 should be deleted and the Seafarers' group agreed. Their common position was supported by the Government members of Japan, Norway, the Philippines and Singapore.

**124.** The Government member of Denmark noted that there are circumstances in which, under Danish law, seafarers are not covered by shipowners' liability but by other national laws, and that these laws require a minimum period of employment. To reflect these kinds of legal arrangements, he proposed inserting the words "for all seafarers" after "workers ashore" in the bracketed text and adding after the word "sickness" the following text:

However, for seafarers other than those working with the safe operation of the ship and who are not engaged by the shipowner, national law and regulation may limit the shipowners' liability in this standard to the contractual period of service on board unless the seafarer suffers from an occupational injury.

**125.** The Government member of Finland supported the retention of the bracketed text. She supported the principal of paying wages without a qualifying period of employment, but pointed out that the text refers to other cash benefits and that, in her country, these are usually subject to a qualifying period.

**126.** The Drafting Committee was requested to delete the final sentence of Standard A4.2, paragraph 4. The Drafting Committee, therefore, proposed the following text:

4. National laws or regulations may limit the liability of the shipowner to pay wages in whole or in part in respect of a seafarer no longer on board to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness.

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

- 127.** The Shipowner Vice-Chairperson noted that the regulation, standard and guideline referred frequently to occupational safety and health management systems, which had been the subject of in-depth discussion at the 91st Session of the International Labour Conference (June 2003). Since 2003 had been only a first discussion on the matter, and was aimed at the promotion of management systems rather than making them mandatory, the subject was not yet mature enough to be included in a Convention. He stated that there were many existing OSH programmes on board ships, and health and safety committees were set up under IMO requirements. There were also a number of national laws covering the issue. His group proposed the deletion of all references to “occupational safety and health management systems” in the text, for example the reference in paragraph 2 was considered inappropriate and should be deleted. Paragraph 3, however, was more operational, and could possibly be amended.
- 128.** The Seafarers’ group submitted that the reference to occupational safety and health management systems was important since there was a need for more emphasis on data collection, risk assessment and prevention and other topics raised by the systems approach.
- 129.** The representative of the Secretary-General stressed the importance of occupational safety and health for the ILO, and its promotion of the modern approach of occupational safety and health management systems, which could be found in published ILO guidelines such as the ILO Guidelines on Occupational Safety and Health Management Systems, (ILO-OSH, 2001).

### Paragraph 2

- 130.** The Shipowner Vice-Chairperson proposed the deletion of the reference to occupational safety and health management systems. While they had no objection to a promotional approach in this area, the text was not considered appropriate in an industry that was already well advanced in the area of occupational safety and health. The Shipowners wanted the focus to remain on occupational safety and health issues, rather than requiring bureaucratic systems. The paragraph should be reworded to give more emphasis to consultations with the social partners with regard to the development of occupational health and safety measures. Wording along the following lines was proposed:

The competent authority in each Member shall consult with the representative organizations of shipowners and seafarers concerned with respect to measures to be taken on occupational safety and health.

- 131.** The Seafarer Vice-Chairperson stressed the need for risk evaluation and statistics. She noted in particular that there was at present a low reporting rate of casualty statistics, making it difficult to address the causes of casualties. These were clearly elements that could be in a Convention.
- 132.** The Government member of Japan agreed with the Shipowners that the reference to occupational safety and health management systems should be deleted, stating that such systems should not be mandatory. As the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), did not have such a reference, his Government had serious reservations about including it in the present text. He also submitted that such a requirement would overlap with the ISM Code and would create unnecessary paperwork. The Government members of the United Kingdom and Venezuela agreed. The latter stressed in addition that there already existed multiple documented processes to monitor occupational safety and health measures.

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- 133.** The Government member of the Bahamas stated that his Government was in favour of anything that would, in practice, advance occupational safety and health on board ships. However, increasing the already large volume of paperwork for seafarers would give rise to additional health problems.
- 134.** The Government member of the Philippines spoke in support of the Shipowners' proposal to strengthen the wording on consultation with the social partners. The Government member of Denmark suggested that "after consultation with" would be more appropriate than "in consultation with".
- 135.** The Government member of Argentina expressed her Government's support for the recommended draft, since it made an important link between safety on ships and the world of work. The Government members of Denmark, France and Norway also supported the wording of the recommended draft.
- 136.** The Government member of the United Kingdom drew the Committee's attention to work underway by the International Maritime Organization (IMO) to develop guidance on occupational safety and health programmes. She noted that this would be relevant to the Committee's discussions. Instead of using the phrase "occupational safety and health management systems" she suggested substituting "occupational safety and health policies". The Government members of France and Japan supported the proposal in principle.
- 137.** The Shipowners' group stated that they could support the proposal of the Government member of the United Kingdom, as long as the specific reference to the ILO Guidelines on Occupational Safety and Health Management Systems was not maintained.
- 138.** The Government member of Argentina also expressed support for the proposal, requesting, however, that reference to the ILO Guidelines remain. The Chairperson informed the Committee that the ILO Guidelines were noted only to indicate the source of the text.
- 139.** The Seafarer Vice-Chairperson expressed concern about substituting the word "policies" as this may not be sufficiently concrete. She suggested that the matter be taken up by a small Working Party, keeping in mind that the Seafarers wanted risk evaluation and monitoring to be addressed. The Committee agreed to set up a tripartite six-person Working Party to address paragraph 2.
- 140.** The Government member of Japan reported on the work of the Working Party, which proposed the following text to replace paragraph 2 with the aim of securing sound management of occupational safety and health on board ships:
- The competent authority in each Member shall, [in/after] consultation with representative organizations of shipowners and seafarers concerned, and taking into account relevant international standards and guidelines, develop and promulgate national guidelines for the management of occupational safety and health on board ships that fly its flag.
- 141.** The Shipowner Vice-Chairperson was broadly in agreement with the Working Party's proposed text. It addressed the concern which had been voiced by the Shipowners over the reference to occupational safety and health management systems in paragraph 2. With regard to the choice between "in" and "after" in the Working Party's proposed text, the Seafarers' group felt strongly that the term should be "in consultation". They were supported by the Government members of Canada, Finland, Namibia and the United States.
- 142.** The Shipowner Vice-Chairperson suggested that "after" would be more appropriate than "in", given the procedural requirements of many national legal processes. This preference was shared by the Government members of Algeria, the Bahamas, Denmark, Egypt,

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France, Ghana, Japan, Philippines, Russian Federation, Singapore, Sweden, Tunisia and the United Kingdom.

143. The Committee agreed to use the word “after”, although the Seafarers’ group reiterated their strong preference for “in”.
144. The Seafarers’ group proposed to replace the reference to “relevant international standards and guidelines” with one to “applicable codes, guidelines and standards recommended by international organizations, administrations and maritime industry organizations”. This language was preferable because it was drawn from the International Safety Management (ISM) Code, which itself draws on a number of other international instruments.
145. The Shipowner Vice-Chairperson supported the proposal, as did the Government members of Algeria, the Bahamas, Canada, Denmark, Egypt, Finland, France, Ghana, Japan, Namibia, Norway, the Philippines, Singapore, Tunisia, the United Kingdom and the United States.
146. The Seafarers’ proposal was accepted by the Committee.
147. The representative of the Secretary-General suggested that, for clarity, “national” should be inserted before “administrations”.
148. The Committee adopted the following text:

The competent authority in each Member shall, after consultation with representative organizations of shipowners and seafarers and taking into account applicable codes, guidelines and standards recommended by international organizations, national administrations and maritime industry organizations, develop and promulgate national guidelines for the management of occupational safety and health on board ships that fly the flag of the Member.

### Paragraph 3

149. The Shipowner Vice-Chairperson stated that the text of paragraph 3 in the recommended draft was acceptable, He was supported by the Seafarer Vice-Chairperson and the Government member of Japan.
150. The Committee agreed that paragraph 3 would be retained.

### **Standard A4.3 – Health and safety protection and accident prevention**

151. The Shipowner Vice-Chairperson informed the Committee that his group would be raising specific issues concerning the various paragraphs of Standard A4.3. The Committee had already agreed a text in Regulation 4.3(2) deleting the reference to “occupational safety and health management systems”; therefore, this deletion would also need to be provided for in the accompanying Standard.
152. The Seafarer Vice-Chairperson supported the recommended draft, since it addressed a number of issues of extreme importance for seafarers. The potential implications of any proposals for drafting changes would need to be considered very carefully. Her group was, however, prepared to ensure that the text would be consistent with the deletions made in Regulation 4.3(2).
153. The Government member of the United Kingdom expressed concern at the implication throughout the Standard that there was an obligation regarding occupational diseases,

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rather than limiting the obligation to infectious and communicable diseases. While acknowledging the importance of occupational diseases in the framework of occupational safety and health, his Government wanted to alert the Committee that such an obligation could be extremely onerous, particularly with respect to additional reporting requirements.

- 154.** The Government member of the Bahamas proposed that the use of the word “risk” in its various contexts be examined throughout the Standard. The word “risk” in “risk evaluation” had a precise meaning in the health, safety and accident prevention fields, but “risk” in the phrase “risk of exposure” was being used in the colloquial sense and could be deleted without changing the meaning. Each use of the word “risk” should be examined.

#### Paragraph 1

- 155.** The Shipowner Vice-Chairperson noted that the reference to “management systems” in paragraph 1(a) would need to be deleted, given the previous discussion pursuant to Regulation 4.3. His group also proposed the deletion of the phrase “the adoption and effective implementation of ...”. Consequently, the paragraph would read as follows: “Promotion of occupational safety and health on ships that fly the Member’s flag, including risk evaluation as well as training and instruction of seafarers;”.
- 156.** The Shipowners’ group also suggested changes to paragraph 1(b), so that instead of reading “occupational accidents and injury and diseases on board”, it would state “occupational accidents, injuries and diseases on board”. This change would result in “occupational” not only being read to modify accidents, but also injuries and diseases. It was indeed appropriate for shipowners to be concerned about and address occupational diseases. They also proposed that the reference in paragraph 1(b) to “reduce and prevent” be changed to “prevent or reduce”. In the same paragraph, replacing the word “ambient” with “environmental” was also proposed, on the ground that “ambient” could be too limiting.
- 157.** In paragraph 1(c), the Shipowner Vice-Chairperson proposed changing the word “programmes” to “measures” and deleting the words after “occupational accidents, injuries and diseases” on the ground that they were redundant in the light of other paragraphs of the Standard containing more specific language. His group, however, supported the recommended draft for paragraph 1(d).
- 158.** The Seafarers’ group supported the text of the recommended draft, on the understanding that the concerns of the Shipowners regarding the reference to management systems would need to be addressed. They did not support the proposed change in paragraph 1(a) to delete “the adoption and effective implementation and”. Regarding paragraph 1(b), the Seafarers supported the comment of the Shipowner Vice-Chairperson regarding the importance of occupational diseases, noting that it was to the benefit of all concerned to ensure the reduction of occupational diseases on board. However, concern was raised that changing the “and” to “or” in the paragraph would be too limiting. The Seafarers’ group also considered that “ambient” should be retained as it was understood in standard usage, and was very useful in including noise and vibration, issues that needed to be in the Standard, particularly if other provisions on noise and vibration were finally moved to Title 3.
- 159.** The Government members of Canada, Denmark and the Russian Federation expressed support for the recommended draft text of paragraph 1.
- 160.** The Government member of Japan generally supported the proposals of the Shipowners, while stating that there was room for flexibility to accommodate the Seafarers’ concerns regarding paragraph 1(b). The Government member of Italy supported the Shipowners’ proposals regarding paragraph 1(a) and (b). She also expressed support for the original text

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of the recommended draft for paragraph 1(c) since it was important to ensure continuous improvement.

- 161.** The Government member of the Bahamas proposed the deletion of the words “the risk of” before “exposure” in paragraph 1(b).
- 162.** The Government member of the Philippines generally agreed with the intention of the Shipowners’ proposals to simplify the text. He expressed support specifically for the proposed change in paragraph 1(b) to make it clear that “occupational” modified accidents, injuries and diseases. However, in the same paragraph, a change from “ambient” to “environmental” would not be appropriate. On the issue of continuous improvement in paragraph 1(c), his Government agreed with deleting the reference since it would be difficult to monitor.
- 163.** The Government member of Namibia, supported by the Government member of Denmark, objected to the proposal of the Shipowners to change “programmes” to “measures” in paragraph 1(c) since it was important to have programmes in place to address identified problems and provide benchmarks for evaluating progress. The Government member of Denmark also queried whether a reference should be made to a threshold level of seafarers on board before programmes needed to be put in place.

## Paragraph 2

- 164.** The Shipowner Vice-Chairperson proposed a similar change in paragraph 2(a) as had been proposed in 1(b) to clarify the reference to occupational diseases. In paragraph 2(b), he proposed the deletion of the reference to “management systems”, and changing “obligation” to “obligations”. With respect to paragraph 2(c), his group was of the view that it could undermine current good practices in this area, since rather than building on existing practice, it sought to impose something different. He made reference to the distinction between acute and chronic conditions, the former requiring an immediate response while the latter required a long-term solution. It could be helpful to specify the minimum size of vessels required to have health and safety committees.
- 165.** The Seafarer Vice-Chairperson, supported by the Government member of the Russian Federation, supported the recommended draft text of paragraph 2.
- 166.** The Government member of Japan requested that the text of paragraph 2(c) concerning the shipboard safety and health officer not exclude ratings from being shipboard safety and health officers. He quoted the provisions of the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134).
- 167.** The Government member of the United Kingdom stated that the reference in paragraph 2(a) to international instruments dealing with specific risks was incorrect, since such instruments addressed hazards rather than risks.

## Paragraph 3

- 168.** The Shipowner Vice-Chairperson raised concerns with the reference to “continuous improvement” in paragraph 3.
- 169.** The Government member of the Russian Federation supported the recommended draft text of paragraph 3.

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#### Paragraph 4

- 170.** The Government member of Denmark noted that Standard A4.3, paragraph 4 referred to “exposure to workplace hazards on board ships”. He suggested that since noise and vibration constituted workplace hazards, this provision should be transferred to Title 3 together with Guidelines B4.3.2 and B4.3.3.
- 171.** The Seafarer Vice-Chairperson supported retaining paragraph 4 in Title 4, since its meaning was broader than that of Guidelines B4.3.2 and B4.3.3. She was supported by the Shipowner Vice-Chairperson, although he noted that his group intended to propose changes to the reference in paragraph 4 to “occupational safety and health management systems”.
- 172.** The Shipowner Vice-Chairperson stated that paragraph 4 was confusing and redundant and should be deleted.
- 173.** The Government member of Denmark proposed that a reference to IMO and ISO standards on noise and vibration be made in paragraph 4. The Chairperson agreed that the proposal should be submitted to the Working Party.

#### Paragraph 5

- 174.** The Shipowner Vice-Chairperson raised a concern regarding the need to take into account guidance, as stated in paragraph 5. Paragraph 5 placed three distinct obligations on the Member, involving reporting, statistics and research, and investigation of accidents.
- 175.** The Government member of the Ukraine drew attention to the requirements regarding statistical data and reporting in paragraph 5. He queried how “serious” cases were to be defined, implied by the reference to guidance provided by the International Labour Organization and the List of Occupational Diseases Recommendation, 2002 (No. 194). Some cases that may seem minor at first could turn out to have serious consequences. It would be important to clarify what was meant by occupational accidents, which should include a reference to loss of capacity. The Government member of the Russian Federation echoed the concerns regarding the difficulty in defining “serious”. The reporting obligation should apply to all accidents.

#### Paragraph 6

- 176.** The Shipowner Vice-Chairperson conveyed his group’s extreme concern with paragraph 6 and the potential for the violation of the privacy of seafarers.
- 177.** The Government member of the United Kingdom expressed concern that reference to “guidance” was being made in a mandatory section of the instrument, and suggested that the reference be moved to the Guidelines.

#### Paragraph 7

- 178.** The Shipowner Vice-Chairperson expressed concern that in paragraph 7 the obligation pursuant to the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), placed on member States had been shifted to the shipowners.
- 179.** The Government member of the United Kingdom expressed a concern similar to that raised with respect to paragraph 6, that reference to “guidelines” was being made in a mandatory section of the instrument, and proposing that it be placed in Guideline B4.3.



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## Paragraph 8

- 180.** The Shipowner Vice-Chairperson proposed that paragraph 8 be moved to the Guidelines since it used language more appropriate for a Guideline.

## Paragraphs 1-8

- 181.** Following its discussion on Standard A4.3, the Committee agreed that the issues raised would be addressed by a six-person Working Party.
- 182.** The Government member of Japan, as reporter of the Working Party, introduced the revised text of Standard A4.3 and Guideline B4.3.1 that it had prepared. The agreed principles guiding the work of the Working Party were that it was necessary to delineate respective responsibilities clearly and ensure that existing procedures could be maintained. The following text was submitted to the Committee for its consideration:

*Standard A4.3 Health and safety protection and accident prevention*

1. The laws and regulations or other measures to be adopted in accordance with paragraph 3 of Regulation 4.3 shall include the following subjects:

- (a) the adoption and effective implementation and promotion of occupational safety and health [policies/programmes] on ships that fly the Member's flag, including risk evaluation as well as training and instruction of seafarers; COMMENT: Shipowners prefer "policies", seafarers prefer "programmes".
- (b) reasonable precautions to prevent occupational accidents, injuries and diseases on board ship, including measures to reduce and prevent the risk of exposure to harmful levels of ambient factors and chemicals as well as the risk of injury or disease that may arise from the use of equipment and machinery on board ships;
- (c) on-board programmes for the prevention of occupational accidents, injuries and diseases and for continuous improvement in occupational safety and health protection, involving seafarers' representatives and all other persons concerned in their implementation; and
- (d) requirements for inspecting, reporting and correcting unsafe conditions and for investigating and reporting on-board occupational accidents.

2. The above provisions shall:

- (a) take into account relevant international instruments dealing with occupational safety and health protection in general and with specific risks and shall address all matters relevant to the prevention of occupational accidents, injuries and diseases that may be applicable to the work of seafarers and particularly those which are peculiar to maritime employment; (modified C.134A4/2)
- (b) clearly specify the obligations of shipowners, seafarers and others concerned to comply with the applicable standards and with the ship's occupational safety and health [policy/programme] with special attention being paid to the health and safety of seafarers under 18 years of age;
- (c) specify the duties of the master and/or a person designated by the master to take specific responsibility for the implementation of and compliance with the ship's occupational safety and health [policy/programme]; and
- (d) specify the powers of members of the ship's crew who have been appointed or elected as safety representatives for the purpose of participating in meetings of the ship's safety committee.

3. The standards referred to in paragraph 3 of Regulation 4.3 shall be periodically reviewed and, if necessary, revised, in consultation with the representatives of the organizations of shipowners and seafarers concerned, to take into account changes in technology and research in order to facilitate continuous improvement in occupational safety and health [policies/programmes] and to provide a safe occupational environment for seafarers on ships that fly the Member's flag.

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4. Compliance with the requirements of applicable international instruments on the acceptable levels of exposure to workplace hazards on board ships and on the development and implementation of ships' occupational safety and health management system shall be considered as meeting the requirements of this Convention. COMMENT: Left unchanged pending discussion of noise and vibration in Committee No. 2.

5. The competent authority shall ensure that occupational accidents and occupational injuries [and diseases] are adequately reported, [taking into account the guidance provided by the International Labour Organization with respect to the reporting and recording of occupational accidents [and diseases]] and that comprehensive statistics of such accidents are kept, analysed and published and, where appropriate, followed up by research into general trends and into the hazards brought to light. All serious occupational accidents shall be investigated. (C.134A2) COMMENT: Shipowners requested deletion of bracketed text.

6. Reporting and investigation of occupational safety and health matters shall be designed to ensure the protection of seafarers' personal data [and shall take into account the guidance provided by the International Labour Organization on this matter] (based on the ILO code of practice on protection of workers' personal data, 1997). COMMENT: Shipowners requested that bracketed text be moved to Part B.

7. Members shall require that shipowners, seafarers' organizations and the competent authority of the member concerned cooperate to take measures to bring to the attention of all seafarers working on board their ships information concerning particular on-board hazards, for instance, by posting official notices containing relevant instructions. [and through such means as information sessions, on-board guidelines on maximum exposure levels to potentially harmful ambient workplace factors and other hazards or outcomes of a systematic risk evaluation process.] COMMENT: Agreed to move bracketed text to Part B.

8. The competent authority shall require that, when shipowners conduct risk evaluation and management, reference is made to appropriate statistical information from their ships and from general statistics provided by the competent authority of the members whose flag their ships fly.

*Guideline B4.3. Health and safety protection and accident prevention*

*Guideline B4.3.1 Provisions on occupational accidents, injuries and diseases*

1. The provisions required under Standard A4.3 should take into account the ILO code of practice on the prevention of accidents on board ship at sea and in port, 1996, and subsequent versions and other related ILO and other international standards and guidelines and codes of practice regarding occupational safety and health protection, including any exposure levels that they may identify.

2. The competent authority should ensure that the national guidelines for the management of occupational safety and health on board ships that fly its flag address the following matters, in particular:

- (a) general and basic provisions;
- (b) structural features of the ship;
- (c) machinery;
- (d) the effects of noise in the workplace and in shipboard accommodation;
- (e) the effects of vibration in the workplace and in shipboard accommodation;
- (f) the effects of ambient factors other than (d) and (e) in the workplace and in shipboard accommodation;
- (g) special safety measures on and below deck;
- (h) loading and unloading equipment;
- (i) fire prevention and fire-fighting;
- (j) anchors, chains and lines;
- (k) dangerous cargo and ballast;

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- (l) personal protective equipment for seafarers; (modified C.134A4/3)
  - (m) work in enclosed spaces;
  - (n) fatigue;
  - (o) the effects of drug and alcohol dependency;
  - (p) HIV/AIDS protection and prevention; and
  - (q) emergency and accident response.

- 183.** The Shipowner Vice-Chairperson indicated that the text of the Working Party was broadly acceptable, though his group would be proposing specific changes. In particular, his group wanted to have a reference to occupational safety and health “policies”, since it acknowledged an important role of governments and, in practice, policy statements were usually the starting point for both governments and shipowners. He noted that implementation and promotion were normally based on policies. Noting that the Seafarers’ group had expressed a preference for the term “programmes” over “policies”, he indicated that it could be possible to refer to both “policies” and “programmes”. In paragraph 2(d), his group objected to the use of the word “powers”, preferring “responsibilities” as this would be more commonly understood. With respect to paragraph 5, contrary to the comment in the text, his group supported the inclusion of the words “and diseases”; however, they felt it was more appropriate for the words “taking into account the guidance provided by the International Labour Organization with respect to the reporting and recording of occupational accidents and diseases” to be included in the Guidelines and not in the Standard. They raised the same concern regarding similar wording in paragraph 6.
- 184.** The Seafarers’ Vice-Chairperson agreed that the text of the Working Party showed substantial consensus and was broadly acceptable to her group if outstanding substantive issues could be resolved. Her group preferred the term “programmes” over “policies”, as the latter was too weak. In paragraph 3 of the proposed text, she suggested that “periodically” be changed to “regularly”. The Shipowners’ group agreed to this change. She also called for a rewording of paragraph 8 to make it clear that such risk evaluation and management should take place, without leaving it to the discretion of the shipowner and also that there be statistical information.
- 185.** On the issue of paragraph 8, the Shipowner Vice-Chairperson commented that his group was not as concerned with when a risk evaluation took place, but objected to the use of the words “and management”.
- 186.** The Government member of Sweden proposed that the reference in paragraph 3 to “in consultation” read “after consultation”, and noted that it was not necessary in paragraph 7 to refer both to the Member and the competent authorities.
- 187.** The Government member of the Russian Federation drew attention to the words “serious accidents” used in paragraph 5, stating that either “serious” cases would need to be clearly defined, or preferably, the wording should be replaced by “all occupational accidents”. The Shipowner Vice-Chairperson acknowledged that there were difficulties with defining “serious”, and suggested that a reference be inserted to national law and practice to determine what is considered “serious”. He stressed, however, that this provision would not, and should not, inhibit the investigation of minor accidents where appropriate.
- 188.** The Government member of the Philippines, supported by an observer representative of the International Christian Maritime Association, submitted that there should be consistent use throughout the instrument to “occupational accident and injury and diseases” to make it clear that injuries and diseases are covered, whether or not they are work-related.

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- 189.** The Shipowner Vice-Chairperson stated that it was important that “occupational” qualify accidents, injuries and diseases, since shipowners should not be responsible for reporting pre-existing conditions or conditions that are not work-related. He raised concerns regarding worker privacy in this context.
- 190.** The Government member of Denmark expressed general support for the Working Party text, and suggested some minor changes: paragraph 1(c) of the Standard and paragraph 2 of the Guideline should include prevention principles.
- 191.** The Shipowner Vice-Chairperson proposed that the reference in paragraph 1(a) of the Working Party text to occupational safety and health “programmes” and all subsequent references be replaced by “policies and programmes”. He was supported by the Seafarers’ group and the Government members of Canada, Italy, Japan, Malta and the Russian Federation.
- 192.** The Committee adopted the Shipowners’ proposed change and Standard A4.3, paragraph 1(b), as amended by the Working Party was adopted.
- 193.** The Government member of Denmark proposed an addition to Standard A4.3, paragraph 1(c), to insert after the words “implementation and”, the following:
- ... take due account of the preventive principles where, among other things, combating risks at the source, adapting the work to the individual, especially as regards the design of workplaces, and replacing the dangerous by the non-dangerous or less dangerous have precedence for protective equipment for seafarers.
- 194.** The Shipowner Vice-Chairperson noted that the proposal embodied a well-established principle of occupational safety and health. While the Convention would benefit from the inclusion of this principle, it should be in the Guidelines rather than the Standard. The Government member of the Bahamas agreed.
- 195.** The Seafarers’ group requested confirmation that the proposed change was intended to ensure that precedence be given to preventive principles before recourse to protective equipment, rather than implying that personal protective equipment plays no role. On receiving confirmation from the Government member of Denmark, the group supported the proposed amendment. It stated that it followed on logically from the notion of continuous improvement and should therefore remain in paragraph 1(c).
- 196.** The Government members of Canada, Malta, Spain and the United States supported the proposed change.
- 197.** The Seafarers’ group observed that the text referred only to workplace design. Since seafarers also live on board their vessels, it should be extended to cover the design of accommodation.
- 198.** The Government member of Denmark suggested that this matter would be regulated by Title 3 (Accommodation) and the Government member of Malta objected to its inclusion in paragraph 1(c) for the same reason.
- 199.** The Seafarers’ group suggested deferring discussion on this issue of the proposal until the Committee had been made aware of the outcome of the discussions on Title 3 conducted by Committee No. 2.
- 200.** The Shipowner Vice-Chairperson proposed an amendment to paragraph 1(c) to add after “implementation” the words “taking account of preventive measures including engineering

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and design control, substitution of processes and procedures for collective and individual tasks and use of personal protective equipment.”

- 201.** The Seafarer Vice-Chairperson supported this amendment, as did the Government members of China, Denmark, Egypt, Finland, Germany, Japan, Malta, the Netherlands, Norway, Singapore, Tunisia, the United Kingdom and the United States.
- 202.** Paragraph 1(c) of the Working Party text was adopted as amended.
- 203.** Paragraph 1(d) of the Working Party text was adopted.
- 204.** Paragraph 2(a) of the Working Party text was adopted.
- 205.** Paragraphs 2(b) and 2(c) of the Working Party text were amended to replace the bracketed text with “policies and programmes” and adopted.
- 206.** The Seafarers’ group proposed replacing “powers” in paragraph 2(d) with “authority.” The proposal was supported by the Government member of Japan and adopted by the Committee. The resulting Working Party text of paragraph 2(d) was then adopted.
- 207.** The Seafarer Vice-Chairperson proposed replacing “periodically” with “regularly” in paragraph 3. The Shipowners supported this proposal, as did the Government members of Denmark, Egypt, Japan, Malta, the Russian Federation and Tunisia, and the proposal was adopted.
- 208.** The Government member of Sweden reiterated that the reference in paragraph 3 to “in consultation” was inappropriate. The text referred to laws and regulations, which can be introduced only by governments and parliaments, and therefore not “in consultation” with social partner organizations.
- 209.** The Seafarers’ group proposed adapting the Working Party text to read:
- The standards referred to in paragraph 3 of Regulation 4.3 shall be regularly reviewed in consultation with the representative organizations of shipowners and seafarers and, if necessary, revised to take into account changes in technology and research ...
- 210.** They were supported by the Government members of Italy, Japan and Sweden, and the resulting Working Party text of paragraph 3 was adopted.
- 211.** The Shipowners proposed that the reference to “management system” be replaced with “policies and programmes.” The proposal was adopted.
- 212.** The Shipowner Vice-Chairperson was concerned that paragraph 4 appeared to require only that governments comply with the applicable international instruments, rather than that they tailor their policies and programmes to the needs of seafarers. He called for further consideration of the meaning and effect of paragraph 4 at the Maritime Session of the International Labour Conference.
- 213.** The resulting Working Party text of paragraph 4 was adopted.
- 214.** The Shipowners’ group proposed the removal of all brackets in the Working Party text of paragraph 5, although reiterating that they felt the reference to ILO guidance was probably more appropriately included in the Guidelines.
- 215.** The Government member of the United Kingdom cautioned that “adequate” reporting of occupational diseases can be difficult to achieve, since many diseases will not become

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manifest for a substantial period. Since the International Maritime Health Association was currently considering the issue, she suggested paragraph 5 could be returned to at the Maritime Session of the International Labour Conference.

- 216.** The Government member of the Russian Federation supported removing the brackets and proposed that the first line refer to “accidents, injuries and diseases,” for reasons of consistency with the other provisions in the Convention. She was supported by the Government member of the Philippines who also proposed that “disease” be included in the reference to comprehensive statistics.
- 217.** The Government member of the Russian Federation noted that the requirement to investigate covered “serious” occupational accidents and questioned the criteria to be used in determining which occupational accidents can be considered “serious”.
- 218.** The Seafarers’ group proposed deleting “all serious” in the final sentence of the Working Party text and was supported by the Government members of Egypt, Finland and the Ukraine.
- 219.** The Working Party text of paragraph 5, as amended, was adopted and reads as follows:

The competent authority shall ensure that occupational accidents, injuries and diseases are adequately reported, taking into account the guidance provided by the International Labour Organization with respect to the reporting and recording of occupational accidents and diseases and that comprehensive statistics on such accidents and diseases are kept, analysed and published and, where appropriate, followed up by research into general trends and into the hazard brought to light. Occupational accidents shall be investigated.

- 220.** The brackets were removed from the Working Party text of paragraph 6 and it was adopted.
- 221.** The Government member of Sweden, in line with his argument that it was unnecessary to refer in paragraph 7 to both “Members” and “competent authorities,” proposed that it should provide either that “Member States” or “the competent authority” “shall cooperate with shipowners’ and seafarers’ organizations.” He was supported by the Government members of Egypt, Philippines and the United Kingdom and the second of his alternative proposals was adopted.
- 222.** The Committee agreed that the bracketed text in paragraph 7 would be moved to Part B.
- 223.** The Working Party text of paragraph 7 was adopted and reads as follows:

The competent authority shall cooperate with shipowners’ and seafarers’ organizations to take measures to bring to the attention of all seafarers working on-board their ships information concerning particular on-board hazards, for instance, by posting official notices containing relevant instructions.

- 224.** The Shipowner Vice-Chairperson proposed that paragraph 8 read:

The competent authority shall require that shipowners conducting risk evaluation in relation to the management of occupational safety and health refer to appropriate statistical information from their ships and from general statistics provided by the competent authority of the Members whose flag their ships fly.

- 225.** The Committee agreed and the foregoing text of paragraph 8 was adopted.

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## **Guideline B4.3 – Health and safety protection and accident prevention**

- 226.** The Shipowner Vice-Chairperson suggested that Guideline B4.3.2 (Exposure to noise) and B4.3.3 (Exposure to vibration) be transferred to Title 3. The Seafarer Vice-Chairperson supported this proposal, as did the Government member of the United States.
- 227.** The Committee discussed Guideline B4.3.2 (Exposure to noise) and B4.3.3 (Exposure to vibration) together, since the issue had been raised whether these two areas would be more appropriate in Title 3.
- 228.** The Government member of the Bahamas summarized the position of various Government members of the Committee, while noting that the meeting of the Government group had been short and not all members were able to express their views. With respect to placement of the provisions, the majority of Government members spoke in favour of retaining them in Title 4. A few governments preferred that they be moved to Title 3; some had expressed no preference. However, there was a strong view that wherever the provisions were placed, they should be subject to a clause that would exempt existing ships from meeting the construction requirements (a “grandfather clause”).
- 229.** As background, the Government member of the Bahamas noted that these Guidelines had been extensively discussed in a special Working Party at the tripartite meeting in Nantes in January 2004. At that time, it was agreed that IMO resolution 468(XII) was particularly relevant. It was agreed that there was no need to duplicate the extensive IMO text, rather to attach the IMO resolution as an appendix to the Convention and make a reference to it in the body of the text, or just have a cross-reference to the resolution. No one had suggested that the ILO begin a revision of the provisions of the resolution.
- 230.** The Government members of Denmark, Egypt, France, Italy, Norway and the United Kingdom supported the position that only a reference to the IMO resolution was needed rather than detailed enumeration.
- 231.** On the issue of the “grandfather clause”, the Shipowner Vice-Chairperson stated that, optimally, noise should be engineered out, or seafarers should be kept out of noisy places. Only if this is not possible, should they be provided with personal protective equipment. His group was not convinced that a “grandfather clause” was necessary. While the Shipowners agreed that a repetition of the contents of the IMO resolution was not needed, they did have some concern regarding measures to be taken, for example in paragraph 3 in Guideline B4.3.2. The order of measures to be taken needed to be changed to place assessment and reduction first, then protection, and finally instructions. They also objected to some of the language in Guideline B4.3.2(3)(b), and were of the view that providing personal protective equipment should be a requirement and thus in the Standard.
- 232.** The Government member of France, supported by the Government member of Denmark, spoke in favour of adding a “grandfather clause” to the Guidelines, thus avoiding the need to shift the text to Title 3.
- 233.** The Government member of the Bahamas noted that IMO resolution A.468(XII), 19 November 1981 “Code on Noise Levels on Board Ship” stipulated in preambular paragraph 5 that it was “not intended for direct incorporation by reference or reproduction in national legislation although it could provide the basis for such legislation”.
- 234.** The Committee having discussed Guidelines B4.3.2 and B4.3.3 informed the Steering Committee that it was of the view that the contents involved health and safety issues as well as certain design and construction considerations, and asked that the Steering

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Committee consider whether Committee No. 3 should discuss the matter further or whether the issues should be referred to Committee No. 2.

- 235.** The Steering Committee, having considered the request regarding Guidelines B4.3.2 and B4.3.3 on noise and vibration, decided to refer those Guidelines to Committee No. 2. As a result, Committee No. 3 would no longer be discussing the Guidelines related to noise and vibration. Government members who wished to submit proposals concerning those provisions, were invited to address such proposals to Committee No. 2.

***Guideline B4.3.1 – Provisions on occupational accidents, injuries and diseases***

- 236.** The Shipowner Vice-Chairperson, supported by the Seafarer Vice-Chairperson, noted that the references to “management systems” would need to be adjusted in the light of the earlier discussion of Regulation 4.3. Paragraph 2(d) and (e) made reference to noise and vibration, which would have to be kept in mind when considering the issue of placement of these topics. Both groups felt that the references should remain in paragraph 2.
- 237.** The Seafarer Vice-Chairperson expressed her group’s general support for the recommended draft.
- 238.** The Government member of Denmark supported the Office text in paragraph 1, but suggested redrafting of the clauses of paragraph 2 to avoid mixing up separate types of issues. The Government member of France agreed, noting the logic of separating technical issues from human elements.
- 239.** The Government member of the Russian Federation expressed support for the recommended draft text of paragraph 1. Paragraph 2(p) should be redrafted to add a reference to “and other life threatening infectious diseases set out in the WHO list.”
- 240.** The Government member of the Bahamas voiced concern about the implications of paragraph 2, in particular the requirement for separate national guidelines on issues that were already comprehensively covered in international instruments.
- 241.** The Government member of the United Kingdom, supported by the Government members of Canada and Egypt, supported the text of paragraph 2, and stated that national laws and regulations would be promulgated as a matter of course to meet international obligations. Meeting the requirements of the paragraph would therefore not be a difficulty.
- 242.** The Committee agreed to forward the issues raised under Guideline B4.3.1 to the Working Party addressing Standard A4.3.

Paragraph 1

- 243.** The Committee supported the recommendation of the Working Party to maintain the text of the recommended draft of paragraph 1. The Committee, therefore, adopted Guideline 4.3.1, paragraph 1 of the recommended draft.

Paragraph 2

- 244.** With respect to paragraph 2, the Committee agreed to base its discussion on the following proposal of the Government member of Denmark:

Replace the text in *paragraph 2, Guideline B4.3.1* with the following wording:



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2. The competent authority should ensure that the national guidelines and the ships' occupational health and safety management system address the following matters, in particular:

- (a) general and basic provisions;
- (b) structural features of the ship;
- (c) machinery;
- (d) special safety measures on and below deck (*previous (g)*);
- (e) loading and unloading equipment (*previous (h)*);
- (f) fire prevention and fire-fighting (*previous (i)*);
- (g) anchors, chains and lines (*previous (j)*);
- (h) dangerous cargo and ballast (*previous (k)*); and
- (i) work in enclosed spaces (*previous (m)*).

In connection with assessment of risks and reduction of exposure on this matters the physical occupational health effects, (including manual handling of loads, noise (*previous (d)*) and vibrations (*previous (e)*)), the chemical and biological occupations health effects, the mental occupational health effects (including fatigue (*previous (n)*)) and occupational accidents shall be taking into consideration. The necessary measures shall, furthermore, take the account to the preventive principles where, among other things combating risks at the source, adapting the work to the individual, especially as regards the design of workplaces and replacing the dangerous by the non-dangers or less dangers have precedence for personal protective equipment for seafarers (*previous (l)*).

3. In addition the competent authority should ensure that the healthiness is taking into account on the following matters, in particular

- (a) emergency and accident response (*previous (q)*);
- (b) the effect of drug and alcohol dependency (*previous (o)*);
- (c) HIV/AIDS protection and prevention (*previous (p)*);

**245.** The Shipowner Vice-Chairperson put forward a proposal to change the reference to “management systems” in the light of the decisions taken regarding Regulation 4.3 and Standard A4.3. The Committee, therefore, adopted the following wording for the opening sentence of paragraph 2:

The competent authority should ensure that the national guidelines for the management of occupational safety and health address the following matters, in particular:

**246.** A Seafarer spokesperson expressed concern that the matters enumerated in the proposal of the Government of Denmark were not as extensive as in the recommended draft, which the Working Party had recommended maintaining. She pointed in particular to the loss of the reference to ambient factors, and proposed in addition that asbestos-related risks be included. The Seafarers' group also wanted the reference to “fatigue” maintained, but with a clarification that it included both physical and mental fatigue.

**247.** The Government member of the United Kingdom, supported by the Government members of Brazil and Denmark, proposed that specific mention be made to “tobacco smoke” in the context of ambient factors.

**248.** An observer from the International Christian Maritime Association proposed the inclusion of a reference to ingress and egress systems, including gangways and accommodation ladders. A representative of the Secretary-General suggested that more appropriate wording would be “means of access”.

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**249.** The Government member of the Philippines indicated that his Government wished to retain as far as possible the list in the recommended draft text of paragraph 2.

**250.** The Shipowner Vice-Chairperson supported the inclusion of ambient factors. With respect to asbestos-related risks, however, this was not necessarily relevant, since ships are no longer permitted to be built using asbestos. The Seafarers' group stressed that this issue was important to seafarers as some ships still contain asbestos.

**251.** The Shipowner Vice-Chairperson proposed that the Committee return to the enumerated matters in the recommended draft of paragraph 2, to replace the list in the proposal of the Government member of Denmark.

**252.** The Committee adopted the list of matters from (a) to (q) in the recommended draft, with the following amendments to clauses (b), (f) and (n):

(b) structural features of the ship, including means of access and asbestos-related risks;

...

(f) the effects of ambient factors other than (d) and (e) in the workplace and in shipboard accommodation, including tobacco smoke;

...

(n) physical and mental health effects of fatigue;

...

**253.** The Committee then discussed the rest of the proposal of the Government member of Denmark concerning paragraph 2, and the addition of a new paragraph 3. The Shipowner Vice-Chairperson proposed some rewording of the proposal, to which the Seafarers' group agreed, subject to the addition of language acknowledging both the physical and mental effects of fatigue. The Committee, therefore, adopted the following text:

The assessment of risks and reduction of exposure on these matters should take into account the physical occupational health effects (including manual handling of loads, noise and vibrations), the chemical and biological occupational health effects, the mental occupational health effects, the physical and mental health effects of fatigue and occupational accidents. The necessary measures should take due account of the preventive principle where among other things combating risk at the source, adapting work to the individual, especially as regards the design of workplaces and replacement of dangerous by the non-dangerous or the less-dangerous have precedence over personal protective equipment for seafarers.

3. In addition the competent authority should ensure that the implications for health and safety are taken into account on the following matters, in particular

(a) Emergency and accident response;

(b) The effect of drug and alcohol dependency; and

(c) HIV/AIDS protection and prevention.

**254.** The Government member of the Bahamas suggested that the phrase preceding the list in both paragraphs 2 and 3 could be better worded, to make it clear that it was either an inclusive list, therefore using a term such as "including" instead of "in particular" or, if the list is intended to be comprehensive, to leave out the term "in particular". The Seafarers' group stressed that they did not consider the list to be exhaustive.

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## **Guideline B4.3.7 – National protection and prevention of programmes**

### Paragraph 2

255. The Shipowners' group, supported by the Seafarers' group, proposed that the following text be added to the end of Guideline B4.3.7, paragraph 2: "... including through such means as information sessions, on-board guidelines on maximum exposure levels to potentially harmful ambient workplace factors and other hazards or outcomes of a systematic risk evaluation process."
256. The Committee adopted the proposal.

## **Guideline B4.4 – Access to shore-based welfare facilities**

### **Guideline B4.4.4 – Financing of welfare facilities**

257. The Shipowner Vice-Chairperson submitted that it was curious to include the wording in paragraph 1 in a guideline.
258. The Government member of Sweden proposed changing the order of paragraphs 1 and 2.
259. The Seafarer Vice-Chairperson proposed that the bracketed text in paragraph 1 be deleted.
260. The Government member of the United Kingdom proposed that the text of paragraph 1 be deleted and a similar text be included in Regulation 4.4. Her Government had submitted a formal amendment to Regulation 4.4, which she hoped there would be time to consider and that it would be favourably received by the members of the Committee.
261. The Shipowner Vice-Chairperson, supported by the Seafarers' group, expressed concern that the language of the provision, wherever it was placed, could result in undermining the continuation of existing financial support. There did not seem to be a need for such a provision, since nowhere in the instrument could it be inferred that the governments might have a financial obligation to support welfare facilities. The concern may arise because of the reference in paragraph 2 to "grants from public funds". Consideration should also be given to the need to include a definition of "welfare facilities".
262. The Government member of Sweden reiterated his Government's proposal to place paragraph 1 after paragraph 2, since it was more appropriate to place the positive provision before the negative. As background, he noted that the provision was based on the Seafarers' Welfare Convention, 1987 (No. 163). It had been clear in the Provisional Record of the International Labour Conference debate on Convention No. 163 that the Convention was not intended to impose any financial obligations on the Government. It was, therefore, important to state this expressly in the present text in order to ensure maintenance of the status quo of Convention No. 163. This proposal was supported by the Government members of Denmark, Egypt and Malta. The Government member of Egypt noted that at the meeting in Nantes in January 2004, the governments had raised the need for an express provision to ensure they had no financial obligation in this area. The Government member of Denmark added that a provision similar to paragraph 1 should also be included in the mandatory section of the instrument.

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- 263.** The representative of the Secretary-General drew attention to the Commentary to the recommended draft on this point, noting that the main concern of many governments related to ensuring that the wording of the provisions referred to an obligation to promote the development of shore-based welfare facilities without imparting any financial obligations. She also noted that Convention No. 163 had been the subject of several requests for interpretation from governments as to whether they were obliged to provide financial support. She also noted that the term “welfare facilities” was clearly defined in Article 1 of Convention No. 163 as follows: “the term welfare facilities and services means welfare, cultural, recreational and information facilities and services”. This is reflected in the current text in Regulation 4.4.2.
- 264.** A Seafarer spokesperson stated that there was nothing in the obligatory part of the instrument that could imply a financial obligation on governments with respect to welfare facilities, and any reference to financial support in paragraph 2 was governed by “national conditions and practice”.
- 265.** The Government member of France supported the views of the Shipowners and the Seafarers and saw no need to upset the balance of Convention No. 163.
- 266.** The Government member of the Philippines agreed that paragraph 1 could be deleted, but drew attention to the fact that this could entail consequential amendments to paragraph 2. Financial support could still be provided, but it would depend on what the country could afford.
- 267.** The Government member of the Bahamas raised the concern with respect to paragraph 2 that if there were no voluntary contributions, public funds would need to be made available. Even if this were not the intention of the provision, it could be read in that manner; therefore, further clarification was needed.
- 268.** The Government member of the United Kingdom considered that the wording of paragraph 1 implied that the wording of Standard A4.4 was not clear. The clarification provided in Guideline B4.4.4 should instead be part of Standard A4.4 since it was A4.4 that was being explained. However, it would make more sense to clarify the obligations in A4.4 to avoid any vagueness regarding governments’ obligations.
- 269.** The representative of the Secretary-General indicated that in preparing the recommended draft on welfare facilities, there had been no intention to impose any obligation on governments for financial support.
- 270.** The Committee agreed to delete paragraph 1, on the understanding that it was not the intention of the Committee that such deletion should imply any financial obligation on the part of Governments with respect to welfare facilities. Guideline B4.4.4 was, therefore, adopted with the suggested changes.

## **Regulation 4.5 – Social security**

- 271.** The Chairperson invited the Committee members to address the Regulation, Standard and Guideline 4.5 on social security together, since they were closely linked. There was broad support from the Shipowners, the Seafarers, and the Government members of Denmark, France, Japan, Netherlands and the United States for the recommended draft which was seen to reflect accurately the outcome of the April 2004 Meeting of Experts.
- 272.** The Shipowner Vice-Chairperson noted that social security was a complex issue, one of importance to the Seafarers, and that a level playing field is a desirable goal. While the text on social security was broadly acceptable, it needed to be clearer and more explicit in some

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areas. The need for further clarity in the text, particularly regarding the allocation of responsibilities, was also raised by the Government members of the Bahamas, Japan, Netherlands and the Philippines.

- 273.** The Shipowner Vice-Chairperson stated that the April 2004 Meeting of Experts had highlighted the diversity of national social security systems, and the shifting parameters in this area. The goal of the Committee was to find a system that could be globally applicable in the midst of continual change. The Shipowners supported a system allocating primary responsibility to the State of residence to take into account the fact that many seafarers' work on many ships with different flags. This view was supported by the Government members of the Bahamas, Denmark and the Philippines. His group could not agree to primary responsibility for the flag State.
- 274.** The Seafarer Vice-Chairperson supported a sharing of responsibility between the flag State, the State of residence, the seafarer and the shipowner.
- 275.** The Government member of France supported the view that the role of the flag State should be further strengthened in the text, particularly to address the situation of seafarers who are not able to be covered by the social security system of their country of residence.
- 276.** The Shipowners' group proposed to add the words "resident in their territory" after "seafarers" in Regulation 4.5, paragraph 1.
- 277.** The Government member of the United Kingdom, supported by the Seafarers' group, objected on the grounds that it would unduly restrict the scope of the accompanying standard and guideline. While his Government agreed that primary responsibility rested with the state of residence, there were some aspects set out in Standard A4.5 that were not the responsibility of the State of residence.
- 278.** The representative of the Secretary-General explained that the Regulation provided the legal framework; if the scope were narrowed in the Regulation, it could not then be made broader in the Standard.
- 279.** The Government member of the Netherlands recommended that the first five paragraphs of Standard A4.5 be redrafted to make the division of responsibilities clearer.
- 280.** The Government member of Denmark proposed changes to Standard A4.5, paragraph 7, to make it clear that the principles of maintenance of acquired rights and rights in the process of being acquired would need to be based on appropriate bilateral agreements before they would be in force. She also suggested a change to Guideline B4.5, paragraph 5, to clarify that, while the long term benefits were mainly the responsibility of the country of the seafarer's residence, responsibility for accidents at work and occupational diseases rested with the flag State.
- 281.** The Government member of Germany reminded the Committee that changes made to certain provisions of the recommended draft would likely require consequential amendments to other related texts. For example, if the Committee were to amend the text of Regulation 4.5, paragraph 1, in line with the Shipowners' group's proposal to the effect that social security protection should be provided by a seafarer's country of residence, there would be changes required in other sections. He also agreed with the Shipowners' group that the definition of the term "seafarers" applicable to Regulation 4.5, paragraph 1, is of substantial significance. In his country, there were differences in the treatment of certain categories of workers under the social security regime, such as between the employed and the self-employed. It would therefore be vital that full agreement be reached on the content of Regulation 4.5, paragraph 1.

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- 282.** The Government member of the Netherlands noted that the European Union Member States intended to submit a proposed change related to the relationship between the Convention and regional legal instruments, such as the EU “coordination law.” This proposal would be towards safeguarding existing rights under EU law.
- 283.** The Government member of Tunisia suggested that most of the provisions contained in the Office text were drawn from the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), which had been ratified by only two ILO member States. Changes to the text should aim at increasing flexibility, so that it could be ratified by more countries than Convention No. 165.
- 284.** The Seafarer Vice-Chairperson indicated that her group intended to propose changes to Standard A4.5, paragraph 4, specifically to refer to provisions of the Convention in addition to Regulations 4.1 and 4.2. They would also propose that Guideline B4.5, paragraph 5, be inserted into Standard A4.5.
- 285.** In response, the Shipowner Vice-Chairperson pointed out that to move paragraph 5 in this way would convert it from guidance into an obligation. Paragraph 5 related to the key issue of the division of responsibilities between the State of residence and the flag State and therefore such a proposed change would require further discussion.
- 286.** The Government member of Japan concurred that changing the text in this way threatened to prevent widespread ratification of the Convention.
- 287.** The Government member of Cyprus objected since the proposal would be unsuited to countries such as his, a major flag State, in which social security systems are contributory, and therefore do not provide benefits to individuals who have not made contributions.
- 288.** The Government members of the United Kingdom and the Russian Federation also opposed this proposed change
- 289.** The Shipowner Vice-Chairperson said his group intended to propose that the word “complementary” be omitted from Standard A4.5, paragraph 3, and that minor textual changes would be proposed to Standard A4.5, paragraph 6, and Guideline B4.5.
- 290.** The Shipowner Vice-Chairperson proposed that the scope provisions of Regulation 4.5 be changed to limit its application to seafarers’ States of residence, except with respect to certain benefits such as occupational safety and health benefits, accident coverage and medical care. Moreover, the text as currently drafted would cover all individuals who board a ship to perform work, whether for short or long periods, and include, for example, repairmen, longshoremen and government ship inspectors. Shipowners would respond to short-term or emergency care for all workers on board but could not assume responsibility for their interim or long-term care or benefits, which should be the responsibility of their shore-based employers.
- 291.** The Government member of Venezuela referred the Committee to the definition of “seafarer” in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (IMO) and suggested that the Convention should make reference to it.

#### Paragraph 1

- 292.** The Government member of Sweden submitted a proposal that in Regulation 4.5, paragraph 1, the words “without prejudice however to any more favourable conditions referred to in paragraph 8 of article 19 of the Constitution of the International Labour

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Organization” should be deleted. The reference to article 19 at this point was superfluous since it was already referred to in the Preamble to the Convention.

- 293.** The representative of the Secretary-General referred the Committee to paragraph 3 of the Addendum to the Commentary on the recommended draft of the maritime labour Convention concerning Regulation 4.5: Social security, which reads in part that:

The proposed Regulation clarifies that the obligations of ratifying Members relate to the matters or branches identified in the Code with respect to seafarers and their dependants that are subject to their social security legislation. It also reminds Members of the overriding obligation under the ILO Constitution that the adoption and the ratification of international labour Conventions do not affect other provisions ensuring more favourable conditions for workers ...

- 294.** She recalled that one of the major concerns voiced by the Seafarers’ group during the April 2004 Meeting of Experts was that, while they agreed with the shift in the social security provisions towards a focus on the State of residence, they wanted to ensure that those seafarers already enjoying higher levels of protection would not be disadvantaged by the adoption of the Convention. It was also felt that, while it might represent inelegant drafting, the inclusion of a reference to the ILO Constitution would be reassuring to ordinary seafarers and heighten their awareness of their rights.
- 295.** Both the Shipowners’ and Seafarers’ groups supported the retention of the text for the reasons outlined by the representative of the Secretary-General.
- 296.** The Chairperson noted the absence of strong support from governments for the proposal submitted by the Government member of Sweden.

## **Standard A4.5 – Social security**

### Paragraphs 1 to 5

- 297.** The Government member of the Netherlands put forward a written proposal involving the redrafting of paragraphs 1-5 of the Standard. The objective of the proposal was to set out clearly the responsibilities of the flag State and the State of residence, in terms of which State had responsibility for which social security benefits. The recommended draft in this area was, in the view of his Government, susceptible to too many different interpretations. The text of the proposal was as follows:

1. The branches to be considered with a view to achieving progressively comprehensive social security protection under Regulation 4.5 are:

- (a) medical care on board, sickness benefit and employment injury benefits as far as they complement the protection provided for under Regulations 4.1, on medical care, and 4.2, on shipowners’ liability, and under other titles of this Convention;
- (b) medical care on shore, unemployment benefit, old-age benefit, family benefits, maternity benefits, invalidity benefit and survivors’ benefit.

2. Members shall take steps according to their national circumstances to provide the social security protection referred to in paragraph 1(b) above to all seafarers ordinarily resident in their territory. This responsibility could be satisfied through appropriate bilateral or multilateral agreements or contribution-based systems, for example. The resulting protection shall not be less favourable than that enjoyed by shore workers resident in their territory.

3. At the time of ratification, the protection to be provided by each Member in accordance with paragraph 1(b) of Regulation 4.5 shall include at least [one/two] of the seven branches listed in paragraph 1(b) above.

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4. Members shall give consideration to the various ways in which comparable benefits will, in accordance with national law and practice, be provided to seafarers in the absence of adequate coverage in the branches referred to in paragraph 1(b) of this Standard.

5. The protection under paragraph 1(b) of Regulation 4.5 may, as appropriate, be contained in laws or regulations, in private schemes or in collective bargaining agreements or in a combination of these.

- 298.** General support for the proposal was expressed by the Government members of Argentina, the Bahamas, Cyprus, Egypt, Finland, France, Liberia, Malta and the United Kingdom. The Government member of Denmark, while generally supporting the Dutch proposal, suggested that sickness benefits be moved from paragraph 1(a) of the proposal to paragraph 1(b).
- 299.** The Shipowners and the Seafarers both stressed that since the discussion was still on general principles, they were not commenting on the specific language of this proposal.
- 300.** The Shipowner Vice-Chairperson stated that the proposal was a step forward in terms of clarity, and appreciated the delineation of responsibilities. In particular, it clarified the three areas of responsibility of shipowners, which his group accepted.
- 301.** The Seafarers' group preferred the recommended draft since the proposal of the Government member of the Netherlands risked upsetting the delicate balance achieved through the April 2004 Meeting of Experts. The Seafarer Vice-Chairperson underlined the importance of the flag State having a monitoring and oversight responsibility to ensure adequate social security coverage if the State of residence did not provide coverage, or the coverage was inadequate. The recommended draft was flexible enough to provide for this in varying ways.
- 302.** The Government member of the Bahamas, supported by the Government members of Cyprus, Egypt, Finland, Japan, Liberia and Malta, expressed concern that the role of the flag State suggested by the Seafarers' group would be difficult to implement and monitor. The Government member of Cyprus also submitted that such responsibility imposed on the flag State could impose undue burdens on certain States and also disadvantage seafarers.
- 303.** The Government member of Liberia stated that if there was a concern that a country did not offer adequate social security coverage, consideration should be given to trying to promote the development of the social security system as a whole for that country, rather than carving out special arrangements for one class of workers, namely seafarers, and leaving the rest of the working population with no coverage.
- 304.** The Seafarer Vice-Chairperson responded to the concerns raised about the role of the flag State, drawing attention to the inequity of leaving some workers unprotected working on the same ship, and noting that Article 94 of the United Nations Convention on the Law of the Sea, 1982, already establishes duties and obligations of flag States.
- 305.** The Government member of Argentina encouraged the Committee to be innovative and find a way to ensure that the flag State had some level of responsibility. The Government member of Egypt suggested that the country of residence could establish a social security number for seafarers, which could be listed with a bank, and that bank could handle all the contributions from the shipowners and the seafarers to ensure continuity of coverage. The Government member of the Bahamas supported this proposal in principle, noting that his Government had made a similar proposal for an international pension fund at the Nantes meeting.
- 306.** The Government member of the Netherlands stated that the preferred approach to responsibility was one centred on the country of residence, while acknowledging that flag



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States should have a role in enforcing the payment of social security contributions. However, issues of enforcement would be addressed in Title 5 of the recommended draft. He also noted that the social partners were free to address social security issues through collective agreements.

- 307.** The Shipowner Vice-Chairperson stated that the mandate of the Committee did not include improving social security generally. However, it would be inequitable to single out one class of worker, i.e. seafarers for social security coverage in a particular country, to the exclusion of all the other classes of workers. The issue of sovereignty was also important, and it would not be appropriate for one State to decide that the social security system of another country was inadequate. On the issue of an international fund for contributions, this would raise serious issues of responsibility and oversight. Flag States had the responsibility to enforce the shipowners' duties, and to comply with any other ratified international treaties. Since these obligations already existed, they did not need to be included in the text under consideration.
- 308.** The Government member of the United Kingdom, supported by the Government members of Argentina, China, Egypt, France, Ghana and Japan, raised concerns with paragraph 3 of the proposal of the Government member of the Netherlands. Defining three branches of social security coverage as a minimum in the first instance, as in Standard A4.5, paragraph 2, of the recommended draft, would provide better coverage than the proposed text which indicated that this be decreased to one or two.
- 309.** The Government member of Finland stated that if decreasing the obligation from three to two branches of social security could improve prospects for ratification, her Government would support the proposal, but remained flexible on this point. The Government member of the Netherlands expressed the view that by increasing the obligation to three, there was a likelihood that there would be fewer ratifications.
- 310.** The representative of the Secretary-General, on behalf of the Chairperson, summarized the views of the Committee to be submitted to the Drafting Committee, as follows:

Committee No. 3 has drawn the following conclusion based on a proposal from the Government of the Netherlands.

The objective of the Netherlands proposal for Standard A4.5 seems in principle acceptable as regards the need for clarity on dividing short-term and long-term protection. This concerns A4.5.1 as regards the responsibility of flag States and that of the States of residence of the seafarers.

The balance of responsibility in A4.5.3 re States of residence and A4.5.4 re flag States must be maintained.

There was also a majority view expressed that the number of benefits concerning long-term protection should be (3) branches of social security.

The Drafting Committee is not to consider the text as proposed by the Netherlands, only the intent. There is no agreement with the text itself.

- 311.** The Drafting Committee, having considered the instructions forwarded to it, and having reviewed the provisions in question, replied as follows [C.R./D.3(C3)]:

After full discussion and several attempts to indicate the responsibilities more clearly, the Drafting Committee expressed its preference to keep the text as it was submitted to the technical Committee. The Drafting Committee wishes to draw the attention of the Committee to Standard A4.2, which refers to the role of the flag State as regards shipowners' liability and to the provisions of Standard A4.5, paragraph 3, which further sets out the responsibilities of the State of residence of the seafarer, and Standard A4.5, paragraph 4, which sets out the responsibilities of the flag State.

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**312.** The original text was, therefore, open to amendment, and two amendments to Standard A.4.5(1) were submitted. The first amendment, submitted by the Government members of Denmark, Finland, the Netherlands, Norway, Poland and the United Kingdom sought to replace paragraph 1 with the following text:

The branches to be considered with a view to achieving progressively comprehensive social security protection under Regulation 4.5 are medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefits, family benefits, maternity benefits, invalidity benefit, survivors' benefit. The corresponding benefits are:

- (a) Medical care relevant to the seafarers' duties, sickness benefit, disability benefits and survivors' benefits due to an employment injury, as far as they complement, extend or replace the protection provided for under Regulations 4.1, on medical care, and 4.2, on shipowners' liability, and under other titles of this Convention;
- (b) Medical care in all other cases, unemployment benefit, old-age benefit, family benefits, maternity benefits, invalidity benefit and survivors' benefit.

**313.** The amendment went on to provide for consequential amendments to paragraphs 3 and 4, replacing them with the following:

3. The responsibilities of members with respect to seafarers on ships that fly their flag shall include those provided for by Regulations 4.1 and 4.2 and the related provisions of the Code as well as those that are inherent in their general obligations under international law. The responsibilities shall also include, according to their national circumstances, those referred to in paragraph 1(a) above.

4. Members shall take steps according to their national circumstances to provide the social security protection referred to in paragraph 1(b) above to all seafarers ordinarily resident in their territory. The resulting protection shall not be less favourable than that enjoyed by shore workers resident in their territory.

**314.** Following a clarification by the representative of the Secretary-General, the Committee agreed to address the proposed amendment to paragraph 1, and then if necessary, any consequential amendments to other paragraphs.

**315.** The Government member of Denmark, speaking on behalf of sponsors of the amendment, stated that they did not agree with the view of the Drafting Committee that the text of the recommended draft be retained, since Committee No. 3 had made it clear that there needed to be a clearer division of responsibilities. She noted that informal talks had taken place with social security experts from various countries, and there was general agreement that the text provided by the Office represented an important step forward, given the urgent need to include provisions dealing with social security in the consolidated Convention. However, the text as it stood could be too widely interpreted, and by not specifying which State had responsibility – either the flag State or that of residence – a situation could arise in which both States repudiated their responsibilities. The intention of the amendment was to divide the benefits between those that are related to responsibilities of shipowners, which should be linked to the flag State, and those that are more appropriate for residence-based schemes.

**316.** Responding to a request for clarification from the Shipowners' group, the Government member of the Netherlands confirmed that the proposed amendment had been put forward by the named member States, and was not a coordinated proposal of the Member States of the European Union. The Government member of the United Kingdom added that the sponsoring countries had all ratified the Social Security (Minimum Standards) Convention, 1952 (No. 102) and were signatories to the European Code of Social Security.

**317.** The Government member of Japan opposed the proposed amendment, stating that rather than clarify responsibilities, it risked upsetting the carefully crafted balance provided in the

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Office text. The Government member of the Philippines also objected to the amendment, and expressed support for the term “complementary” used in the recommended draft text.

- 318.** The Government member of Norway stated that the amendment to paragraph 1 was necessary to ensure clarity and clearly delineate responsibilities so that countries would understand their obligations under the Standard and be in a position to ratify the consolidated Convention. As presently drafted, his country would not be prepared to ratify the Convention. In addition, in making paragraph 1 clearer, further ambiguities in the text became obvious, thus resulting in the need for additional consequential amendments. In particular, he drew attention to Regulation 4.5, paragraph 3, proposing that the words “who are ordinarily resident in their territory” would need to be added after “seafarer”. He also proposed that Guideline B4.5, paragraph 5, be deleted. These proposals were supported by the Government member of the Bahamas.
- 319.** The Government member of Denmark agreed that failure to clarify the responsibilities of different States would jeopardize the prospects of ratification. In response to a request for clarification from the Government member of the Bahamas concerning the apparent duplication in the amendment of responsibility for invalidity/disability and survivor benefits, she highlighted the important distinction between subparagraphs 1(a) and 1(b) of the proposed amendment. The first covered benefits related to employment injury, while the second was not work-related. She noted that this was more clearly expressed in the French version of the amendment. The fact that only two member States had ratified Convention No. 165 also supported a need to more clearly define the respective responsibilities of flag States and States of residence.
- 320.** With respect to the proposed consequential amendment to Regulation 4.5, paragraph 3, put forward by the Government member of Norway, the representative of the Secretary-General cautioned that it would narrow the Regulation. This might have consequences for the content of the related Standards and Guidelines, which would have to fall within the substantive scope of the Regulation.
- 321.** The Shipowner Vice-Chairperson stated, in the context of the proposed consequential change to Regulation 4.5, paragraph 3, that it did not seem necessary to specify that the seafarers needed to be resident in the member State since the provision was qualified by the phrase “to the extent provided for in their national laws”, thus providing sufficient flexibility to take into account different national contexts.
- 322.** The Government member of the Netherlands stressed that Standard A4.5 should provide the detail necessary to implement its Regulation. To this end, he proposed a subamendment to paragraph 4 of the amendment proposed by the Government members of Denmark, Finland, Norway, Netherlands, Poland and the United Kingdom, to insert after “protection” the words “provided for by Regulation 4.5, paragraph 3, and likewise as”. The first sentence of paragraph 4 of the amendment would thereby read as follows:
- Members shall take steps according to their national circumstances to provide the social security protection provided for by Regulation 4.5, paragraph 3, and likewise as referred to in paragraph 1(b) above to all seafarers ordinarily resident in their territory.
- 323.** The proposed subamendment was supported by the Government members of Denmark, Finland, Norway and Poland.
- 324.** The Seafarers’ group commented that the proposed subamendment did not appear to facilitate the Committee in reaching a consensus. It was supported by the Shipowners’ group, which suggested that discussion should proceed on the basis of the recommended draft because it allowed flexibility for governments, for example through the reference in

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its paragraph 3 to the “national circumstances” of member States. The Government members of Japan, Philippines and Turkey also opposed the proposed subamendment.

- 325.** The Government member of the Bahamas expressed concern about the text of the proposed amendment to paragraph 1 because, in his view, invalidity benefits included disability benefits, which involved a long-term commitment and would therefore be difficult for flag States to provide. In addition, paragraph 1(a) of the proposed amendment stated that it covered the listed benefits “as far as they complement, extend or replace” the protection provided for under Regulations 4.1 and 4.2. An explanation would be needed of how the flag State could provide such benefits. He was supported by the Government members of Japan and Panama.
- 326.** The Government member of Denmark explained that the text of paragraph 1(a) of the proposed amendment should be read in conjunction with its paragraphs 3 and 4, stressing that member States would not be required to introduce new social security systems for the benefit of seafarers, but only to apply their existing social security laws to cover them.
- 327.** The Government members of Italy and Spain both supported the proposed amendment on the ground that the recommended draft did not sufficiently clearly define the responsibilities of flag States and States of residence.
- 328.** The Government member of Panama preferred the recommended draft, although it may need some further clarification of the respective responsibilities of flag States and States of residence. The Government member of Egypt also supported retaining the recommended draft.
- 329.** The Government members of France and the United States both stated that if consensus could not be reached on the proposed amendment, they would favour the recommended draft.
- 330.** The representative of the Secretary-General noted that the proposed amendment deleted the reference in paragraph 3 of the recommended draft to member States being able to fulfil their responsibilities through, for example, bilateral multilateral agreements. She stressed that this provision was intended to permit States to share financial burdens, and wondered why it had been omitted from the proposed amendment.
- 331.** In response, the Government member of Norway explained that it would be impossible for his country to conclude bilateral agreements with all relevant countries, and therefore that it would be preferable for the Convention to regulate the division of responsibilities. The Government member of Denmark stressed the importance of individual seafarers knowing in which country they were insured from the outset of their work. The text referred to by the representative of the Secretary-General had not been retained in the proposed amendment because there was a need for clarity, rather than flexibility, in the sharing of responsibility between States.
- 332.** The representative of the Secretary-General noted that the Drafting Committee had concluded that clarifying the allocation of responsibilities between flag States and States of residence as proposed would give rise to additional difficulties in areas in which agreement had already been reached. Given that the aim of the governments sponsoring the proposed amendment was to clarify the division of financial responsibilities, she questioned whether this clarification was not already provided by paragraphs 3 and 4 of the recommended draft.
- 333.** The Government member of Denmark suggested that a compromise between the proposed amendment and the recommended draft was possible and proposed a subamendment which

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would retain the proposed amended text of paragraph 1 and include modified versions of paragraphs 3 and 4 of the recommended draft. The text would then read as follows:

1. The branches to be considered with a view to achieving progressively comprehensive social security protection under Regulation 4.5 are medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefits, family benefits, maternity benefits, invalidity benefit, survivors' benefit. The corresponding benefits are:

- (a) Medical care relevant to the seafarers' duties, sickness benefit, disability benefits and survivors' benefits due to an employment injury, as far as they complement, extend or replace the protection provided for under Regulations 4.1, on medical care, and 4.2, on shipowners' liability, and under other Titles of this Convention;
- (b) Medical care in all other cases, unemployment benefit, old-age benefit, family benefits, maternity benefits, invalidity benefit and survivors' benefit.

(Paragraph 3 of the Office text) Members shall take steps according to their national circumstances to provide the social security protection referred to in paragraph 1(b) above to all seafarers ordinarily resident in their territory. This responsibility could be satisfied through appropriate bilateral or multilateral agreements or contribution-based systems for example. The resulting protection shall not be less favourable than that enjoyed by shoreworkers resident in their territory.

(Paragraph 4 of the Office text) The responsibilities of Members with respect to seafarers on ships that fly their flag shall include those provided for by Regulations 4.1 and 4.2 and the complementary benefits under 1(a) above, [as well as those that are inherent in their general obligations under international law.]

- 334.** The Government member of Japan pointed out that the April 2004 Meeting of Experts had reached a considerable degree of consensus on the text, as reflected in the recommended draft, and had concluded that long-term benefits should be the responsibility of States of residence. Paragraph 1(a) of the proposed amendment, however, allocates long-term benefits to flag States. He cautioned against an amendment that might shift this balance of responsibilities and was supported by the Government member of the Bahamas, who opposed the proposed subamendment, and the Government member of the United Kingdom.
- 335.** The Government member of Denmark agreed that the Meeting of Experts had allocated responsibility for the provision of long-term benefits to States of residence, but argued that sickness benefit had not been considered a long-term benefit. The countries sponsoring the proposed amendment did not, in any case, consider a separation of benefits into long- and short-term to be useful. They preferred a division between those linked to shipowners' liability, for which the flag State should be responsible, and those which should be the responsibility of the State of residence, such as family benefits.
- 336.** An ILO social security expert clarified that long-term sickness benefit is referred to as invalidity benefit in ILO terminology, and included among the nine branches of social security covered by the Social Security (Minimum Standards) Convention, 1952 (No. 102). "Disability benefit" was not one of the nine branches, although it was included among the long-term benefits identified by the Convention as arising out of employment-related injuries.
- 337.** The Government member of Norway suggested that this explanation implied that the use of the term "sickness benefit" would allow for the kind of flexibility called on by some delegates; while the Government member of Japan questioned whether, given that the ILO classified disability benefit as a long-term liability, flag States would be prepared to assume such a responsibility.

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- 338.** The Shipowner Vice-Chairperson suggested that if national laws contain definitions which differed from those of the ILO, the concerns of Governments over the terminology of the Convention text were valid.
- 339.** The Government member of Denmark, on behalf of the sponsors of the original amendment, proposed a further subamendment to paragraph 4 of the recommended draft text, to include the words “in accordance with their national circumstances”, to bring it in line with the wording of paragraph 3.
- 340.** In response to a request by the Seafarers’ group for clarification of the implications of the addition of this phrase, the representative of the Secretary-General stated that this wording was placed in instruments to take into account situations of countries at different levels of development. In her view, more appropriate wording in the context of the Standard would be “in accordance with national law and practice” since the issue was determining responsibilities between flag States and States of residence rather than between States at different levels of development. She also confirmed, in response to another request by the Seafarers’ group, that should the Committee adopt the original amendment or the subamendment, consequential amendments to the Standard would not be required.
- 341.** The Government member of Japan, supported by the Government member of the Bahamas, opposed the proposed amendment, as sub-amended. He drew attention to the provisions of the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), in relation to the wording of the recommended draft. He noted that both Conventions refer to the same nine branches of social security. However, the proposed amendment, while acknowledging these nine branches in the opening sentence, divides them in clauses (a) and (b) using different wording, thus resulting in confusion. He submitted that the language proposed for paragraph 1(a) should be stated in terms of the contingencies covered under “employment injury benefit” in Convention No. 102. He was also of the view that the proposal unnecessarily altered the balance achieved at the April 2004 Meeting of Experts. The Government member of the Bahamas added that the wording of the amendment could be open to a number of different interpretations, and recommended returning to the original Office text. He also pointed to a problem with the word “survivor” which had opposite meanings in social security legislation and in normal marine terminology, and was used in both senses in the Convention, thus requiring some clarification.
- 342.** The Government member of Denmark explained that the confusion was understandable and stemmed from the wording of Regulation 4.2 – Shipowners’ liability and Standard A4.2 – Shipowner’s liability, some of which was still in brackets pending the outcome of the IMO/ILO Working Party. Thus parts of what was contained under A4.5 were benefits supplementary to what Regulation 4.2 and Standard A4.2 would offer. In an attempt to be consistent with other parts of the recommended draft, she was aware that the wording was not consistent with the Social Security (Minimum Standards) Convention, 1952 (No. 102). It would be possible to use the traditional text of the Social Security (Minimum Standards) Convention, 1952 (No. 102), if that were considered preferable.
- 343.** In response to a request from the Government member of Denmark for further clarification concerning the branches covered by Convention No. 102 and, in particular, the branch of employment injury benefit, an ILO social security expert of the Office stated that Convention No. 102 covers and defines the nine branches of social security. One of these nine branches is the branch of employment injury benefit, which is defined in Article 32 of Convention No. 102. This branch covers four risks, all of them due to an accident or an occupational disease resulting from employment: the first is a morbid condition and corresponds to medical care benefits; the second is incapacity for work, which is the short term sickness benefit; the third is long term disability benefit; and the fourth is survivors’ benefit. These benefits correspond to the benefits listed in paragraph 1(a) of the proposed

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amendment. In addition, the proposed amendment covers in paragraph 1(a) general sickness benefit as under the seafarers' employment contract, also a general sickness is a sickness resulting from employment. The other branches of Convention No. 102 that do not result from employment, are covered by paragraph 1(b) of the proposed amendment.

- 344.** The Government member of the United Kingdom suggested that the confusion of Committee members related to a misunderstanding of the provisions complementing shipowners' liabilities. This was not intended to be open-ended but be on the basis of contributory insurance; the reason for the amendment was to ensure benefits were provided solely to those who qualified under the principle of insured persons. However, as some member States might provide complementary insurance benefits to all seafarers rather than only its residents, it was necessary to find a formulation that recognized these different situations.
- 345.** The Seafarers' group asked for confirmation from the Government member of the United Kingdom that the implications of the statement was that based on their understanding of the proposed amendment, flag state responsibilities, and only in respect to persons insured and resident in the flag State. The Government member of the United Kingdom confirmed that the understanding of the Seafarers was correct.
- 346.** The Government member of the Netherlands stated that the flag State was to provide benefits to complement those accruing under shipowners' liability by means of national legislation. Paragraph 1(a) of the proposed amendment was intended to cover all seafarers under the flag State, irrespective of the seafarers' place of residence, whereas paragraph 1(b) linked to State of residence.
- 347.** The representative of the Secretary-General explained that the recommended draft of the Consolidated Maritime Labour Convention had sought to find language to reflect all national circumstances. It had been formulated with the aim of ensuring that it would be relevant to all systems. It was clear that governments were not prepared to establish a special social security regime for seafarers due to the nature of social security systems. The Office text was built on the following principles: (i) seafarers should benefit from at least three branches of social security; (ii) flag States have certain responsibilities; and (iii) responsibility for the major components of social security should be shifted to the State of residence. Acknowledging that paragraph 1 of Standard A4.5 might not be as clear as the Members might wish with regard to short and long-term benefits, she stated that it did represent a delicate balance.
- 348.** The Government member of France, supported by the Government member of Japan, proposed that the Committee adopt the recommended draft text, since there did not seem to be a consensus on the proposed amendment and it did not seem to be clarifying the issues.
- 349.** The Government member of Denmark, on behalf of the sponsors of the proposed amendment, submitted that they still considered the amendment to be the most appropriate approach to clarifying the issue of respective responsibilities. However, they agreed to withdraw the amendment, on the understanding that they maintained their concerns regarding the Office text. They asked the Committee members to reflect on those concerns, since they would likely be raised again during the subsequent Conference discussions.
- 350.** The Committee, therefore, reverted to the text of the recommended draft of paragraphs 1-4.

#### Paragraph 1

- 351.** The Shipowners' group submitted an amendment to replace "complementing" by "taking into account" in Standard A4.5, paragraph 1. The Shipowner Vice-Chairperson acknowledged the need for ensuring enforcement, and this amendment sought to assist

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Governments to ratify the consolidated Convention, since the word “complementing” seemed to be causing difficulties. Having explained the rationale for the proposed amendment, he withdrew the amendment given the Committee’s time constraints, on the understanding that his group would be raising this issue again during the Maritime Conference.

### Paragraph 3

- 352.** The Shipowners’ group proposed to delete the word “complementary” from Standard A4.5, paragraph 3, on the ground that it was redundant.
- 353.** The representative of the Secretary-General suggested that this word enhanced the text. She referred delegates to paragraph 6 of the Addendum to the Commentary on the recommended draft of the maritime labour Convention concerning Regulation 4.5: Social security, which indicated that “complementary” had been included in the text to encompass protection over and above the shipowners’ liability provided for under Regulations 4.1 and 4.2.
- 354.** The Shipowner Vice-Chairperson agreed with the representative of the Secretary-General, noting that States could have responsibility for providing complementary social security protection which extended beyond the more limited liability of shipowners. His group therefore withdrew the suggested change.

### New paragraph, following paragraph 3

- 355.** The Government members of Belgium, Denmark, Germany, Greece and the Netherlands submitted a proposal to add a new paragraph after paragraph 3, which would read as follows:

Notwithstanding paragraph 3 above, Members may determine, through bilateral and multilateral agreements and through provisions adopted in the framework of regional economic integration organizations, other rules concerning the social security legislation seafarers are subject to.

- 356.** The Government member of the Netherlands introduced the proposal, stating that it was aimed at first, ensuring provisions of the Convention would not interfere with the free movement of persons throughout the European Union, and second at safeguarding regulations on the coordination of social security between European Union Member States.
- 357.** The Shipowners’ and the Seafarers’ groups supported the proposal in principle. The Shipowner Vice-Chairperson suggested that consideration be given to adding the new wording to paragraph 3. The Secretary of the Seafarers’ group queried whether the proposed text would have an impact on any other provisions of the Standard. The representative of the Secretary-General confirmed that it would not. She went on to suggest that the provision be contained in a new paragraph since paragraph 3 was already lengthy. She also suggested some rewording in the interest of clarity.
- 358.** The Committee then adopted the following new paragraph to be placed after paragraph 3:

Notwithstanding the attribution of responsibilities in paragraph 3 above, Members may determine, through bilateral and multilateral agreements and through provisions adopted in the framework of regional economic integration organizations, other rules concerning the social security legislation to which seafarers are subject.



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#### Paragraph 4

- 359.** The Seafarers' group proposed to broaden Standard A4.5, paragraph 4 to refer to certain other relevant provisions of the Convention, including Titles 2 and 5.
- 360.** The Shipowner Vice-Chairperson contended that the paragraph was included with the Convention's provisions on social security protection and was therefore limited to describing the responsibilities of member States with regard to social security coverage of seafarers on ships that fly their flags.
- 361.** The representative of the Secretary-General clarified that the paragraph did not provide an exhaustive identification of the provisions in the Convention to which it referred. It therefore covered other relevant provisions of the Code.
- 362.** The Government member of the Bahamas enquired as to the justification for including paragraph 4, on the grounds that the repetition of provisions in legal documents could result in interpretative problems.
- 363.** The representative of the Secretary-General explained that the specific reference to Regulations 4.1 and 4.2 in paragraph 4 was not simply duplicative. They were included in the provisions on social security to provide a link between the short-term protection provided by shipowners, on which there was already agreement, and the longer term protection for which governments were responsible.
- 364.** The Shipowner Vice-Chairperson agreed that since this part of the text ascribed responsibility to governments for long-term coverage as well as ensuring that shipowners fulfilled their obligations, it was appropriate that it be included in the text.

#### Paragraph 5

- 365.** The Government member of France submitted in writing a proposal to replace paragraph 5 of the recommended draft with the following:

Members shall ensure that seafarers aboard ships flying their flag benefit from the protection under paragraph 1 of Regulation 4.5 in conformity with the present Convention, whether provided through the legislation of the State of residence of the seafarers, the legislation of the flag State, or other arrangements.

- 366.** The Government member of France explained that the proposal sought to further clarify the text, and ensure that a flag State could not evade responsibility for ships flying its flag. The proposal sought to ensure that the flag State had oversight responsibility, and to avoid the use of flags of convenience. The proposal also sought to ensure flexibility concerning the type of arrangements that could be established.
- 367.** The Shipowner Vice-Chairperson opposed the proposal on the grounds that it was beyond the mandate of the Committee, it could not be enforced, it would limit prospects of ratification, and it raised issues of sovereignty discussed previously in the context of the Seafarers' group's contribution to the discussion on the proposal of the Government member of the Netherlands. It would also be inappropriate for a government to interfere in the collective bargaining process of another country.
- 368.** The Seafarers' group and the Government members of Algeria, Argentina, Brazil, Canada, Italy, Philippines, Spain, Tunisia and Turkey, generally supported the proposal of the Government member of France. The Government member of Tunisia stated that his Government supported the proposal since it took into account the different approaches of States in providing social security coverage to seafarers, and was flexible enough so that

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coverage could be provided by the State of residence, the legislation of the flag State, or through other arrangements. This would, in his view, facilitate the work of the Committee of Experts on the Application of Conventions and Recommendations in understanding the legal instrument adopted in each member State regarding social security coverage for seafarers. The Government member of Argentina expressed the view that the proposal would allow broader coverage and more flexibility of arrangements. She stated that those working side by side on a ship should have social security coverage.

- 369.** The Government member of the Philippines suggested that the reference in the proposal to Regulation 4.5 should in fact be to Standard A4.5.
- 370.** The Government member of Italy, while broadly supporting the proposal, raised the question of how such a system could be implemented and monitored in practice. The Government members of the Bahamas, Cyprus, Denmark, Japan, Liberia, Spain reiterated this concern. The Government member of the Bahamas submitted that the flag State, while being responsible for what went on aboard the ship, could not be responsible for what went on in another country.
- 371.** The Government member of Denmark agreed with the underlying intention of the proposed text, but noted that issues of monitoring and enforcement were being dealt with by another Committee under Title 5 of the recommended draft.
- 372.** The Government member of Malta expressed a preference for the recommended draft of Standard A4.5.
- 373.** The Government member of France suggested that the proposed text could be included elsewhere than in Standard A4.5 paragraph 5, and suggested that the Office look into the issue of appropriate placement. Monitoring and oversight was always a difficult issue but would be an essential component if the Convention were to be enforced. It was not unreasonable to expect flag States to check the relevant legislation in force, or make other pragmatic arrangements with the shipowners to verify information on social security coverage. Documentary proof of coverage would constitute a first level of control, with a second level of oversight only being necessary where complaints were lodged.
- 374.** The Seafarer Vice-Chairperson stated that the proposed text was flexible. She pointed out that Title 5 of the recommended draft addressed monitoring, and Title 2 referred to the employment agreement, including on social security benefits, providing practical avenues for checking social security coverage. While agreeing with the Shipowners' view that flag States could not interfere with the sovereignty of States of residence, including on issues of collective bargaining, the Seafarers' group noted that many countries were already linked through bilateral and international agreements regarding social protection. She also pointed to Article 94 of the United Nations Convention on the Law of the Sea, 1982, which acknowledged that only flag States had jurisdiction over their ships.
- 375.** The Shipowner Vice-Chairperson, also referring to the United Nations Convention on the Law of the Sea, stated that, where there is an alleged violation of Article 94, the issue can be taken to the appropriate forum under that Convention, and need not be dealt with in the present debate.
- 376.** The Government member of France stated that the United Nations Convention on the Law of the Sea provides that States are to exercise jurisdictions with respect to all social issues on board ships that fly their flags.
- 377.** The Government member of the United Kingdom stated that the reference to "or other arrangements" in the proposal was too vague. He noted that the Seafarers' group had indicated earlier that they would also be submitting a proposal on oversight, and suggested

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that the Committee await the submission of this text before discussing further the proposal of the Government member of France. The Committee agreed to defer its discussion on Standard A4.5, paragraph 5.

- 378.** The representative of the European Commission informed the Committee that the Member States of the European Union intended to propose a change to Standard A4.5 with the aim of avoiding conflict between the Convention and European Community law on the coordination of social security schemes. This legislation provided that the laws applicable to seafarers who exercise free movement within the EU were those of the flag State. The text of Standard A4.5 posed a problem for EU Member States because it provided for shared responsibility between the flag State and the State of residence. It would be difficult for them to ratify a Convention which could be seen as derogating from European Union law and they therefore intended to propose an amendment to regulate the relationship between the Convention and European Community law.
- 379.** The Shipowner Vice-Chairperson stated that, in principle, the Convention should accommodate the concern voiced by the representative of the European Commission.
- 380.** The Government member of the United Kingdom agreed with the representative of the European Commission, adding that Regulation 4.5 presents difficulties which are not confined to EU Member States, but extended to other countries including those of the European Economic Area and those which have concluded bilateral agreements with EU Member States.
- 381.** The Government members of Germany and France also shared the concerns of the representative of the European Commission.
- 382.** The Government member of France acknowledged the doubts expressed about the feasibility of his earlier proposal and responded that the legislation of the primary labour-supplying States was well-known and shipowners would be aware whether seafarers were covered. Moreover, this coverage could take the form of private insurance and need not necessarily be provided under a statutory system.
- 383.** The Shipowner Vice-Chairperson noted that paragraph 5 of the recommended draft required that member States “give consideration” to the ways in which comparable benefits are provided to seafarers, whereas the proposed replacement provides they “shall ensure” protection, rendering it mandatory. He opposed the proposed change on the ground that it would prevent the Convention from being widely ratified and enforced.
- 384.** The Seafarers’ group supported the proposed change. They did not feel that the “shall ensure” requirement was inconsistent because flag States are subject to the same level of obligation under Regulations 4.1 and 4.2.
- 385.** The Government member of Japan expressed grave concern that seafarers resident in States which have not ratified the Convention would be prevented from serving on ships whose flag States had ratified it, which was not fair treatment of seafarers. The Government member of the Bahamas could not support the proposal for the same reasons. It was also opposed by the Government members of Cyprus, Denmark, Egypt, Germany, Malta, Philippines, Russian Federation, United Kingdom and the United States.
- 386.** The Government member of Argentina supported the proposed change as enhancing the social protection of seafarers. She was supported by the Government members of Canada, Italy, Mexico, Norway, Spain and Turkey.
- 387.** In response to concerns as to how flag States would ascertain seafarers’ social security coverage, the Seafarers’ group pointed to Standard A2.1 (Seafarers’ employment

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agreements), paragraph 4(h), which requires member States to ensure that a reference to social security benefits provided by the shipowner is included in all seafarers' employment agreements.

- 388.** The Government member of Germany objected that States could not rely on such a statement but must confirm that the conditions of insurance were being met.

#### Paragraph 6

- 389.** The Shipowners' group proposed that the reference to "collective bargaining agreements" be deleted from Standard A4.5, paragraph 6. They felt that they should be entitled to complete freedom to negotiate, although they were interested in hearing the opinions of other delegates.
- 390.** The Seafarer Vice-Chairperson noted that Title 2 (conditions of employment) refers to collective bargaining agreements; it is therefore appropriate to refer to them in paragraph 6.
- 391.** The representative of the Secretary-General added that Article IV of the Convention includes collective bargaining agreements among the means to give effect to the provisions of the Convention.
- 392.** The Government members of Canada, Egypt, France, Tunisia, Turkey and the United Kingdom supported retaining the text of the recommended draft and the Chairperson noted the broad support for its retention.

#### Paragraph 7

- 393.** The Government member of Denmark proposed to replace Standard A4.5, paragraph 7, with the following text:

To the extent consistent with their national law and practice, Members shall endeavour to cooperate in bilateral or multilateral agreements to ensure the maintenance of social security rights that have been acquired or are in course of acquisition, by all seafarers regardless of residence.

- 394.** Her Government envisaged problems with the principle of maintenance of acquired rights and the need for more precise guidelines on how to implement this provision. The text appeared to require that member States ensure the maintenance of social security rights that have been acquired or are in the course of acquisition, regardless of the State of residence. This presented difficulties under Danish law, especially with respect to family benefits, old age benefits and early retirement pay, all of which were funded from general taxation and made available only to individuals resident in Denmark. Paragraph 7 would allow these benefits to be "exported" to seafarers who have worked on a Danish vessel but subsequently taken up residence in another country. This would result in difficulties in systems such as that in Denmark which are not financed by contributions, and make the Convention difficult to implement. The principle of the maintenance of acquired rights should instead be provided for in bilateral or multilateral agreements. This proposal was supported by the Government members of Egypt, Germany and the United Kingdom and by the Shipowners' and Seafarers' groups.
- 395.** It was agreed that the following conclusion would be forwarded to the Drafting Committee:

The Committee discussed the Danish proposal on paragraph 7. The intention of the Danish proposal was to ensure that, irrespective of whether the social security system in a country is contributory or non-contributory, the provision should be formulated so that the

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obligation of Members is to cooperate through bilateral and multilateral agreements in order to ensure the maintenance of social security rights for all seafarers, irrespective of residence. The provision should be broadly worded to cover all types of systems.

**396.** The Drafting Committee proposed replacing paragraph 7 with the following text:

To the extent consistent with their national law and practice, member shall cooperate, through bilateral or multilateral agreements or other arrangements, to ensure the maintenance of social security rights, provided through contributory or non-contributory schemes, which have been acquired or are in the course of acquisition, by all seafarers regardless of residence.

**397.** The Drafting Committee's text was adopted.

## **Guideline B4.5 – Social security**

### **Paragraph 5**

**398.** The Government member of Denmark made a written proposal to replace Guideline B4.5, paragraph 5, with the following text:

The requirement of the Convention should not be interpreted as preventing a member from maintaining a principle by which seafarers are covered in the flag State in the event of accident at work and occupational diseases.

**399.** She gave two reasons for the proposed text. The first was that there were some doubts about the meaning of the paragraph in the Office text, which the Office had explained was aimed at ensuring flexibility for flag States to provide benefits under their own legislation. There was need for greater clarity in the text, however, as closer reading gave the impression that the aim was to oblige States to provide seafarers residing outside their territories with benefits similar to those of seafarers residing in their territories. In addition, Standard 4.5, paragraph 3, and the whole of Regulation 4.5 were on the basis of the State of residence principle, which he thought should not be applicable.

**400.** The Shipowner Vice-Chairperson noted that the proposal referred to workplace accidents and occupational diseases and stressed that these are two areas in which both shipowners and flag States should have some responsibilities.

**401.** The Seafarer Vice-Chairperson said her group had no objection to including the proposed text of the Government member of Denmark in the text of paragraph 5, but could not agree that it should replace the entire paragraph.

**402.** The Government member of the Bahamas suggested that the provisions of paragraph 5 partially overlapped with those of Standard A4.2 (Shipowners' liability), in particular its paragraph 1, which provides for flag state responsibility for monitoring shipowners' liabilities. It may be possible to delete Guideline B4.5, paragraph 5, while retaining Standard A4.2.

**403.** The Seafarer Vice-Chairperson objected to the deletion as social security is complementary to shipowners' liability, which could endure for only a limited period of time.

**404.** The Shipowner Vice-Chairperson emphasized that shipowners are not prepared to assume responsibility for long-term and medium-term protection, such as retirement benefits. Neither did supplementing paragraph 5 add anything of value to the Convention; it should be deleted.

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- 405.** The Seafarers' group noted that the Committee was straying into a subject under discussion in the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers and that the Committee should not pre-empt the work of that group.
- 406.** The Seafarers' group proposed that paragraph 5 be transferred to Standard A4.5, arguing that it was of fundamental importance to seafarers and urging the Committee to strengthen the monitoring and oversight role of flag States. The group was supported by the Government members of Argentina and Italy.
- 407.** The Shipowner Vice-Chairperson opposed the proposed transfer since it would detract from the Convention's prospects for ratification. The proposal was also opposed by the Government members of Bahamas, Germany, Japan, Philippines and the United Kingdom. The Government member of Denmark objected to the proposal on the grounds that it would raise problems for countries in which social security was funded from general taxation rather than by contributions.
- 408.** The Government member of Norway suggested that paragraph 5 was outdated now that most seafarers are not residents of the flag States of their vessels and that there is no relationship between their terms and conditions and what is applicable to the residents of the flag States; therefore, the paragraph should be deleted. He was supported by the Government members of Cyprus, Denmark, Germany and Japan.
- 409.** In response to a request for clarification from the Government member of the Netherlands, the representative of the Secretary-General referred to paragraph 7 of the Addendum to the Commentary, which pointed out that paragraph 5 complements Standard A4.5, paragraph 4. She explained that paragraph 5 amplifies the general obligations of flag States under international law. In this regard, the Seafarers' group referred to Article 94 of the United Nations Convention on the Law of the Sea, which allocates to the flag State responsibility for "social matters".
- 410.** In response to a request for clarification by the Shipowner Vice-Chairperson, the representative of the Secretary-General explained that the reference to "national circumstances" was intended to provide flexibility by recognizing that it was not feasible for all countries to extend to seafarers coverage under all the branches of social security applicable to their residents.
- 411.** The Committee decided to recommend to the Steering Committee that paragraph 5 should remain between square brackets, that all the views expressed by the delegates should be reflected in the report, and that this matter should be referred to the Maritime Session of the International Labour Conference.
- 412.** The Steering Committee returned paragraph 5 to the Committee and asked it to reconsider the text and come to a decision.
- 413.** The Shipowners reiterated their position that the paragraph should be deleted, and the Seafarers emphasized that they considered it fundamental and wanted it to be placed in Part A of the Convention.
- 414.** The Committee agreed to inform the Steering Committee that no further progress could be made in the discussion of paragraph 5 due to time constraints.

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## Paragraph 6

- 415.** The Shipowners' group proposed that Guideline B4.5, paragraph 6 should be deleted. The employment agreement was a matter for seafarers and shipowners and should not be included in the Convention.
- 416.** The Seafarer Vice-Chairperson said that it should be retained. They noted that the employment agreement was significant; the paragraph was a means of ensuring that seafarers could be made aware of the social security protections available to them. The text had been agreed at the April 2004 Meeting of Experts as a "compromise position" and Standard A2.1 (Seafarers' employment agreements), paragraph 4(h) stated that these agreements should contain particulars on the health and social security protection benefits to be provided by the shipowner.

## Closing remarks

- 417.** The Committee concluded its discussions on the bracketed text of Title 4 of the recommended draft. Unless otherwise noted, it retained all unamended bracketed text and the brackets were removed. It did not discuss any of the unbracketed text in these provisions.
- 418.** 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 to propose a text, with a view to the adoption of the Convention by the 94th Session (Maritime) of the International Labour Conference.
- 419.** She informed the delegates of the Steering Committee's decision that no bracketed text would be forwarded to the Maritime Session of the International Labour Conference. Instead, bracketed text which could not be resolved by the Committee would be removed from the text to be adopted by the PTMC, and would be subject to another mechanism. This would take the form of a consultation meeting, to be conducted at no cost to the Office, to which all governments would be invited. The social partners would themselves determine the level of representation they felt to be necessary. The object of the consultation meeting would be to review all outstanding points of contention. At its conclusion, the Office would prepare a revised text, which would be submitted to all members for comment before being forwarded to the Maritime Session of the Conference.
- 420.** The Shipowner and Seafarer Vice-Chairpersons expressed their appreciation to the Chairperson for her expert guiding of the Meeting; the secretariat for its assistance and support; and the Government delegates for the benefit of their expertise and experience. Both acknowledged the significant advances made by the Committee, not least in the substantial amount of text on which consensus had been reached, and looked forward to meeting in future in the spirit of cooperation.
- 421.** The Chairperson thanked delegates for their frank and honest exchanges of views and praised the Committee for reaching a significant degree of consensus on a challenging subject-matter and complex text. She also thanked the Office for providing support and assistance to the Committee and thereby contributing to its success.

Geneva, 23 September 2004.

(Signed) F.A. Elhamid,  
Reporter.