



## Governing Body

322nd Session, Geneva, 30 October–13 November 2014

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**Legal Issues and International Labour Standards Section**  
*International Labour Standards and Human Rights Segment*

**LILS**

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### THIRD ITEM ON THE AGENDA

## **Report of the first meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (Geneva, 7–11 April 2014)**

## **Report of the Chairperson to the Governing Body, in accordance with article 16 of the Standing Orders of the Special Tripartite Committee**

#### **Purpose of the document**

Firstly, to enable the Governing Body to take note of the report of the Chairperson of the first meeting of the Special Tripartite Committee (7–11 April 2014), as required by the Standing Orders of the Special Tripartite Committee, and of the final report of this first meeting; secondly, to appoint the Chairperson of the Special Tripartite Committee for a further two-year term; and thirdly, to consider convening the second meeting of the Special Tripartite Committee in 2016 (see the draft decision in paragraph 17).

**Relevant strategic objectives:** Promote and realize standards and fundamental principles and rights at work as well as promote social dialogue.

**Policy implications:** Lessons that could be learnt for future standard setting.

**Legal implications:** Amendments of 2014 to the Maritime Labour Convention, 2006, adopted by the Special Tripartite Committee and approved by the International Labour Conference at its 103rd Session (2014), will enter into force, subject to prescribed conditions being met, on 18 January 2017.

**Financial implications:** Financial arrangements relating to a second meeting of the Special Tripartite Committee.

**Follow-up action required:** Second meeting of the Special Tripartite Committee scheduled for 2016.

**Author unit:** International Labour Standards Department (NORMES).

**Related documents:** GB.319/LILS/5; GB.320/INS/2.



## Introduction

1. The first meeting of the Special Tripartite Committee established by the Governing Body under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006), took place from 7 to 11 April 2014 at ILO headquarters in Geneva. The final report<sup>1</sup> of this first meeting is submitted with this report of the Chairperson (see Appendix IV). The meeting was attended by over 400 participants.
2. In accordance with article 16 of the Standing Orders of the Special Tripartite Committee,<sup>2</sup> the Chairperson of the Committee is to report to the Governing Body "... on the working of the Convention. The report may contain recommendations to the Governing Body on action to be taken to ensure the effective, efficient and, to the extent deemed expedient, uniform implementation of the Convention."
3. The meeting was successful in that all matters on the agenda adopted by the Governing Body at its 319th Session in October 2013<sup>3</sup> were dealt with, and the meeting had useful bipartite and tripartite exchanges on many issues related to the working of the Convention and reached tripartite agreement on many important matters. The remainder of this report of the Chairperson sets out the outcome of the meeting with respect to each matter on the agenda.

### 1. Appointment of the three Vice-Chairpersons of the Committee

4. In accordance with article 6(3) of its Standing Orders, the Committee appointed the following representatives as Vice-Chairpersons for the Committee for a three-year term:
  - Mr Hans Leo Cacdac (Government member, Philippines);
  - Mr Arthur Bowring (Shipowner member, Hong Kong, China);
  - Mr David Heindel (Seafarer member, United States).

### 2. Consideration of proposals for amendments to the Code of the Maritime Labour Convention, 2006

5. The meeting considered proposed amendments to the Code of the Maritime Labour Convention, 2006 (MLC, 2006), that had been jointly submitted by the Shipowner and Seafarer representatives on the Special Tripartite Committee. These proposals were communicated by the Director-General to all Members of the Organization with an invitation to submit comments or suggestions on the amendments within a six-month period. In accordance with Article XV, paragraph 4, a summary of these observations or

<sup>1</sup> ILO: *Final report*, First meeting of the Special Tripartite Committee established under Article XIII of the MLC, 2006 (Geneva, 7–11 April 2014), STCMLC/2014/6.

<sup>2</sup> Adopted by the 313th Session (March 2012) of the Governing Body: GB.313/LILS/3. Available on the MLC, 2006, website at: [http://www.ilo.org/global/standards/maritime-labour-convention/special-tripartite-committee/WCMS\\_183944/lang--en/index.htm](http://www.ilo.org/global/standards/maritime-labour-convention/special-tripartite-committee/WCMS_183944/lang--en/index.htm).

<sup>3</sup> GB.319/LILS/5, Appendix, and GB.319/PV, para. 584.

suggestions was transmitted to the Committee for its consideration when it discussed the proposed amendments at its first meeting in April 2014.

6. The amendments to the Code implementing Regulation 2.5 – *Repatriation* are intended to better address the specific problems faced in cases of abandonment of seafarers. The amendments to the Code implementing Regulation 4.2 – *Shipowners' liability* address the details of the obligation for shipowners to provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard.<sup>4</sup>
7. In light of the, then ongoing, work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, the details of the financial security and related issues involved were not dealt with in 2006 when the MLC, 2006, was adopted.<sup>5</sup>
8. The Special Tripartite Committee reviewed and revised the proposed amendments to the Code implementing Regulations 2.5 and 4.2 of the MLC, 2006, and voted overwhelmingly<sup>6</sup> in favour of them, thus meeting the two-thirds majority and other requirements set out in Article XV, paragraph 4, of the MLC, 2006. The Committee also considered it important that provision be made for transitional measures to address the period following entry into force of these amendments, as the amendments would require alterations to documents carried on board ships and time would be needed to revise and reissue the documents. Accordingly, in conjunction with the amendments, the Committee adopted a resolution regarding transitional measures to address this more operational matter.<sup>7</sup>
9. Pursuant to Article XV, paragraph 5, of the MLC, 2006, and article 17 of the Standing Orders of the Special Tripartite Committee, the amendments to the Code, accompanied by a commentary, were communicated by the Chairperson of the Committee to the Governing Body, through its Chairperson, for transmittal to the next session of the International Labour Conference (June 2014). The 103rd Session of the Conference approved them by the

<sup>4</sup> They were based on the principles agreed at the Ninth 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 and were based upon the texts of the 2001 IMO/ILO *Guidelines on provision of financial security in case of abandonment of seafarers* and the 2001 IMO/ILO *Guidelines on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers*.

<sup>5</sup> The need for further provisions was reflected in the International Labour Conference's resolution concerning the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers (resolution III). The resolution calls upon Members to develop a standard accompanied by guidelines, which could be included in the MLC, 2006 (or another instrument) at a later date. The resolution can be found at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_088130.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_088130.pdf).

<sup>6</sup> Article XIII of the MLC, 2006, provides for weighted voting ensuring that the Shipowners' and Seafarers' groups each have half the voting power of the Government group. There were no votes against the amendments and only two abstentions by the representatives of one Government member of the Committee.

<sup>7</sup> See the resolution on the transitional measures relating to the entry into force of the amendments to the Maritime Labour Convention, 2006, concerning financial security requirements in respect of abandonment of seafarers and for shipowners' liability, in ILO: *Final report*, op. cit., paras 391–399 and Appendix II.

required two-thirds majority on 11 June 2014.<sup>8</sup> The text of the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the Conference, is contained in Appendix I to this report.

10. On 18 July 2014, these amendments were (under Article XV, paragraph 6, of the MLC, 2006) notified to all Members whose ratification of the MLC, 2006, was registered prior to the date of the Conference's approval. These Members have a period of two years from that notification – that is, until 18 July 2016 – to communicate to the Director-General a formal expression of disagreement to the amendments. The amendments will enter into force on 18 January 2017 – that is, six months after the end of the two-year period – unless more than 40 per cent of the Members which have ratified the Convention and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified the Convention have communicated to the Director-General their formal expressions of disagreement with the amendments. In accordance with paragraph 8 of Article XV, amendments deemed to have been accepted in accordance with paragraph 7 will come into force (six months after the end of the two-year period) for all the ratifying Members except those which have formally expressed their disagreement in accordance with paragraph 7 of Article XV and have not withdrawn such disagreement in accordance with paragraph 11 or given a notice in accordance with paragraph 8(a) or (b). After the entry into force of an amendment adopted under Article XV, the Convention may only be ratified in its amended form.

### 3. Exchange of information related to implementation

11. There was an important and very useful exchange of information among governments and on a tripartite basis. Several specific issues for implementation were raised, including matters related to the regulation of seafarer recruitment and placement services and to jurisdiction with respect to seafarers' employment agreements. A concern about the need for uniform implementation of the definition of a seafarer was also noted as a matter that the Committee of Experts on the Application of Conventions and Recommendations might wish to consider when it conducts its review of national reports under article 22 of the Constitution of the International Labour Organisation. A number of other specific issues were also discussed, as set out in the final report of the meeting.<sup>9</sup>
12. In general, it should be noted that participants expressed the view that the first meeting had provided an important forum for a useful exchange of information with respect to approaches to implementation. The meeting adopted a resolution recommending that, at least for an initial period following the entry into force of the MLC, 2006, the Governing Body should convene regular meetings of the Special Tripartite Committee to enable more exchange and international social dialogue in order to ensure more effective working of the Convention.<sup>10</sup>

<sup>8</sup> ILO: *Provisional Record* Nos 2, 2A and 16, International Labour Conference, 103rd Session, Geneva, 2014.

<sup>9</sup> ILO: *Final report*, op. cit., paras 401–429.

<sup>10</sup> See the resolution concerning regular meetings of the MLC, 2006, Special Tripartite Committee, in ILO: *Final report*, op. cit., para. 400 and Appendix II.

#### **4. Consideration of any request for consultation under Article VII of the MLC, 2006**

13. There were no requests for consultation at this meeting.

#### **5. Adoption of the arrangements for consultation under Article VII of the MLC, 2006**

14. It was expected that there may be a number of requests for consultation in the future. In accordance with its mandate, the Committee adopted interim arrangements for consultations that could be requested between meetings of the Committee under Article VII of the MLC, 2006.<sup>11</sup>

#### **6. Any other business**

15. In accordance with article 6(2) of the Standing Orders, the Government representatives on the Committee recommended to the Governing Body that the current Chairperson, Mr Naim Nazha, who had been appointed for an initial period of one year, be appointed as Chairperson of the Committee for a term of two more years.<sup>12</sup>

#### **7. Administration**

16. The Office has taken note of the Committee's recommendations and resolutions, and advises with respect to regular meetings that provision was made in the current biennium's budget for only one meeting of the Committee. Resources will be included in the Director-General's Programme and Budget proposals for 2016–17 to conduct a further session of the Committee.

#### ***Draft decision***

##### **17. *The Governing Body:***

- (a) takes note of the information in this report, including the information in section 5 of this report and paragraph 442 of the final report of the first meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006), regarding the arrangements for consultation under Article VII of the MLC, 2006;*

<sup>11</sup> See the arrangements for responding to requests for consultation made under Article VII between meetings of the Committee, in ILO: *Final report*, op. cit., para. 442.

<sup>12</sup> Further to the delegation of authority to the Officers of the Governing Body to take decisions relating to the organization of the first meeting of the Special Tripartite Committee (GB.319/LILS/5, para. 29(f)), the Officers of the Governing Body authorized the Director-General to appoint Mr Naim Nazha to chair this first meeting (GB.320/INS/16); his reappointment for a two-year term would align the term of the Chairperson with the three-year term of the three Vice-Chairpersons (see para. 4 of this report).

- (b) reappoints for two years Mr Naim Nazha as the Chairperson of the Special Tripartite Committee for a second consecutive term; and*
- (c) decides to convene the second meeting of the Special Tripartite Committee in 2016, subject to financial arrangements being made for this purpose.*





## Appendix I

### Text of the amendments of 2014 to the Maritime Labour Convention, 2006

#### ***Amendments to the Code implementing Regulations 2.5 and 4.2 and appendices of the Maritime Labour Convention, 2006 (MLC, 2006), adopted by the Special Tripartite Committee on 11 April 2014***

- I. Amendments to the Code implementing Regulation 2.5 –  
Repatriation of the MLC, 2006 (and appendices)
- A. *Amendments relating to Standard A2.5*

In the present heading, “Standard A2.5 – Repatriation”, replace “A2.5” by “A2.5.1”.

Following paragraph 9 of the present Standard A2.5, add the following heading and text:

#### *Standard A2.5.2 – Financial security*

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.

2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers’ employment agreement, the shipowner:

- (a) fails to cover the cost of the seafarer’s repatriation; or
- (b) has left the seafarer without the necessary maintenance and support; or
- (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners’ and seafarers’ organizations concerned.

4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer on a ship flying the flag of the Member.

5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.

6. Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

7. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A2-I. It shall be in English or accompanied by an English translation.

8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 above.

9. Having regard to Regulations 2.2 and 2.5, assistance provided by the financial security system shall be sufficient to cover the following:

- (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
- (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10; and
- (c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.

10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.

13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.

14. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

## **B. Amendments relating to Guideline B2.5**

At the end of the present Guideline B2.5, add the following heading and text:

### *Guideline B2.5.3 – Financial security*

1. In implementation of paragraph 8 of Standard A2.5.2, if time is needed to check the validity of certain aspects of the request of the seafarer or the seafarer's nominated representative, this should not prevent the seafarer from immediately receiving such part of the assistance requested as is recognized as justified.

C. *Amendment to include a new appendix*

Before Appendix A5-I, add the following appendix:

APPENDIX A2-I

*Evidence of financial security under Regulation 2.5, paragraph 2*

The certificate or other documentary evidence referred to in Standard A2.5.2, paragraph 7, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A2.5.2.

D. *Amendments relating to Appendices A5-I, A5-II and A5-III*

At the end of Appendix A5-I, add the following item:

Financial security for repatriation

In Appendix A5-II, after item 14 under the heading *Declaration of Maritime Labour Compliance – Part I*, add the following item:

15. Financial security for repatriation (Regulation 2.5)

In Appendix A5-II, after item 14 under the heading *Declaration of Maritime Labour Compliance – Part II*, add the following item:

15. Financial security for repatriation (Regulation 2.5)

At the end of Appendix A5-III, add the following area:

Financial security for repatriation

II. Amendments to the Code implementing Regulation 4.2 – Shipowners' liability of the MLC, 2006 (and appendices)

A. *Amendments relating to Standard A4.2*

In the present heading, "Standard A4.2 – Shipowners' liability", replace "A4.2" by "A4.2.1".

Following paragraph 7 of the present Standard A4.2, add the following text:

8. National laws and regulations shall provide that the system of financial security to assure compensation as provided by paragraph 1(b) of this Standard for contractual claims, as defined in Standard A4.2.2, meet the following minimum requirements:

- (a) the contractual compensation, where set out in the seafarer's employment agreement and without prejudice to subparagraph (c) of this paragraph, shall be paid in full and without delay;
- (b) there shall be no pressure to accept a payment less than the contractual amount;
- (c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;
- (d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and
- (e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.

9. National laws and regulations shall ensure that seafarers receive prior notification if a shipowner's financial security is to be cancelled or terminated.

10. National laws and regulations shall ensure that the competent authority of the flag State is notified by the provider of the financial security if a shipowner's financial security is cancelled or terminated.

11. Each Member shall require that ships that fly its flag carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

12. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

13. The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.

14. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A4-I. It shall be in English or accompanied by an English translation.

Add the following heading and text following the present Standard A4.2:

*Standard A4.2.2 – Treatment of contractual claims*

1. For the purposes of Standard A4.2.1, paragraph 8, and the present Standard, the term "contractual claim" means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarers' employment agreement or collective agreement.

2. The system of financial security, as provided for in Standard A4.2.1, paragraph 1(b), may be in the form of a social security scheme or insurance or fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.

3. National laws and regulations shall ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1, paragraph 8, through expeditious and fair procedures.

**B. Amendments relating to Guideline B4.2**

In the present heading, “Guideline B4.2 – Shipowners’ liability”, replace “B4.2” by “B4.2.1”.

In paragraph 1 of the present Guideline B4.2, replace “Standard A4.2” by “Standard A4.2.1”.

Following paragraph 3 of the present Guideline B4.2, add the following heading and text:

*Guideline B4.2.2 – Treatment of contractual claims*

1. National laws or regulations should provide that the parties to the payment of a contractual claim may use the Model Receipt and Release Form set out in Appendix B4-I.

**C. Amendment to include new appendices**

After Appendix A2-I, add the following appendix:

APPENDIX A4-I

*Evidence of financial security under Regulation 4.2*

The certificate or other documentary evidence of financial security required under Standard A4.2.1, paragraph 14, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers’ contractual claims;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1.

After Appendix A4-I, add the following appendix:

APPENDIX B4-I

***Model Receipt and Release Form***  
*referred to in Guideline B4.2.2*

Ship (name, port of registry and IMO number): .....

Incident (date and place): .....

Seafarer/legal heir and/or dependant: .....

Shipowner: .....

I, [Seafarer] [Seafarer’s legal heir and/or dependant] \* hereby acknowledge receipt of the sum of [currency and amount] in satisfaction of the Shipowner’s obligation to pay

contractual compensation for personal injury and/or death under the terms and conditions of [my] [the Seafarer's] \* employment and I hereby release the Shipowner from their obligations under the said terms and conditions.

The payment is made without admission of liability of any claims and is accepted without prejudice to [my] [the Seafarer's legal heir and/or dependant's] \* right to pursue any claim at law in respect of negligence, tort, breach of statutory duty or any other legal redress available and arising out of the above incident.

Dated: .....

Seafarer/legal heir and/or dependant: .....

Signed: .....

*For acknowledgement:*

Shipowner/Shipowner representative:

Signed: .....

Financial security provider:

Signed: .....

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\* Delete as appropriate

D. *Amendments relating to Appendices A5-I, A5-II and A5-III*

At the end of Appendix A5-I, add the following item:

Financial security relating to shipowners' liability

In Appendix A5-II, as the last item under the heading *Declaration of Maritime Labour Compliance – Part I*, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2)

In Appendix A5-II, as the last item under the heading *Declaration of Maritime Labour Compliance – Part II*, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2)

At the end of Appendix A5-III, add the following area:

Financial security relating to shipowners' liability

## Appendix II

### Resolution concerning regular meetings of the MLC, 2006, Special Tripartite Committee

The Special Tripartite Committee established by the Governing Body under Article XIII of the Maritime Labour Convention, 2006, having met in Geneva between 7–11 April 2014,

Noting the long and unique history of the Maritime Sector within the ILO and the important contribution it has played in addressing key labour issues within the globalized shipping industry and thereby ensuring that ILO activities remain relevant to the realities of the global shipping industry,

Noting that the Maritime Labour Convention, 2006, has been cited as being the fourth pillar of the global maritime regulatory regime, the others being the IMO SOLAS, MARPOL and STCW Conventions,

Noting the desire since the Geneva Accord was adopted to be able to update and review the implementation and effectiveness of the Convention on a regular basis,

Recalling the obligation of the Special Tripartite Committee to keep the Convention under continuous review and the need for the Special Tripartite Committee to provide a forum for consultation under Article VII for those Members where representative organizations of shipowners or of seafarers do not exist with that Member,

Considers that the next three years will be crucial in securing the effective implementation of the Convention,

Noting that continuous evolution and technical developments in the shipping industry and the importance of taking the social and labour aspects into account, in order to maintain decent work for the seafarers who crew the world's fleet,

Noting also the importance of the effectiveness of the Convention to the global maritime regulatory regime, the shipping industry, the seafarers and global community, with 90 per cent of world trade transported by sea,

Requests that adequate budget and resources are made available to host regular sessions of the Committee over the next three years, with the frequency of meetings to be reviewed after this initial period, and

Invites the Director-General to ensure that adequate resources are provided to maintain the relevance and the effective implementation of the Convention in future years through regular meetings of the Committee.

## Appendix III

### **Arrangements for responding to requests for consultation made under Article VII between meetings of the Committee**

Pursuant to article 14 of its Standing Orders, the Special Tripartite Committee agreed upon the following interim arrangements for responding to any requests made by a ratifying Member between meetings of the Committee, for consultation under Article VII of the Maritime Labour Convention, 2006:

1. There will be a panel made up of representatives of the Government group the Shipowners' group and the Seafarers' group who will be available to provide advice, on behalf of the Committee, in the case of requests for consultation received from a government in accordance with Article VII of the Convention between meetings of the Committee.

2. Upon receipt of a request for consultation pursuant to paragraph 1 of article 14 of the Standing Orders, the Officers of the Committee will, taking account of all relevant factors such as the subject matter of the request and the language needed to communicate with the government concerned, form a working group to provide the requested advice to the government concerned. Each Vice-Chairperson will select two members of the working group from their respective group.

3. The Officers will determine unanimously how consultation will proceed. This consultation process should not incur significant cost.

4. In accordance with paragraph 3(e) of the Committee's Standing Orders, the advice provided will be made available to the Committee at its next meeting and – to the extent approved by the Committee – to all Members of the Organization.

5. The government concerned will communicate to the Office the result of its determination made after consultation. The Office will then communicate it to the Committee.



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## Appendix IV

### Final report of the first meeting of the Special Tripartite Committee established under Article XIII of the MLC, 2006 (Geneva, 7–11 April 2014)

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## I. Introduction

1. The Special Tripartite Committee was established by the 318th Session (June 2013) of the Governing Body of the ILO, in accordance with Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006). According to Article XIII, “The Governing Body of the International Labour Office shall keep the working of this Convention under continuous review through a committee established by it with special competence in this area of maritime labour standards.” In addition, under Article XV the Committee has a central role with respect to the more rapid process for the amendment of the Code of the MLC, 2006 (the Standards and the Guidelines) containing the more detailed, technical provisions. Article XV provides that, upon verification, proposed amendments, along with a summary of related observations or suggestions, shall be transmitted to the Special Tripartite Committee for consideration at a meeting. At its 319th Session (October 2013), the Governing Body convened the first meeting of the Special Tripartite Committee for April 2014 and adopted the agenda, which took into account the advice from the Preparatory Tripartite MLC, 2006 Committee (PTMLC) that had met previously in September 2010 and December 2011. The first meeting of the Special Tripartite Committee was held from 7 to 11 April 2014 at the headquarters of the ILO in Geneva. This report has been prepared by the International Labour Office.

## II. Composition of the Special Tripartite Committee

2. In accordance with paragraph 2 of Article XIII of the MLC, 2006, the Special Tripartite Committee was composed of “two representatives nominated by the Government of each Member which has ratified this Convention, and the representatives of Shipowners and Seafarers appointed by the Governing Body after consultation with the Joint Maritime Commission”. There were 220 Government representatives, 44 Shipowner and 76 Seafarer participants and their advisers. Representatives of a number of non-governmental international organizations and intergovernmental organizations, as well as interested parties, also attended the meeting. A list of participants is attached.
3. At its 319th Session (October 2013), the Governing Body, in accordance with Article XIII and the Standing Orders of the Special Tripartite Committee, made decisions on a number of matters related to convening the first meeting including the appointment of additional representatives of seafarers and shipowners, the appointment of the first Chairperson, and invitations to other organizations and observers. The Officers of the Governing Body appointed the Chairperson for an initial term of one year.
4. In accordance with the Standing Orders for the Committee, the Officers, other than the Chairperson, were appointed for a three-year term. A recommendation was made to the Governing Body that the first Chairperson be reappointed for a term of two years.<sup>1</sup> The Officers of the Special Tripartite Committee are as follows:

<sup>1</sup> The Governing Body had decided at its 319th Session (October 2013) to appoint the Chairperson for an initial one-year term. In accordance with paragraph 2 of Article 6 of the Standing Orders, the Government members nominated the Chairperson with a recommendation to the Governing Body that the first Chairperson be reappointed for a two-year term, thereby aligning that term with the three-year term of the three Vice-Chairpersons appointed by the Committee.

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*Chairperson:* Mr Naim Nazha (Government member, Canada)

*Vice-Chairpersons:* Mr Hans Leo Cacdac (Government member, Philippines)  
Mr David Heindel (Seafarer member, United States)  
Mr Arthur Bowring (Shipowner member, Hong Kong, China)

5. The Officers of the Government group were as follows:

*Chairperson:* Ms Birgit Sjølling Olsen (Government member, Denmark)

*Vice-Chairperson:* Mr Yeong-Woo Jeon (Government member, Republic of Korea)

6. The Committee appointed a Drafting Committee for the meeting composed of the following members:

*Shipowners:* Ms Sarah Cerche (Australian Shipowners Association)  
Mr Matthieu Laurent (Armateurs de France)  
Mr Tim Springett (UK Chamber of Shipping)

*Seafarers:* Mr Philippe Alfonso (European Transport Workers' Federation (ETF))  
Mr Fabrizio Barcellona (International Transport Workers' Federation (ITF))  
Ms Jacqueline Smith (Norwegian Seafarers Union)  
Mr Somiruwana Subasinghe (ITF)

*Government:* Ms Julie Bédard (Canada)  
Ms Marina Charalampous (Greece)  
Mr Ronald Siphu Jama Mbatha (South Africa)

### III. Opening statements

7. The Director-General of the ILO noted that, at a time when the ILO was engaged in difficult debates about its standards-related work, he had followed with interest and optimism the progress made with respect to the MLC, 2006. In 1919, the founders of the ILO had noted that “the very special questions concerning the minimum conditions to be accorded to seamen might be dealt with at a special meeting of the International Labour Conference”, and the first Maritime Session of the Conference was thus held in 1920. Almost 100 years later, the world’s seafarers and ships continued to operate in a sector which was, by definition, global and essential to the operation of the world’s economy with approximately 90 per cent of the world’s trade carried on ships. The maritime sector deserved special attention from the ILO to ensure its effective operation and to ensure that seafarers’ working and living conditions were secured.

8. The first and second meetings of the PTMLC in 2010 and 2011 had identified two priority concerns: the abandonment of seafarers and financial security; and claims related to death or long-term disability of seafarers. Problems arising from the abandonment of seafarers, as well as the difficulties experienced by families resulting from a seafarer’s death or long-term disability, had been intensively discussed for over a decade in tripartite ILO and International Maritime Organization (IMO) meetings. The Special Tripartite Committee

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had been tasked to take concrete steps which would result in binding international law on those subjects. The Governing Body had decided to place the question of amendments, if they are adopted by the Special Tripartite Meeting, on the agenda of the Conference in June 2014 for approval. Like the MLC, 2006, the mechanisms that were to be developed and implemented during this meeting were innovative and could serve as inspiration for other sectors. The MLC, 2006, indeed was further evidence of the constituents' foresight as it contained provisions allowing parts of the Convention to be rapidly updated, which enabled it to evolve to meet changing needs. The MLC, 2006, had been in force since 20 August 2013, and it had been ratified by 56 member States responsible for approximately 80 per cent of the world's fleet. The goal for the MLC, 2006, was, and must continue to be, universal ratification by countries with a maritime interest. Concerning the effective national implementation of the Convention, countries were progressing, in particular with capacity-building support from countries such as Sweden. Given its special nature, he expressed his wish for the Special Tripartite Committee and this meeting to be constructive for all parties.

9. The Shipowner Vice-Chairperson, the Seafarer Vice-Chairperson and the Chairperson of the Government group expressed their respect for the late Mr Dierk Lindemann, who had been instrumental in the development of the MLC, 2006. The Committee rose for a minute of silence in his honour.
10. When the proceedings resumed, the Chairperson accepted with appreciation the responsibility of chairing the work of the first meeting of the Special Tripartite Committee, whose competence and mandate would allow the Governing Body to keep the working of the MLC, 2006, under continuous review. Previous work had identified priority matters for the first STC meeting, including the 2010 and 2011 PTMLC meetings, which he had chaired. While the proceedings for the first meeting were governed by the Standing Orders of the Special Tripartite Committee, he emphasized that, in taking decisions, the Committee should, as with previous maritime meetings, mainly operate on the basis of consensus and a high level of cooperation.
11. The representative of the IMO stressed that reaching a binding solution on the provision of financial security for abandonment, injury and death of seafarers was also central to the mandate of the IMO. The IMO and the ILO had a long history of cooperating on issues which came under the remit of both Organizations and had established several meetings of joint IMO/ILO ad hoc expert working groups on labour-related maritime issues. He recalled the history of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers (Joint Working Group), which had been established to ensure the rights of seafarers to adequate compensation for loss of life or personal injury, as well as to adequate protection in cases of abandonment, and to formulate suitable recommendations to the IMO Legal Committee and the Governing Body of the ILO. Between 1999 and 2009, the Joint Working Group had met nine times, and the social partners had held a number of inter-sessional meetings. During its third session, the Joint Working Group had developed the texts of two important resolutions and associated guidelines, which were subsequently adopted by the IMO Assembly and the Governing Body of the ILO and were directed at providing seafarers and their families with the protection that had otherwise been lacking for seafarers' welfare. Further to the resolution of the 94th Maritime Session of the International Labour Conference in 2006, the Joint Working Group, at its ninth session, reached agreement on principles that could be recommended as the basis for finalizing a mandatory instrument. An amendment to the MLC, 2006, had been recommended as the best way to create such a mandatory instrument, on condition that the IMO Legal Committee would remain seized of the issue and would keep it under consideration in the event that amendments to the MLC, 2006, would prove not feasible or timely. The speaker was convinced that introducing amendments to the MLC, 2006, was the best way to reach

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a binding solution on those issues, since the MLC, 2006, was now in force, was well-ratified and included comprehensive maritime labour standards that covered a wide range of social protection issues. On behalf of the IMO, he expressed the hope that the proposed draft amendments to the MLC, 2006, would be adopted during the meeting so that seafarers and their families would be provided with the support and protection they deserved. The outcome of this first Special Tripartite Committee meeting would be reported to the 101st Session of the IMO Legal Committee.

12. The Secretary-General said that the mandate of the Special Tripartite Committee was linked to the design of the MLC, 2006, as it allowed the Convention to respond to developments more rapidly than the traditional ILO amendment process. She recalled the procedures of processing the two joint proposals for amendment as well as for the consideration of amendments under the MLC, 2006, and the Standing Orders of the Special Tripartite Committee. She further drew attention to the Background paper for discussion at the first meeting of the Special Tripartite Committee,<sup>2</sup> which contained the joint proposals for amendments to the Code relating to Regulations 2.5 and 4.2 of the MLC, 2006. Finally, she introduced the Office's summary of observations and suggestions on the two sets of joint proposals.<sup>3</sup> Constituents would consider the proposals during the meeting and thus complete a lengthy process initiated by the Joint Working Group in 1998 and culminating in the agreement in 2009 on the principles that could be adopted by the PTMLC as a priority for the agenda of the first meeting of the Special Tripartite Committee. In addition to the consideration of the proposed amendments, the Committee was mandated to keep the working of the Convention under continuous review and would therefore have an opportunity to exchange information concerning implementation experiences. The Committee also had the responsibility under Article VII of the MLC, 2006, to consult with Members where representative organizations of shipowners or of seafarers did not exist, when decisions needed to be made concerning derogation, exemption or other flexible application provided for by the Convention.
13. The Shipowner spokesperson expressed his satisfaction that the first meeting of the Special Tripartite Committee was taking place and that ratifications of the MLC, 2006, amounted to over 80 per cent of the world tonnage, with more ratifications likely to follow before the end of the year. The Shipowners' group expressed its concern about the continuing cases of abandonment which, while few in number, were causing great stress and anxiety among the affected seafarers and their families. More needed to be done by the wider maritime community, including flag States and insurance providers, to ensure that those who abandoned their seafarers, or did not pay their wages and other entitlements in accordance with their employment contracts, were not given encouragement and support to remain active in the industry. The views of all of the groups identifying ratification and implementation challenges would be of interest, as would determining whether exchange of information within the Committee could be of assistance. The outcome of the discussions held in the Joint Working Group, the IMO Legal Committee and the ILO Governing Body needed to be duly taken into account to enable concentration on the unresolved issues. The principles agreed in the Joint Working Group should be fully reflected. Recalling that the proposed amendments had been jointly submitted by the Shipowners' and Seafarers' representatives as a matter of procedure, he stated that both groups had clearly reserved the right to submit requests for clarification. It was positive

<sup>2</sup> See *Background paper for discussion at the first meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006* (STCMLC/2014), [www.ilo.org/global/standards/maritime-labour-convention/WCMS\\_235062/lang--en/index.htm](http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_235062/lang--en/index.htm).

<sup>3</sup> See *Summary of observations and suggestions on the two sets of joint proposals for amendments to the Code of the Maritime Labour Convention, 2006* (STCMLC/2014/1) (Summary document), [www.ilo.org/global/standards/maritime-labour-convention/WCMS\\_240267/lang--en/index.htm](http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_240267/lang--en/index.htm).

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that advice could be provided by Protection and Indemnity (P&I) Clubs and insurers on what would be recoverable by insurance, particularly in relation to exemptions similar to those in the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL). All of the groups, particularly the Government group, needed time to discuss the issues.

- 14.** With regard to future meetings of the Special Tripartite Committee, the Shipowners' group and the Seafarers' group would be proposing a draft resolution for consideration by the Committee to call for budget provisions to be made for an annual Committee meeting for the next three years with the frequency of further meetings to be reviewed after that time. Furthermore, it was of concern that some misunderstanding appeared to have led governments to incorrectly advise the Office of potential social partners as representatives appointed to the Special Tripartite Committee. The Office should, in the future, issue a note explaining the process of appointment of the representatives of shipowners and seafarers on the Committee.
- 15.** The Seafarer spokesperson recalled the importance of the MLC, 2006, and stressed that the Special Tripartite Committee was a unique structure within the ILO with an important role in ensuring that the Convention was uniformly implemented. It was empowered to submit amendments to the Code to the International Labour Conference for adoption, and was uniquely, a standing Committee similar to a Conference Committee. Referring to the history behind the proposals, he stressed that the time required to reach a long-term solution reflected the sensitive nature of the issues at stake. The Seafarers' group would table a proposal to provide a mechanism that would trigger the financial security system for cases where seafarers were abandoned. The criteria which had been adopted by the second session of the Joint Working Group and which had been found in the IMO Assembly Resolution A.930(22) proved difficult to use in practice, and the number of cases was underreported. However, the large number of cases recorded in the ILO database demonstrated the compelling need for the amendments. Finally, it was important that the ILO provide funding for further meetings of the Special Tripartite Committee as those meetings would be needed to address issues relating to the implementation of the MLC, 2006.
- 16.** The Chairperson of the Government group stated that the Government group had a positive view of the proposals for amendment, recognized the great interest in this topic, and would work constructively to achieve a good result.
- 17.** A representative of the Government of Greece, speaking on behalf of the governments of European Union Member States that had ratified the MLC, 2006, welcomed the first meeting of the Special Tripartite Committee. The entry into force of the MLC, 2006, was an important milestone in promoting decent living and working conditions for seafarers and fairer competition conditions for shipowners worldwide. From the outset, the European Union and its Member States had supported the ILO on the MLC, 2006, and had sought to achieve the establishment of a level playing field in the maritime industry. Efforts were therefore geared towards ratification of the MLC, 2006, and, to date, most European Union Member States had ratified the Convention. The European Union had considered it important to give effect to the provisions of the Convention to a large extent in European Union law, and the agreement reached by the European Union social partners in the maritime sector was implemented through the adoption of an EC Directive, which induced consultation procedures and promoted social dialogue. The enforcement of the MLC, 2006, was also secured through further EU legislation on flag State and port State control that was adopted in 2013.

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- 18.** A representative of the Government of the Philippines expressed his hope that the Committee would positively contribute to the rights and welfare of seafarers. The MLC, 2006, entered into force on 20 August 2013, after the deposit of ratification on the same date by the Philippines as the 30th member State, which marked a global milestone for the international maritime community. The MLC, 2006, was highly significant to the Philippines as a flag State and as a member State with labour-supplying responsibilities. Its task was to secure the best possible employment standards and protection to the approximately 375,000 Filipino seafarers working on board ocean-going ships. His Government generally agreed with the two sets of joint proposals, but would seek clarification on certain issues. Once adopted, the sets of proposals would necessitate amendments to the Standard Employment Contract of the Philippine Overseas Employment Agency (POEA) through the POEA Governing Board. The Philippines adhered to international standards for the protection of seafarers and would continuously monitor the implementation of laws and regulations and seek to develop the legal and administrative framework for stronger MLC, 2006, compliance.
  - 19.** A representative of the Government of the Republic of Korea stressed that the joint proposals reflected past deliberations and the amendments process should follow the procedure established under Article XV of the MLC, 2006. The rules regarding financial security providers should be analysed to entitle seafarers to direct access and expedited procedures. There were cases in which seafarers had no enforceable right of recovery against any party, or had been waiting for financial assistance since 2010. Seafarers should be allowed to claim compensation for all injuries insured by financial security providers. In most countries, including the Republic of Korea, shipowners were required to provide financial security against seafarers' short-term and medium-term disabilities, even though the MLC, 2006, required contracting parties to ensure compensation only in case of seafarers' long-term disability or death. Finally, he referred the Committee to the Interim Guidelines on Measures Relating to the Welfare of Seafarers and their Families Affected by Piracy off the Coast of Somalia, which the Government of the Republic of Korea had submitted to the IMO, highlighting the shipowners' responsibility to maintain appropriate insurance to cover seafarers against piracy-related risks, including repatriation and compensation for injury.
  - 20.** A representative of the Government of Canada stated that the Government had worked with the social partners to ensure full compliance with the Convention. He was confident that the Committee would reach an agreement regarding basic financial security requirements to assist seafarers and their families without delay.
  - 21.** A representative of the Government of Norway noted that his Government could accept the draft proposals from the social partners, except for minor changes that were reflected in the Summary document. He expressed the hope that the number of amendments would be kept to a minimum and the Office would provide the clarifications needed. He concluded by recalling that one of the strengths of the Convention was its flexibility, which allowed different types of solutions for the implementation of the requirements of the Convention.
  - 22.** A representative of the Government of China indicated that her Government agreed with the two sets of proposals in principle and had certain practical suggestions for the amendments. China was preparing to ratify the Convention and would provide details to the Special Tripartite Committee in that respect.
  - 23.** A representative of the Government of Mauritius noted that certain issues would need to be clarified to ensure that important principles were not forgotten. Some of the vessels which called into Port Louis and had become abandoned, ran out of fuel and essential supplies. The proposed text regarding financial security in case of abandonment did not cover instances when the master lacked the financial means to operate the ship, such as having



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sufficient fuel and supplies on board. This was especially critical in case of cyclonic weather. Abandonment was not only a question of non-payment of wages.

24. A representative of the Government of Togo said abandonment was a concern for his Government and expressed the hope that the meeting would clarify how to address the situation.
25. A representative of the Government of the Islamic Republic of Iran supported the proposed amendments. He asked whether the amendments and the financial security requirements would apply to non-ratifying flag States when passing through port State control of ratifying port States. The Chairperson of the Government group responded that the text would apply to ships flying the flag of non-member States when entering ports of ratifying member States. She noted that the Government of Denmark had already applied this procedure to a number of vessels which had entered its ports, even those that had not yet ratified the Convention, which had in some cases led to vessel detentions.
26. A representative of the Government of the Congo recalled the importance of the maritime industry. Regionally, the major changes which had occurred in the industry since the 1990s had had devastating effects, yet the prestige of African seafarers remained intact. Along with the other major United Nations and IMO maritime conventions, the MLC, 2006, was of major importance to secure the protection of seafarers from the adverse effects of globalization. Appropriate means of action were needed to strengthen the capacities of national administrations and provide decent work for seafarers. The Congo had also approved the ratification of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and the Work in Fishing Convention, 2007 (No. 188).
27. An observer representing the International Christian Maritime Association (ICMA) strongly supported the proposed amendments because his organization responded to the needs of abandoned seafarers.
28. An observer representing the International Seafarers' Welfare and Assistance Network (ISWAN) expressed the hope that the major shipping nations that had not yet ratified the Convention would do so in the future. His organization provided the seafarers' emergency fund which provided phone cards, food, and water to seafarers who had been stranded in ports for weeks or months. He expressed the hope that countries would encourage the establishment of welfare committees to provide support to seafarers where they did not currently exist.

#### **IV. Proposals for amendments to the Code relating to Regulations 2.5 and 4.2 of the MLC, 2006**

##### **Proposal for amendments to the Code relating to Regulation 2.5 of the MLC, 2006**

29. The discussion below is with reference to the proposal for amendments to the Code relating to Regulation 2.5 of the MLC, 2006, jointly submitted by the Shipowners' and Seafarers' representatives. The proposal is set out in Appendix C of the Background paper.

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## **Standard A2.5.2 – Financial security**

### Paragraph 1

30. The Shipowner spokesperson introduced amendment D.38, which sought to replace the word “rapid” with “expeditious” for consistency with the term “expeditious” used in the MLC, 2006. If the amendment were to be adopted, the Shipowners’ group would propose that it be a consequential amendment throughout the texts.
31. The Seafarer spokesperson supported the proposal.
32. Amendment D.38 was adopted.
33. The representative of the Government of the Islamic Republic of Iran introduced amendment D.48, which was co-sponsored by the representative of the Government of Egypt, and which sought to replace the word “assist” by “secure”. He explained that “assist” had a moral nature; the word “secure” was more appropriate from a legal point of view.
34. The Chairperson of the Government group expressed the group’s hesitation to consider it.
35. The Shipowner and Seafarer spokespersons opposed the amendment.
36. Amendment D.48 was not adopted.
37. The Shipowner spokesperson proposed an editorial change to replace the phrase “in the event of abandonment of seafarers” with the phrase “in the event of their abandonment”.
38. The Seafarer spokesperson agreed with the proposal.
39. Paragraph 1 was adopted as amended.

### Paragraph 2

40. The representative of the Government of China introduced amendment D.44, which sought to insert after “employment agreement” the words “and/or any applicable collective bargaining agreement”. The amendment was not seconded and therefore was not discussed.

### Paragraph 2(b)

41. The Shipowner spokesperson introduced amendment D.37, which sought to replace the words “necessary maintenance and support” with “basic necessities of life, inter alia, adequate food, accommodation and necessary medical care”. The proposed amendment was tied to two other amendments under paragraph 5 (amendments D.33 and D.34) and aimed at distinguishing the issues which arose before a seafarer was considered abandoned with those issues which arose after the abandonment. The amendment would ensure consistency with IMO Assembly Resolution A.930(22), which assessed the situation prior to abandonment.
42. The Seafarer spokesperson opposed the amendment.
43. The Chairperson of the Government group opposed the amendment.
44. Amendment D.37 was not adopted.

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### Paragraph 2(c)

45. The Shipowner spokesperson introduced amendment D.36 to delete “a period of” and insert the word “consecutive” before the word “months” in order to clarify that the period referred to in Standard A2.5.2, paragraph 2(c), was of two consecutive months.
46. The Seafarer spokesperson opposed the amendment since, if a shipowner paid wages to a seafarer for one day in the course of a two-month period, that period could be extended for an indefinite period of time.
47. The representatives of the Governments of Canada, Denmark, Mauritius, Philippines, Portugal and United States concurred with the Seafarer spokesperson and opposed the amendment.
48. Amendment D.36 was not adopted.

### New paragraph after paragraph 2(c)

49. The representative of the Government of Mauritius, seconded by the representative of the Government of Namibia, introduced amendment D.6 which sought to insert a new paragraph 2(d): “fails to provide the master of the ship with the means in respect of ship operation”, in accordance with language used in IMO Assembly Resolution A.930(22). A vessel could be considered abandoned if the master was left without any financial means with respect to the ship’s operations. In cyclonic conditions, ships without fuel or supplies such as essential spares for generators would be in an impossible situation and governments needed to be able to respond.
50. The Shipowner spokesperson opposed the amendment because it related to ship operations and because ships’ masters rarely carried significant financial means on board.
51. The Seafarer spokesperson concurred, adding that the matter was already addressed in Standard A2.5.2(b).
52. The Chairperson of the Government group also opposed the amendment.
53. Amendment D.6 was not adopted.
54. Paragraph 2 was adopted as amended.

### New paragraph after paragraph 2

55. The representative of the Government of China introduced amendment D.47, which proposed adding a new paragraph following paragraph 2 to read as follows: “Each Member shall have laws and regulations in place to acknowledge the abandonment of the seafarers working on ships flying its flag due to the conduct of shipowners under paragraph 2 of Standard A2.5.2, so that the seafarers to be abandoned could get effective and expeditious assistance.” The amendment was not seconded and was therefore not discussed.

### Paragraph 3

56. The representative of the Government of the Marshall Islands introduced amendment D.50, which was seconded by the representative of the Government of the United States, and which sought to insert at the beginning of the last sentence: “Where such a financial system does not exist,”. Paragraph 3 of the joint proposal implied that there may not be financial security arrangements provided by flag States, which was not necessarily the

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case. States with existing financial security systems should not be required to put a new system in place under consultation with their social partners.

57. The Shipowner and Seafarer spokespersons opposed the amendment as it was already implied in the text.
58. The Chairperson of the Government group concurred, considering that, if a system of insurance was already in place, there would be no requirement for a new system.
59. The representative of the Government of the United States said the Convention should not add additional requirements for countries that already had a system of insurance.
60. Amendment D.50 was not adopted, but it was agreed that an explanation of the issue would be included in the report of the meeting.
61. Paragraph 3 was adopted without amendment.

#### Paragraph 4

62. The representative of the Government of Mauritius introduced amendment D.7, which sought to replace paragraph 4 with the following text: “Every Member shall provide any abandoned seafarer who was employed or engaged or working in any capacity on a ship flying the flag of a Member with direct access to expedited financial assistance in accordance with that Standard. That financial assistance shall have sufficient coverage.” The amendment was not seconded and was therefore not discussed.
63. The Seafarer spokesperson introduced amendment D.17, which sought to replace “access” with “action against the financial security provider”.
64. The Chairperson of the Government group indicated that the issue was essential for many member States. Moreover, the Government group had also held substantial discussions on the issue of piracy and abandonment, which caused serious concern among the governments. When seafarers were taken hostage, they would need to have the same rights as abandoned seafarers to be repatriated upon release.
65. The Seafarer spokesperson preferred the term “action” over “access” because it would give the Convention more strength. The representative should be able to access not only the financial security provider but also take action on behalf of the represented seafarer, including if the seafarer had been taken up by piracy.
66. The Shipowner spokesperson opposed the amendment because the terms “direct access” and “direct action” were well-defined terms; the former was broader.
67. The Chairperson of the Government group raised a concern regarding what the term “action” entailed as it implied a government obligation. There was a need to ensure that seafarers had protection and direct access to insurance companies to facilitate their claims rather than through the shipowners.
68. The Seafarer spokesperson agreed with the Shipowners’ group that, if the term “direct access” implied action, they could accept the proposed text.
69. Amendment D.17 was not adopted.

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70. The representative of the Government of Japan, seconded by the representative of the Government of Norway, introduced amendment D.3 to delete the words “who was employed or engaged or working in any capacity”. As the term “seafarer” was already defined in Article II, paragraph 1(f), of the Convention, the proposal would avoid redundancy.
  71. The Shipowner spokesperson supported the amendment due to the potential repetition of the definition of the term “seafarer”. In addition, Article II, paragraph 3, of the MLC, 2006, provided for consultations in the event of doubt as to whether any categories of persons were to be regarded as seafarers for the purpose of the Convention, and the proposed paragraph 4 of Standard A2.5.2 did not provide for such consultations.
  72. The Seafarer spokesperson opposed the amendment.
  73. The Chairperson of the Government group supported the amendment as it aimed at avoiding duplication of the definition of the term “seafarer”. The representatives of the Governments of the Russian Federation and Germany also expressed support for the amendment.
  74. The representative of the Government of the Islamic Republic of Iran said that there was a difference between the proposed amendment and the definition of the term “seafarer” in the Convention because Article II, paragraph 1(f), implied the no more favourable treatment provision.
  75. The Chairperson of the Committee proposed changing the text to read: “to any abandoned seafarer working in any capacity on a ship flying the flag of the Member”, which was not supported.
  76. In response to a question raised by the representative of the Government of the Bahamas, the Chairperson of the Committee stated that as the term “seafarer” was already defined in Article II, paragraph 1(f), of the MLC, 2006, if the amendment were opposed, the phrase “who was employed or engaged or working in any capacity” would have to be repeated throughout the text when “seafarer” was mentioned.
  77. The representative of the Government of Greece supported the amendment as the term “seafarer” was already defined in the Convention. Moreover, the past tense used in paragraph 4 of Standard A2.5.2 in the first set of joint proposals could provoke legal ambiguities.
  78. The Seafarer spokesperson indicated that his group was willing to support the proposed amendment.
  79. Amendment D.3 was adopted.
  80. As a consequence of the adoption of amendment D.3, the Shipowner spokesperson withdrew amendment D.35.
  81. Paragraph 4 was adopted as amended.

## Paragraph 5

82. The Shipowner spokesperson introduced amendment D.34, which sought to delete Standard A2.5.2, paragraph 5. This was part of a wider proposal tied to proposed amendment D.33, which sought to insert a new paragraph after Standard A2.5.2, paragraph 9, of this Standard, to read as follows: “For the purposes of paragraph 9 of this

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Standard, necessary maintenance and support of seafarers shall include: adequate food, clothing, accommodation, necessary medical care and other reasonable charges arising from the abandonment.”

- 83.** The Shipowner spokesperson further noted that those amendments sought to clarify the distinction between the pre-abandonment situation, which fell under paragraph 5, and the post-abandonment situation, which fell under paragraph 9. As regards amendment D.34, he indicated that amendments D.5, D.18 and D.60 should be considered a package of amendments related to Standard A2.5.2, paragraph 5. To that end, he introduced a subamendment to amendment D.34, which sought to amend paragraph 5 to state: “For the purposes of paragraph 2(b), necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel oil for survival on board the ship and necessary medical care.” This would define the trigger contained in Standard A2.5.2, paragraph 2(b), that determined whether the act of abandonment had taken place.
- 84.** The Chairperson of the Government group agreed that amendment D.34 should be read with amendment D.33.
- 85.** The representative of the Government of Norway did not support the two amendments because paragraph 5 of Standard A2.5.2 in the joint proposal applied to the whole Standard A2.5.2.
- 86.** The Committee suspended discussion of amendment D.34 in order to consider that amendment together with amendment D.33 in the course of discussion of a proposal for a new paragraph after Standard A2.5.2, paragraph 9.<sup>4</sup> It was also decided to discuss amendments D.5, D.18 and D.60, which also concerned paragraph 5, in that context.
- 87.** Following the discussion of these other amendments, which related to other paragraphs, paragraph 5 was adopted as amended.<sup>5</sup>

## Paragraph 6

- 88.** The Seafarer spokesperson introduced amendment D.15, which sought to insert, after the word “provide”, the phrase “a certificate or other”. The insertion harmonized the text with Appendix A2-I and the relevant ILO mechanisms. It was important and in accordance with the IMO Assembly Resolution A.930(22) that a reference to a certificate should be included in the text.
- 89.** The Shipowner spokesperson supported the amendment.
- 90.** The representative of the Government of Belgium could understand the concern of the Seafarers’ group but wanted to address it in a different way, as set out in proposed amendment D.63. Those concerns could be addressed by the maritime labour certificate and the declaration of maritime labour compliance (DMLC) contained in the MLC, 2006, which were already available to seafarers.
- 91.** The representative of the Government of Norway, supported by the representatives of the Governments of the Bahamas and Canada, said that it was unnecessary to add the proposed wording, since the term “documentary evidence” already included certification. The text

<sup>4</sup> See paras 154–166 of this report.

<sup>5</sup> *ibid.*

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should be as flexible as possible, in view of the different security systems operating in the market, so that governments would not be limited to one solution.

92. The Seafarer spokesperson explained that insurance certificates would normally be valid for one year, whereas the Maritime Labour Certificate would be valid for five years. The problem arose when the insurance lapsed after 12 months, but the certificate was issued for five years, and port State control could mistakenly assume that seafarers were covered by insurance.
93. The representative of the Government of Norway, supported by the Government of the Russian Federation, indicated that the term “documentary evidence” was an additional document to the Maritime Labour Certificate. While those documents likely did not have the same duration, the necessary control measures were in place and the verification that the insurance policy was up to date was important.
94. Responding to the Shipowner spokesperson’s concern that there was a drafting error in paragraph 6 of Standard A2.5.2 stating that “ships” should provide documentary evidence, the Secretary-General clarified that the wording reproduced the language from Regulation 2.5 of the MLC, 2006.
95. The representative of the Government of Denmark supported the comment made by the representative of the Government of Belgium. Her Government had co-sponsored amendment D.66, which dealt with the cancellation of the insurance certificate.<sup>6</sup> Financial security could consist of different elements, for instance, a private fund, social security or government-provided funding. There had to be some form of notification to the flag State if the insurance was cancelled or not renewed. In those cases, the shipowner would be required to provide the necessary financial security for the ship to be allowed to operate. There had to be some way that the flag State would be informed to enable it to take action.
96. The Seafarer spokesperson provided examples of certificates that were issued on an annual basis, such as those issued under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 and under the International Convention for the Prevention of Pollution from Ships (MARPOL).
97. The Chairperson of the Committee indicated that the MLC, 2006, provided for a mechanism of control, as its certificate had a five-year validity and required periodic inspections. Shipowners also had to keep evidence on board of the financial security certificate’s validity, which should be included in the term “documentary evidence”.
98. The Shipowner spokesperson recalled that the discussion did not concern certification as financial evidence, but rather a “certificate or documentary evidence”, noting that the word “or” was included in the proposal. The term “documentary evidence” could take the form of a certificate.
99. Amendment D.15 was adopted.
100. The representative of the Government of Singapore introduced amendment D.1, seconded by the representative of the Government of the Philippines, which sought to replace the word “posted” with “made available” and replace the words “prominent position” with the words “conspicuous place”. The word “posted” in the proposal for amendment could imply that documentary evidence had to be displayed individually on the notice board in the seafarers’ accommodation, which could contain several other documents requiring the

<sup>6</sup> See paras 223–232 of this report.

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seafarers' immediate attention. Replacing the word "posted" by "made available" would provide shipowners with flexibility to determine other areas for the documentary evidence. Amendment D.1 did not change the intent of the original language. The second proposal was to replace "prominent position" by "conspicuous place" in order to be consistent with the wording contained in other parts of the MLC, 2006.

- 101.** The Shipowner spokesperson concurred and supported the amendment.
- 102.** The Seafarer spokesperson agreed to replace "prominent" by "conspicuous" as documentary evidence could be displayed in the captain's office or on the bulletin board for seafarers or elsewhere. However, his group opposed the change from "posted" into "made available" as the terms had different meanings.
- 103.** The representative of the Government of Germany supported the proposal to replace "prominent position" by "conspicuous place" as that was consistent with the wording of the MLC, 2006. He proposed a subamendment to align the wording of Standard A2.5.2, paragraph 6, with the wording of Standard A5.1.3, paragraph 12, of the MLC, 2006, which stated that "a copy shall be posted in a conspicuous place on board where it is available to seafarers" because the information duties laid down in the MLC, 2006, did not specify the particular location of the information. The representatives of the Governments of the Bahamas and the Netherlands and the Seafarer spokesperson concurred.
- 104.** The representatives of the Governments of Canada, Nigeria, Norway and Saint Vincent and the Grenadines supported the amendment.
- 105.** The representative of the Government of Singapore understood the concern expressed by the Seafarers' group but maintained that many other documents had to be posted, such as those concerning urgent safety matters and pollution prevention.
- 106.** The representative of the Government of China agreed to replace "posted" by "made available".
- 107.** The representative of the Government of the Bahamas supported the alignment of the text with Standard A.5.1.3, paragraph 12, indicating that the fundamental issue was to ensure that the documentary evidence was made available to seafarers.
- 108.** The Government representative of the Russian Federation supported the amendment. A copy of the document could be posted and the original could remain in the captain's office.
- 109.** The Chairperson of the Government group agreed with the Seafarers' group that "posted" was not the same as "made available". It was essential that seafarers had the possibility, without asking, to be informed of their rights.
- 110.** The Chairperson of the Committee indicated that it was necessary to look at the original text stating "shall be posted in the seafarers' accommodation". That meant that the documentary evidence had to be made available in the seafarers' accommodation.
- 111.** The Chairperson of the Committee pointed out that Standard A5.1.3, paragraph 12, did not relate to accommodation, whereas the wording of Standard A2.5.2, paragraph 6, was very precise in that regard, and meant that the deliberations were on "posted" or "made available" in the seafarers' accommodation.
- 112.** The Shipowner spokesperson considered that the subamendment aimed to replace the sentence in Standard A2.5.2, paragraph 6, with the wording of Standard A5.1.3, paragraph 12, which did not refer to accommodation. The Shipowners' and Seafarers'



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groups supported that proposal and understood that the documentary evidence could be a copy.

- 113.** The representative of the Government of Greece pointed out that the original document should be duly kept on board for port State inspections.
- 114.** Amendment D.1 was adopted as subamended to read: “Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, provide certification or other documentary evidence of financial security issued by the financial security provider. A copy of the documentary evidence shall be posted in a conspicuous place on board where it is available to the seafarers.”
- 115.** Amendment D.40 by the representative of the Government of China to replace “in a prominent position” by “a conspicuous place” was withdrawn.
- 116.** The representative of the Government of Belgium introduced amendment D.63, co-sponsored by representatives of the Governments of Denmark and Ireland, to add after the final sentence: “The documentary evidence shall be made available to the competent authority on request.” This addressed their concern to protect the financial security of seafarers while at the same time easing the administrative burden related to certification. If adopted, the two sets of joint proposals for amendments could increase flag States’ administrative burden. The DMLC, Part I, together with the financial security sections would guarantee that the ship was covered by the necessary financial security. Therefore, the attestation of financial security would need to be attached to the Maritime Labour Certificate and the DMLC. Furthermore, the financial security should not cease until the end of the certification, unless the flag State had been notified of the cancellation with prior notice of a specified time period.
- 117.** Amendments D.63 and D.68 were withdrawn as they related to the measures that would apply during a transitional period, a concern which the Committee decided to address by way of a resolution.<sup>7</sup>
- 118.** The representative of the Government of Norway sought to subamend the text of paragraph 6 by replacing the word “provide” with “carry”.
- 119.** The Shipowner and Seafarer spokespersons further subamended that proposal to read: “carry on board”.
- 120.** Paragraph 6 was adopted as amended.

#### Paragraph 7

- 121.** The Seafarer spokesperson introduced amendment D.14, which sought to insert after “the” the phrase “certificate or other”, in order to harmonize the language of paragraph 7 with the amended paragraph 6.
- 122.** The Shipowner spokesperson supported the amendment.
- 123.** The representative of the Government of Belgium suggested that a series of amendments, co-sponsored by the Government representatives of Denmark and Ireland, regarding Appendix 2-I (D.64, D.65, D.66 and D.67) would be relevant to the current discussion, and

<sup>7</sup> See paras 391–399 and Appendix II of this report.

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it would be better to consider amendment D.14 after a decision regarding the language in Appendix 2-I was decided.

- 124.** The representative of the Government of Greece observed that since a national social security scheme could provide financial security for the seafarer, the certificate or other documentary evidence could refer to national legislation. In Appendix A4-I subparagraph (f), the requirement to provide the “place of business of the provider/s of the financial security” was vague.
- 125.** The Seafarer spokesperson clarified that the proposal was linked to the amended paragraph 6 and would make the two paragraphs consistent. It was merely a consequential amendment.
- 126.** The Shipowner spokesperson added that the discussion did not need to continue since the social partners had agreed that paragraphs 6 and 7 should be consistent and there were no objections from the governments. He concurred with the concerns raised by the representative of the Government of Greece.
- 127.** The representative of the Government of Norway disagreed with the summary provided by the Shipowner spokesperson. The concerns raised by the representative of the Government of Greece could be addressed with substantial equivalence. The text should not be expanded to include unnecessary language. However, paragraphs 6 and 7 should be consistent. Regarding the suggestions introduced by the Governments of Belgium, Denmark and Ireland, there should not be a problem where the financial certificate was appended to the Maritime Labour Certificate.
- 128.** The representative of the Government of Denmark pointed out that the discussion was more substantive and not merely about consequential drafting. The proposals made by the Governments of Belgium, Denmark and Ireland would strengthen the text as a whole. To move the discussion forward, the amendments to paragraph 7 could be accepted for now, and then if appropriate they could be adjusted after the discussion of the Appendix. The representative of the Government of Sweden concurred with this view.
- 129.** Amendment D.14 was adopted.
- 130.** Paragraph 7 was adopted as amended.

## Paragraph 8

- 131.** The Shipowner spokesperson introduced amendment D.61, which sought, after the words “upon request made by” in paragraph 8, to replace the words “or on behalf of the seafarer concerned” with the words “the seafarer or their representative”. That proposal was intended to prevent persons without authority from receiving assistance.
- 132.** The Seafarer spokesperson did not support the proposal since it was based on an assumption that the seafarer was to appoint his or her representative. In practice, manning agencies had incorrectly claimed to be the representative of the seafarer.
- 133.** The representative of the Government of the Bahamas referred to a recent case in which a seafarer had not had access to information and had not been able to identify, to the flag State, who the seafarers’ representative was. An identification made by the seafarer was therefore necessary.

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134. The representative of the Government of Mauritius preferred the original text because, as in many cases, it was a local authority that actually intervened and acted on behalf of the seafarer although they were not the seafarer's representative.
  135. The representative of the Government of Norway supported the proposal and noted that the provision addressed the financial security system, which required narrow interpretation.
  136. The Shipowner spokesperson indicated that the purpose of the proposal was to limit persons who could access the financial security system and to whom assistance must be provided promptly upon request.
  137. The Seafarer spokesperson proposed to subamend the provision by inserting the word "nominated" before the word "representative".
  138. Amendment D.61 was adopted as amended.
  139. Paragraph 8 was adopted as subamended.

#### New paragraph after paragraph 8

140. The Seafarer spokesperson introduced amendment D.13, which sought to introduce, after paragraph 8, a new paragraph that read: "In addition, the Member or an authorized officer of the Member, in whose maritime jurisdiction the ship is located, shall investigate a potential abandonment case on the basis of information submitted by the appropriate seafarers' organization, a trade union, the port authority or a seafarers' welfare organization. The information shall include the name of the port, the name of the vessel, the flag State, the number and composition of the crew and the financial security provider. Notification of such an investigation shall be provided expeditiously to the competent authority and the financial security provider by the Member or an authorized officer of the Member in whose maritime jurisdiction the ship is located or by a seafarers' organization, a trade union, port authority or seafarers' welfare organization." The paragraph was necessary to make port States aware of the abandonment case, in addition to the financial security provider, while seafarers could always resort to the onshore seafarer complaint-handling procedures.
141. The Chairperson of the Government group indicated that the group did not support the amendment. The existing mechanism provided for under Regulation 5.2.2 should be used.
142. The Shipowner spokesperson concurred with the Government group since the obligations ultimately rested with the governments.
143. The representative of the Government of the Philippines supported the statement by the Government group, but was also open to the amendment because a special mechanism or reference to an onshore complaint system would benefit the seafarer as well as the seafarer's family.
144. Amendment D.13 was withdrawn.

#### Paragraph 9(a)

145. The representative of the Government of Germany withdrew amendment D.55, which sought to replace both references to "four months" by "three months" in paragraph 9(a).
146. The representative of the Government of the Marshall Islands withdrew amendment D.62, which sought to replace both references to "four" by "two" in paragraph 9(a).

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Paragraph 9(c)

- 147.** The representative of the Government of China, seconded by the representative of the Government of Mauritius, introduced amendment D.43, which sought to add, after “at home”, the words “or destination of repatriation (chosen by the seafarer)” to harmonize the wording with the provisions of Guideline B2.5.1, paragraph 6, and to provide more flexibility, rights and protection to seafarers.
- 148.** Following clarifications by the Office, the Shipowner spokesperson cited paragraph 54 of the final report of the Joint Working Group according to which, while seafarers normally had the right to choose among the agreed repatriation destinations, repatriation to the “seafarer’s home” would be the most appropriate destination in the specific case of abandonment.
- 149.** The Seafarer spokesperson agreed that, after abandonment, seafarers would just want to return home.
- 150.** The representative of the Government of the Philippines said that, based on the experience of the POEA which dealt with family matters in abandonment cases, seafarers always wanted to go home and opening the possibility for other repatriation options could lead to complications.
- 151.** Amendment D.43 was not adopted.
- 152.** The representative of the Government of Greece, speaking on behalf of the Member States of the European Union which had ratified the Convention, introduced amendment D.58, which sought to replace the word “home” of paragraph 9(c) by “place of repatriation”. There may be cases in which seafarers would not want to go home due to social situations in their countries.
- 153.** Amendment D.58 was not adopted.
- 154.** The Shipowner spokesperson introduced amendment D.33, which had called for including a new paragraph after paragraph 9, and immediately introduced a subamendment to paragraph 9(c) to replace the original text with: “the essential needs of the seafarer, including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel oil for survival on board the ship, necessary medical care and any reasonable costs or charges from the act or omission constituting the abandonment, until the seafarer arrives at home”.
- 155.** The Seafarer spokesperson supported the subamendments to D.33 and D.34<sup>8</sup> submitted by the Shipowners’ group.
- 156.** The Chairperson of the Government group indicated that the compromise solution aimed to cover the discussion that had taken place. As it was supported by the Seafarers’ and Shipowners’ groups, the Government group would not oppose it. The representatives of the Governments of Norway and the Bahamas stressed that the two subamendments had to be considered as a package.
- 157.** The representative of the Government of South Africa proposed a further subamendment which removed the term “fuel oil” and replaced it solely with the term “fuel”.

<sup>8</sup> See paras 82–87 of this report.

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- 158.** The representative of the Government of Singapore supported the subamendments as well as the further subamendment proposed by the representative of the Government of South Africa. He asked for clarification with respect to the necessity of including “where necessary” after the word “clothing”.
- 159.** The Shipowner spokesperson indicated that the words “clothing where necessary” were taken from amendment D.60, which had been proposed by the Member States of the European Union. The terms “as appropriate” could, however, replace “where necessary”.
- 160.** The representative of the Government of the Philippines shared the views of the representative of the Government of Singapore concerning clothing.
- 161.** The representative of the Government of the Russian Federation proposed the addition of the words “telecommunications costs” to the proposed subamendment to paragraph 5. He asked whether the items listed were all “necessary”, except for fuel.
- 162.** The representative of the Government of Denmark supported the proposed subamendments as further subamended by the representative of the Government of South Africa. Concerning the subamendment for Standard A2.5.2, paragraph 9(c), which contained elements that appeared in her country’s legislation, she stressed that essential fuel for survival on board the ship could be vital in countries where heating or air-conditioning were necessary. She clarified that “clothing where necessary” applied when the seafarer was abandoned and did not have access to clothing that would be necessary, for example, in freezing conditions. The same consideration did not apply if the seafarer was on board the ship.
- 163.** The representative of the Government of Norway also supported the proposed subamendments to paragraph 5 and paragraph 9(c), as further subamended by the representative of the Government of South Africa. The proposed subamendments to paragraph 5 would lead to quicker recognition of abandonment situations. With respect to the suggestion proposed by the representative of the Government of the Russian Federation, “telecommunications costs” might be covered by “other reasonable costs”.
- 164.** The representative of the Government of Mauritius wished to propose a further subamendment to both paragraphs 5 and 9(c) to include the terms “and supplies” after “essential fuel”, and “drinking water” instead of “supplies with drinking water”. The representative of the Government of Namibia shared the sentiment and asked for further clarifications concerning reference to fuel on board in paragraph 9(c). These proposals were not considered.
- 165.** As a result of the above discussion, amendments D.33 and D.34 were adopted as subamended, amendments D.5, D.18 and D.60, which related to Standard A2.5.2, paragraph 5, fell, and amendment D.5, which also related to paragraph 5, was not introduced.
- 166.** Paragraph 9(c) was adopted as amended.

#### New paragraph after paragraph 9(c)

- 167.** The representative of the Government of Germany, seconded by a representative of the Government of the Netherlands, introduced amendment D.56 to add a new paragraph 9(d), which read as follows: “A Member may set ceilings on the coverage of outstanding wages. These ceilings must not fall below the socially acceptable level. A Member may adopt appropriate measures for the purpose of preventing possible abuse.” Following group consultations, he proposed to subamend the amendment and only retain the last sentence.

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- 168.** The Shipowner spokesperson asked for clarification as to where the new proposed text would be inserted and questioned its necessity as it did not require the adoption of appropriate measures but only provided an option for governments willing to do so; which already was in their present competence. The Seafarer spokesperson concurred with the Shipowners' group that the amendment as subamended may be unnecessary and did not make clear what kind of "abuse" seafarers were to be protected from.
- 169.** The Chairperson of the Government group also opposed the amendment as subamended as it would add ambiguity whereas the main goal should be to establish adequate protection for seafarers.
- 170.** The Government representative of Germany, based on the understanding, expressed by the Shipowner and Seafarer representatives, that the MLC, 2006, did authorize member States to take measures aimed at preventing abuse, withdrew amendment D.56 as subamended as it was not the objective of the proposal to be prejudicial to seafarers' rights in relation to wages.

#### New paragraph after paragraph 9

- 171.** Following the discussion of amendments under Appendix A2-I,<sup>9</sup> the Shipowner spokesperson proposed, as a consequence of the adoption of amendment D.66, to add a new paragraph after paragraph 9, which read: "The financial security cannot cease before the end of the period of validity of the financial security unless prior notification from the financial security provider to the flag State of at least 30 days." This paragraph satisfied the P&I Club rules.
- 172.** The representative of the Government of Singapore suggested the wording should read: "unless with prior notification", which was noted by the Drafting Committee.
- 173.** The proposed text was accepted. The new paragraph was subsequently placed to follow paragraph 10.

#### Paragraph 10

- 174.** A representative of the Government of Greece, speaking on behalf of the Member States of the European Union which had ratified the Convention, withdrew amendment D.59, which sought to replace "home" by "place of repatriation".

#### Paragraph 11

- 175.** The Shipowner spokesperson introduced amendment D.32 to insert the word "applicable" before the word "rights" in paragraph 11. Since the joint proposal had been agreed upon in 2009, there had been a court decision in common law jurisdictions to the effect that a person or institution subrogated to the seafarers' rights did not enjoy the same rank of priority as seafarers for the recovery of claims. In practice, that meant that the priority right the seafarer would have enjoyed cannot be subrogated. Adding the word "applicable" would have the effect of making the right applicable in those legal systems in which it could be applied.

<sup>9</sup> See paras 223–232 of this report.

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- 176.** The Seafarer spokesperson did not see the need for the proposed amendment. If a seafarer had a right, it would be applicable, and therefore adding the word “applicable” was not necessary as it was implied. A representative of the Government of Canada concurred with that statement.
- 177.** The Shipowner spokesperson explained that the proposed amendment was related to subrogation, that is cases in which the seafarer was not the person making the claim, and did not affect the seafarers’ right to priority for their claims. The joint proposal could become a barrier to the ratification of the Convention.
- 178.** A representative of the Government of Mauritius stressed that the issues were important as they related to the manner in which institutions such as voluntary organizations, governments, local administrations or port authorities which had paid for seafarers’ expenses could be reimbursed.
- 179.** A representative of the Government of Denmark expressed her understanding that the proposed amendment aimed to take into account the fact that, in certain national jurisdictions, the rights of companies subrogated to the rights of seafarers had been diminished. She therefore introduced a subamendment to D.32 which sought to delete the word “applicable” and add the words “in accordance with national law and practice” after the words “it has paid”.
- 180.** The Shipowner spokesperson supported the subamendment proposed by the representative of the Government of Denmark.
- 181.** The Seafarer spokesperson asked the Office for clarification. The Secretary-General indicated that the representative of the Government of Denmark’s proposal to add the words “in accordance with national law” after the words “it has paid” was a possible solution.
- 182.** The Seafarer spokesperson referred to the subamendment and asked which national law would apply, the national law of the flag State or the port State. Coming back to the initial amendment D.32, his group asked for a legal opinion from the Office concerning the impact of adding the word “applicable” before “rights”.
- 183.** The Shipowner spokesperson agreed that this legal issue affected financial security providers but not seafarers’ rights, and proposed that the Office could draft it to duly take into account the matters concerning the subrogated rights of the financial security providers.
- 184.** The Secretary-General indicated that, following discussions between the Drafting Committee and the Legal Adviser, the following text was proposed: “If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights of the seafarer.”
- 185.** The Shipowner and Seafarer spokespersons agreed with this wording and the text was, accordingly, subamended.
- 186.** The representatives of the Governments of Denmark and Canada supported the proposal.

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- 187.** The Secretary-General addressed a question raised by the Government representative of Norway and indicated that the provision governing the rule of law for social security providers would be decided by national courts based on the applicable law and was a conflict of law principle.
- 188.** The representative of the Government of Norway indicated that, if that was indeed the case, his delegation could not accept the proposed subamendment.
- 189.** The representative of the Government of Denmark pointed out that it was a question of private international law and contractual law.
- 190.** Amendment D.32 was adopted as amended.

New paragraph after paragraph 11

- 191.** The representative of the Government of Mauritius, seconded by a representative of the Government of China, introduced amendment D.8, which sought to insert, after paragraph 11, the following new paragraph: “Where a government or another institution has paid for any costs or expenses mentioned in paragraph 9 above, these shall be reimbursed by the financial security system”. He emphasized the importance of the existence of mechanisms to reimburse the expenses incurred by governments and other institutions.
- 192.** The Shipowner spokesperson expressed the view that the proposed amendment could lead to confusion. Moreover, with the coming into force of the amendments, the situation referred to by the representative of the Government of Mauritius would be covered by the provisions of paragraph 9.
- 193.** The Seafarer spokesperson concurred.
- 194.** The amendment was not adopted.

New paragraph after paragraph 13

- 195.** The representatives of the Governments of Belgium and Denmark introduced amendment D.68, which was co-sponsored by the Government of Ireland and which sought to insert, after paragraph 13, the following new paragraph: “The Maritime Labour Certificates and Declarations of Maritime Labour Compliance valid on the date of entry into force of the present Standard stay valid until the renewal date.” This amendment introduced a transitional provision aimed at establishing the validity of Maritime Labour Certificates and declarations issued prior to the entry into force of the discussed amendments until their expiry even in cases in which they would expire subsequently to the entry into force of those amendments.
- 196.** The Committee took up the issue addressed in amendment D.68 in the context of discussion of the proposed resolutions.
- 197.** The proposals relating to Standard A2.5 were adopted as amended.

***Guideline B2.5.3 – Financial security***

- 198.** The representative of the Government of Mauritius withdrew amendment D.9, which had sought to insert a new paragraph to precede current paragraph 1: “1. Abandonment is characterized by the severance of ties between the shipowner and the seafarer. Abandonment occurred when the shipowner failed to fulfil certain fundamental obligations



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to the seafarer relating to timely repatriation and payment of outstanding remuneration and to provision of the basic necessities of life, inter alia, adequate food, accommodation and medical care. Abandonment will have occurred when the master of the ship has been left without any financial means in respect of ship operations.”

- 199.** The representative of the Government of China, seconded by the representative of the Government of Singapore, introduced amendment D.42 which sought to insert the phrase “of the seafarers” after the word “representative”.
- 200.** The Shipowner spokesperson observed that paragraph 1 of Guideline B2.5.3 related to the financial security of seafarers who were entitled to receive assistance in cases where the request for such assistance was made by their representative. Accordingly the Shipowners’ group introduced a subamendment which sought to delete the word “seafarer’s” as well as the phrase “or a representative”, and to insert after the word “request” the wording “of the seafarer or the seafarer’s representative”.
- 201.** The Secretary-General recalled that the issue was related to paragraph 8, the amended text of which referred to “the request made by the seafarer or his or her nominated representative”. In order to ensure coherence, the Committee might wish to refer to that wording.
- 202.** The Seafarer spokesperson agreed with the subamendment submitted by the Shipowners’ group provided that harmonized language would be used. The Shipowner spokesperson concurred.
- 203.** Amendment D.42 was adopted as subamended to read: “In implementation of paragraph 8 of Standard A2.5.2, if time is needed to check the validity of certain aspects of the request of the seafarer or the seafarer’s nominated representative, this should not prevent the seafarer from immediately receiving such part of the assistance requested as is recognized as justified.”

#### New paragraph 2

- 204.** The representative of the Government of China, seconded by the representative of the Government of Singapore, introduced amendment D.46, which sought to insert a new paragraph 2 to Guideline B2.5.3, as follows: “In implementation of paragraphs 8 and 9 of Standard A2.5.2, if time is needed to check the validity of outstanding wages and other entitlements due to the seafarer from the shipowner under their employment agreement, the seafarer, or a representative of the seafarer should agree with the repatriation arrangement confirming the verification procedure has been undertaken. This should not prevent the seafarer or a representative of the seafarer from receiving the necessary assistance including outstanding wages and other entitlements after accepting repatriation.” The amendment aimed at giving priority to repatriation and at avoiding situations in which financial security providers would initially check the validity of outstanding wages which could result in unnecessary delays.
- 205.** The Shipowner spokesperson, referring to paragraph 9 of the Explanatory note to the Regulations and Code of the MLC, 2006, did not support the amendment because paragraphs 8 and 9 of Standard A2.5.2 were clearly drafted and did not require further precision as to the provisions and entitlements of seafarers. The Seafarer spokesperson concurred.
- 206.** Amendment D.46 was not adopted.
- 207.** The proposal relating to Guideline B2.5 was adopted as amended.

- 208.** The representative of the Government of Belgium introduced amendment D.64, which was co-sponsored by the Governments of Denmark and Ireland, and which sought to replace in the heading of the appendix the words “Regulation 2.5, paragraph 2” with “Standard A2.5.2”, with a view to making it clear that this part also covered Standard A2.5.2.
- 209.** The Shipowner spokesperson opposed the amendment as the heading proposed for Appendix A2-I in the joint proposal clearly referred to the overriding Regulation 2.5 on financial security. The Seafarer spokesperson concurred.
- 210.** The representative of the Government of Greece supported the amendment, explaining that since the objective of the Appendix was to regulate repatriation in case of abandonment, it was preferable to have a reference to Standard A2.5.2 which dealt specifically with abandonment whereas Regulation 2.5 covered all cases of repatriation. The representatives of the Governments of Norway, the Philippines, Sweden and the United Kingdom also supported the amendment because, if the heading of Appendix A2-I referred to Regulation 2.5, its scope would go beyond the issues that were examined by the Committee. The representative of the Government of Norway noted that it was preferable to be precise and refer to the provisions directly related to abandonment.
- 211.** The representative of the Government of the Republic of Korea stated that Regulation 2.5, paragraph 2, covered all cases of repatriation, not only repatriation in case of abandonment. Changing the proposed heading of this appendix would have the effect of eliminating financial security in the case of repatriation.
- 212.** The Seafarer spokesperson concurred that both cases were covered, but requested clarification from the Office.
- 213.** The Shipowner spokesperson recalled that the Committee was examining amendments to the Code and not to the Articles of the MLC, 2006. Regulation 2.5 therefore had to remain the overriding Regulation as it covered both repatriation and abandonment of seafarers, even though it did not refer explicitly to abandonment. Replacing the reference to Regulation 2.5 in the heading of the Appendix by a reference to Standard A.2.5.2 would result in the absence of reference to the overriding provision.
- 214.** The representative of the Government of the United States concurred. The representative of the Government of Australia shared the concerns raised by the representative of the Government of the United States and the Seafarer and Shipowner spokespersons, as he considered that it needed to be clearly understood that Appendix A2-I only related to abandoned seafarers.
- 215.** The representative of the Government of Denmark, supported by the Shipowner and Seafarer spokespersons, asked the Office for clarification and advice on this issue. The Secretary-General indicated that Regulation 2.5 was the overriding provision as regards financial security. The heading of Appendix A2-I derived its authority from that regulation, and its scope was broader and not limited to repatriation in case of abandonment.
- 216.** Amendment D.64 was not adopted.
- 217.** Amendment D.45, submitted by the Government of China, which sought to delete the words “certificate or other” in Appendix A2-I, was not seconded and therefore was not discussed.

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- 218.** A representative of the Government of Denmark introduced amendment D.65, which was co-sponsored by the representatives of the Governments of Belgium and Ireland, and sought to delete the words “certificate or other” in the first sentence of Appendix A2-I. The proposal was intended to dissipate any confusion since the documentary evidence of financial security had been integrated in the Maritime Labour Certificates. Representatives of the Governments of Germany, Ireland and Portugal also supported the proposal emphasizing the need for consistency in wording.
- 219.** The representatives of the Governments of Australia, Germany and Greece agreed that the appendix needed to reflect the terminology used in the corresponding Standard.
- 220.** The Shipowner spokesperson recalled that the Committee had decided to add the words “certificate or other” to paragraph 7 of Standard A2.5.2 and it would therefore be consistent to use the same wording in the appendix. “Certificate” in the first sentence of Appendix A2-I did not necessarily mean the Maritime Labour Certificate. Any certificate considered to be documentary evidence of financial security would suffice.
- 221.** The Seafarer spokesperson concurred.
- 222.** Amendment D.65 was not adopted.

Appendix A2-I, new paragraph following paragraph (h)

- 223.** A representative of the Government of Belgium introduced amendment D.66, which was co-sponsored by the Governments of Denmark and Ireland, and which sought to add a new paragraph following paragraph (h) which read as follows: “(i) an attestation that the financial security cannot cease before the end of the period of validity of the financial security unless prior notification from the financial security provider to the flag State of at least ... days; and”. He immediately proposed to subamend D.66 by deleting the words “an attestation that”. The representative of the Government of Denmark seconded this subamendment.
- 224.** The Shipowner spokesperson proposed to replace the brackets in amendment D.66 by the number “30”.
- 225.** The representative of the Government of Denmark clarified that the intention of this amendment was not to allow any vacuum period during which seafarers lacked financial security in case of abandonment.
- 226.** The Shipowner spokesperson explained that if the new paragraph (i) as subamended was to establish the need for an attestation, Appendix A2-I was an appropriate place to do so. Should that not be the case, the content of the proposed paragraph must be inserted in another provision of the Convention, since the paragraph no longer concerned documentary evidence.
- 227.** The representative of the Government of Denmark concurred with that view and expressed willingness to identify an appropriate place to include this subamendment. She also concurred with the proposal made by the Shipowners group for prior notification from the financial security provider to the flag State of 30 days.
- 228.** The Shipowner spokesperson noted that the amendment had called for an “attestation”, but further understood that the Government group had proposed a subamendment to remove “an attestation that”. If it was not an attestation, the phrase was misplaced because it did not belong with certificate or other documentary evidence as it was a statement or

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requirement, and not an attestation. He therefore proposed a further subamendment to read: “(i) an attestation that the financial security meets the requirements of Standard A2.5.2.”.

- 229.** The Seafarer spokesperson fully supported the subamendments proposed by the Shipowner spokesperson and withdrew amendment D.16.
- 230.** The representatives of the Governments of Denmark, Singapore and the United States supported the subamendments proposed by the Shipowner spokesperson.
- 231.** Amendment D.66 was adopted as amended.
- 232.** The proposal for a new Appendix A2-I was adopted as amended.

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

- 233.** A representative of the Government of Denmark introduced amendment D.67, co-sponsored by the Governments of Belgium and Ireland, which sought to insert, in Appendix A5-II under the heading *Declaration of Maritime Labour Compliance – Part I*, after “(Regulation 2.5)” the words “on condition that the present certificate is accompanied by a valid attestation issued by the provider of the financial security in conformity with the requirements of Appendix A2-I.” It was intended to expand the text of Appendix A5-II, the DMLC, to reflect the new language. The term “attestation” was now included in the proposed item “Financial security for repatriation”. The language should be strengthened to make it clear that it was included in the DMLC.
- 234.** The Shipowner spokesperson did not support the amendment. The 14 items under the MLC, 2006, which had to be certified by the flag State in the DMLC, Part I, were well laid out and did not require an attestation like the item relating to Regulation 2.5. They were included in the DMLC so that port State control could verify what measures the flag State had taken concerning the 14 items. The present item was not a certifiable item, it was an inspectable item, and there was no reference under the Convention for it to become the fifteenth item. The insertion of this item would extend beyond the prima facie evidentiary value of the DMLC, Part I, for port States to accept. If this were an issue, he suggested that national laws and regulations could bring the Convention into effect in that respect, which would be more appropriate.
- 235.** The representative of the Government of Denmark recalled that financial security for repatriation was, in accordance with the joint proposals for amendments, included as item 15 for both port State and flag State control as well as the Maritime Labour Certificate and, consequently, the element of financial security for repatriation, as the text was presently drafted, would already be included in the items for certification and inspection.
- 236.** The Seafarer spokesperson supported the amendment.
- 237.** The Shipowner spokesperson acknowledged that financial security for repatriation had been added as the 15th item, but further indicated that the other items listed in the DMLC, Part I, only referred to the relevant Regulations and their title, leaving it to member States to determine the details and give effect to those items through national laws and regulations. It would not be appropriate for the ILO to make any such stipulations for member States to follow, particularly as there were no other similar stipulations in the DMLC.
- 238.** The Seafarer spokesperson stated that the issue was covered under Regulation 2.5, paragraph 2.

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239. The representative of the Government of Greece did not support the proposed amendment. While the amendment aimed to further safeguard seafarers, it was unnecessary because it was already covered by the operative part of the Regulation and Code and it would disrupt the prima facie evidence of the certificate, which was intended to facilitate the smooth operation of the vessel. On the other hand, Part I only addressed national legislation in a succinct manner. Other matters, such as medical certification, also expired, but there had never before been a reference to the validity of a certificate as jeopardizing the validity of the entire DMLC.
240. The representative of the Government of the Marshall Islands did not support the proposed amendment. The new item 15 was just an additional marker within Part I that had to be addressed in greater detail in Part II.
241. The representative of the Government of the United States did not support the amendment for the reasons given by the representatives of the Governments of Greece and the Marshall Islands. He had previously suggested that only the term “documentary evidence” be used rather than “certificate” to avoid confusion. The representatives of the Governments of Antigua and Barbuda and Liberia also did not support the amendment.
242. The representative of the Government of Singapore did not support the amendment because the parts of the DMLC under the Code, including Regulation 5.2, paragraph 10, were to be drawn up by the competent authority.
243. Amendment D.67 was not adopted.
244. The proposals relating to Appendices A5-I, A5-II and A5-III were adopted.

### **Proposal for amendments to the Code relating to Regulation 4.2 of the MLC, 2006**

245. The discussion below is with reference to the proposals for amendments to the Code relating to Regulation 4.2 of the MLC, 2006, jointly submitted by the Shipowner and Seafarer representatives. The proposal is set out in Appendix D of the Background paper.

#### ***Standard A4.2.1 – Shipowners’ liability***

##### Paragraph 8

246. The Chairperson of the Committee noted that amendment D.31, which concerned paragraph 8, was related to amendments D.27 and D.53 which concerned new Standard A4.2.2.
247. The Shipowner spokesperson introduced amendment D.31, which sought to delete the phrase “for contractual claims, as defined in Standard A4.2.2” in paragraph 8 of Standard A4.2.1. This amendment was necessary to avoid creation of a definition of the term “contractual claim” which would be in conflict with Standard A4.2, paragraph 1(b), which provided that “the shipowner shall provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard ...”. It was therefore suggested to delete the reference to Standard A4.2.2 in order to avoid confusion and to ensure consistency. The Shipowner spokesperson referred to his group’s amendment D.27, which would seek to delete proposed Standard A4.2.2 in its entirety.

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**248.** Following discussion of amendments related to Standard A4.2.2, amendment D.31 was not adopted, and amendment D.27 fell.<sup>10</sup>

**249.** The representative of the Government of China, seconded by the representative of the Government of the Bahamas, introduced amendment D.41, which sought to insert the phrase “and/or any applicable collective bargaining agreement” after the words “seafarer’s employment agreement”. The intention was to make the provision in this paragraph more comprehensive.

**250.** The Shipowner spokesperson did not see the necessity of the amendment since the present Standard A4.2, paragraph 1(b), already mentioned collective agreements as one of the instruments in accordance with which shipowners shall provide financial security. The Seafarer spokesperson concurred.

**251.** Amendment D.41 was not adopted.

#### Paragraph 8(a)

**252.** The Shipowner spokesperson introduced amendment D.30, which sought to add the phrase “if proven or justified” after the word “delay” in Standard A4.2, paragraph 8(a). This proposal was based on a consideration that financial assistance could be paid or requested without justification.

**253.** The Seafarer spokesperson opposed the amendment, explaining that it could harm seafarers because it could take years before proof of death could be obtained by the family members and before they would receive assistance.

**254.** The Chairperson of the Government group indicated that most of the members were not in favour of the amendment as it might induce uncertain consequences.

**255.** Taking note of the lack of support for amendment D.30, the Shipowner spokesperson withdrew the amendment.

#### Paragraph 8(e)

**256.** The representative of the Government of the Republic of Korea, seconded by a representative of the Government of Namibia, introduced amendment D.4, which sought to add at the end of paragraph 8(e) the phrase “to the extent covered by his financial security provider”. He referred to the original wording of paragraph 8(e) proposed by the 2009 Joint Working Group. The original text expressly referred to “any contractual claim for compensation required to be covered by the financial security system referred to in Standard A4.2.1(b)”. That meant that shipowners would provide financial security compensation for seafarers in the event of death or long-term disability only. As the present text did not refer expressly to Standard A4.2.1(b), it was not clear whether seafarers could have direct access to their financial security provider only in the event of death or long-term disability, or also in the event of occupational sickness, injury, or death. As most countries required shipowners to provide financial security to seafarers against other risks beyond long-term disability or death, direct claims by seafarers should include all occupational sickness, injury and death covered by the financial security provider.

**257.** The Shipowner spokesperson opposed the amendment indicating that Standard A4.2, paragraph 8, referred clearly to contractual claims as defined in Standard A4.2.2, that is claims related to sickness, injury or death, and not to the entirety of contractual claims.

<sup>10</sup> See paras 299–313 of this report.

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- 258.** The Seafarer spokesperson and the Chairperson of the Government group concurred with that view.
- 259.** Amendment D.4 was not adopted.
- 260.** The representative of the Government of the Republic of Korea expressed the hope that financial security providers who currently accepted direct access in respect of short-term occupational injuries would continue to do so in the future.
- 261.** Paragraph 8 was adopted.

#### Paragraph 9

- 262.** The Chairperson suggested examining amendments D.10, D.29(a) and D.76 in conjunction as they all referred to the same issue.
- 263.** The Seafarer spokesperson introduced amendment D.10 which sought to insert after “notification” the phrase “by the competent authority” and immediately proposed a subamendment to insert “and the shipowner” after the words “by the competent authority”.
- 264.** The Shipowner spokesperson further subamended D.10 proposing to replace “and” by “or”, as it would generate an administrative burden.
- 265.** The Seafarer spokesperson indicated that seafarers often did not receive information about whether a shipowner’s financial security had been cancelled or not renewed.
- 266.** The Chairperson of the Government group indicated that it was not necessary to add further text and that the issue had to be dealt with by national legislation in consultation with the social partners.
- 267.** The Shipowner spokesperson concurred with that view.
- 268.** Amendment D.10 was not adopted and amendments D.29(a) and D.76 fell.
- 269.** The Chairperson of the Committee suggested examining in conjunction amendments D.29(b), submitted by the Shipowners’ group, and D.49, submitted by the Marshall Islands and seconded by Liberia. Introducing amendment D.29(b), the Shipowner spokesperson indicated that the amendment sought to replace, after the word “cancelled”, the remainder of the sentence by the words “or terminated”. Financial security arrangements were usually renewed every year, and therefore having to notify a change in the financial security each time would be a major administrative burden. Responding to the Seafarer spokesperson’s question, the Shipowner spokesperson indicated that the proof of financial security renewal was the evidence of financial security.
- 270.** The representative of the Government of the Marshall Islands introduced amendment D.49, which was seconded by the Government of Liberia, and explained that this amendment sought to delete all the words after “cancelled” for the same reasons as those given by the Shipowners’ group.
- 271.** The Chairperson of the Government group stated that the Government group could support amendment D.29(b) given that the issue of the evidence of the financial security was already covered by the existing provisions. Based on this explanation, the Seafarer spokesperson agreed to the amendment.
- 272.** Amendment D.29(b) was adopted and amendment D.49 fell.

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**273.** Paragraph 9 was adopted as amended.

Paragraph 10

- 274.** The representative of the Government of the Philippines introduced amendment D.52, which was co-sponsored by the Government of the Republic of Korea, which sought to add, in paragraph 10, after “flag State” the words “and Member States with labour-supplying responsibilities” and replace “is” by “are”. While that would create an additional administrative burden upon insurers, it was important that governments have the ability to provide assistance to seafarers who might be receiving medical treatment at the time of cancellation or termination of the shipowner’s financial security.
- 275.** The Shipowner spokesperson indicated that this would be an impossible task and opposed the amendment.
- 276.** The Seafarer spokesperson, while supporting the amendment, suggested that bilateral agreements could be concluded between flag States and labour-supplying States.
- 277.** The Chairperson of the Government group indicated that, following group discussions, there was a majority to oppose the amendment.
- 278.** The representative of the Government of the Philippines indicated that his Government would embark on bilateral agreements as referred to by the Seafarer spokesperson.
- 279.** Amendment D.52 was not adopted.
- 280.** The Chairperson of the Committee suggested regrouping and examining in conjunction amendments D.28, D.73 and D.51. The Shipowner spokesperson introduced amendment D.28, which sought to replace, in paragraph 10, after the words “financial security”, the remainder of the sentence with “is cancelled or terminated”. That amendment was consequential following the decision on paragraph 9.
- 281.** Responding to a question raised by the representative of the Government of Cyprus, the Shipowner spokesperson clarified that the differences in drafting between paragraphs 9 and 10, as amended, of the joint proposal were due to the fact that, in paragraph 9, the words “to be” should be retained because situations took place prior to notification, while, in paragraph 10, the words “to be” should not appear. Paragraph 10 as amended would read: “Each Member’s laws and regulations shall ensure that the flag State is notified by the provider of the insurance if a shipowner’s financial security is cancelled or terminated.”
- 282.** The Seafarer spokesperson and the Chairperson of the Government group supported the amendment. The representative of the Government of Greece proposed to subamend D.28 with a view to replacing “insurance” by “financial security”.
- 283.** The representative of the Government of the Marshall Islands, speaking also on behalf of the Government of Liberia, withdrew amendment D.51.
- 284.** Amendment D.28 was adopted as subamended and amendment D.73 fell.
- 285.** Paragraph 10 was adopted as amended.



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## Paragraph 11

- 286.** The Seafarer spokesperson introduced amendment D.12, which sought to insert, in the first sentence of paragraph 11, after “provide” the phrase “a certificate or other”. This was a consequential amendment following the decisions taken during the consideration of proposals under Regulation 2.5.
- 287.** The Shipowner spokesperson and the Chairperson of the Government group supported the amendment.
- 288.** Amendment D.12 was adopted.
- 289.** The representative of the Government of Singapore, seconded by the representative of the Government of the Bahamas, introduced amendment D.2 which was a consequential amendment and sought to replace “posted in a prominent position” with “made available in a conspicuous place”. He suggested that the Drafting Committee should ensure coherence along the lines of the decisions taken during the consideration of proposals under Regulation 2.5. Based on this understanding, the Shipowner and Seafarer spokespersons agreed with the amendment, as did the Chairperson of the Government group.
- 290.** Amendment D.2 was adopted as reformulated by the Drafting Committee to read: “A copy shall be posted in a conspicuous place available to the seafarer”. As a consequence, amendment D.39 fell as it had the same content.
- 291.** The representative of the Government of Belgium, speaking also on behalf of the representatives of the Governments of Denmark and Ireland, withdrew amendment D.74.

## Inversion of paragraphs 11 and 12

- 292.** The Shipowner spokesperson proposed to invert paragraphs 11 and 12, and this proposal was accepted.
- 293.** Paragraphs 11 and 12 were adopted as amended.

## Paragraph 13

- 294.** The Seafarer spokesperson introduced amendment D.21, which sought to replace, in paragraph 13, “The documentary evidence” with “The certificate or other documentary evidence”. This amendment followed the decision taken during the consideration of proposals under Regulation 2.5. The Shipowner spokesperson agreed with the amendment.
- 295.** Amendment D.21 was adopted.
- 296.** Following receipt of a new text from the Drafting Committee, the representative of the Government of the Islamic Republic of Iran indicated that the wording of paragraphs 8, 9 and 10 should be harmonized concerning the phrase “laws and regulations”. While paragraph 8 referred to “national laws and regulations”, paragraphs 9 and 10 referred to “each Member’s laws and regulations”.
- 297.** The Committee decided to replace the words “Each Member’s laws and regulations” with “National laws and regulations” in paragraphs 9 and 10.
- 298.** Paragraph 13 was adopted as amended.

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## **Standard A4.2.2 – Treatment of contractual claims**

### Paragraph 1

- 299.** The representative of the Government of Germany introduced amendment D.53, which was co-sponsored by the representatives of the Governments of Greece, the Netherlands and the United Kingdom, which sought to insert “, paragraph 8” after “Standard A4.2.1” contained in paragraph 1; and to replace “sickness, injury or death” by the words “death or long-term disability of seafarers due to an occupational injury, illness or hazard”. Current Standard A4.2, paragraph 1(b), covered only the death or long-term disability of seafarers due to an occupational injury, illness or hazard. It did not cover death or long-term disability of seafarers in general. The current wording of paragraph 1 therefore appeared to be outside the scope of the Convention.
- 300.** The Shipowner and Seafarer spokespersons agreed with amendment D.53 since it would achieve consistency in the scope of shipowners’ liability.
- 301.** The Chairperson of the Government group indicated that the group was also generally in favour of the proposal.
- 302.** The representative of the Government of the Republic of Korea introduced a subamendment, supported by the representative of the Government of the Philippines, which sought to replace the phrase “occupational injury, illness or hazard” by the phrase “occupational sickness, injury or death”. This proposal was based on a consideration that direct access to the financial security system might otherwise be limited in cases of short-term disability.
- 303.** The Shipowner spokesperson opposed the subamendment since it might unduly expand the liability of shipowners. The Seafarer spokesperson concurred.
- 304.** The representatives of the Governments of Norway and Singapore opposed the subamendment while expressing support for the amendment.
- 305.** The subamendment by the Government of the Republic of Korea was not adopted.
- 306.** The Shipowner spokesperson introduced a subamendment which sought to add the phrase that appeared in present Standard A4.2, paragraph 1(b), “, as set out in national law, the seafarers’ employment agreement or collective agreement”, following the words in the amendment, “death or long-term disability of seafarers due to an occupational injury, illness or hazard.”
- 307.** Following referral to the Drafting Committee, the proposed paragraph 1 added after the words, “the seafarers’ employment agreement or collective agreement” the words “occurring while the seafarer is serving under a seafarers’ employment agreement or arising from their employment under such an agreement.”
- 308.** The Shipowner spokesperson concurred as it would refer to the same definition that was referred to in Standard A4.2, paragraph 1(b). The Seafarer spokesperson also concurred.
- 309.** The representative of the Government of the Bahamas questioned whether the added wording was needed.
- 310.** The representative of the Government of the Republic of Korea pointed out that Standard A4.2, paragraph 1(b), did not include the additional language and paragraph 1 of Standard A4.2.2 would be redundant.

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- 311.** The Chairperson of the Committee confirmed that this was correct since the same added text had also been deleted previously in Standard 4.2, paragraph 1(b). The text should therefore end with “or collective agreement”.
- 312.** The Shipowner and Seafarer spokespersons accepted the proposal made by the Chairperson.
- 313.** Paragraph 1 of Standard A4.2.2 was adopted as amended.

New paragraph before paragraph 2

- 314.** The representative of the Government of Germany, seconded by the representative of the Government of the United States, introduced amendment D.57, which sought to add a new paragraph before paragraph 2: “The system of financial security, as provided by paragraph 1(b) of Standard A4.2.1, may be in the form of a social security scheme or insurance or fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners’ and seafarers’ organizations concerned.” This would define “financial security” and give flexibility as to the form that it may take.
- 315.** The Shipowner spokesperson agreed with the amendment.
- 316.** The Seafarer spokesperson agreed, while indicating that the group would have preferred “in consultation” instead of “after consultation”.
- 317.** The Chairperson of the Government group indicated that there was no agreement within the group to support the amendment.
- 318.** The representatives of the Governments of the Philippines, Spain and the United States indicated that they supported the amendment as it was important to have flexibility for questions of implementation. The representative of the Government of Denmark also supported the proposed amendment, stressing that it had been drafted flexibly while not exempting shipowners from their obligations.
- 319.** The representative of the Government of Norway, supported by the representatives of the Governments of Namibia and the United Kingdom, opposed the amendment and stressed that the envisaged situation was different from that under Regulation 2.5. The amendment would create confusion since social security was dealt with under Regulation 4.5. Instead of giving flexibility, the amendment would limit available options to the ones listed. The representative of the Government of Greece also shared the concern expressed by the representative of the Government of Norway with respect to social security, stressing that Regulation 4.2 dealt with shipowners’ liability.
- 320.** The representative of the Government of China opposed the amendment stating that its structure did not give sufficient flexibility to the member States to establish their own national laws and regulations adapted to national contexts.
- 321.** Amendment D.57 was adopted.
- 322.** New paragraph 2 was adopted.

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## Paragraph 2

- 323. The representative of the Government of Germany introduced amendment D.54, which was co-sponsored by the representatives of the Governments of Greece, the Netherlands and the United Kingdom and which sought to add “paragraph 8” after “Standard A4.2.1”, an amendment of an editorial nature which followed the adoption of amendment D.53.
- 324. The Shipowner spokesperson and the Seafarer spokesperson supported the proposed amendment.
- 325. Amendment D.54 was adopted.
- 326. The Committee replaced “Each Member’s” with “National” with a view to aligning the wording with text previously adopted.
- 327. Paragraph 2 was adopted.
- 328. The proposals relating to Standard A4.2 were adopted as amended.

### ***Guideline B4.2.2 – Treatment of contractual claims***

- 329. When reviewing the text from the Drafting Committee, the representative of the Government of Singapore proposed replacing “or” with “and” before “regulations” as in previous text the wording “and” had been accepted.
- 330. The Secretary-General explained that, in the Guidelines, which were not binding, a Member had, as a flexibility measure, a range of legislative or other options subject of course to any specific requirement regarding the form of implementation that may be set out in the relevant MLC, 2006, Regulation or Part A of the Code.
- 331. The amendment was not adopted.
- 332. The proposals relating to Guideline B4.2 were adopted.

## Appendix A4-I

- 333. The Seafarer spokesperson introduced amendment D.23 which sought to replace in the heading “Regulation 2.5, paragraph 2” by “Standard A4.2.1”. The Chairperson indicated that amendment D.70 jointly submitted by the Governments of Belgium, Denmark and Ireland had the same content as amendment D.23. The Shipowner spokesperson supported the proposed amendments and considered that the matter should be referred to the Drafting Committee.
- 334. Amendment D.23 was adopted and amendment D.70 fell.
- 335. The Seafarer spokesperson introduced amendment D.22 which sought to replace in the chapeau of Appendix A4-I the words “The documentary evidence” with the phrase “The certificate or other documentary evidence” in order to harmonize the text. This amendment aimed at ensuring consistency.
- 336. The Shipowner spokesperson concurred.
- 337. Amendment D.22 was adopted.

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Appendix A4-I(e)

- 338.** The Seafarer spokesperson introduced amendment D.19 which sought to insert after “name” the word “, address”. He indicated that the amendment should be referred to the Drafting Committee to ensure consistency.
- 339.** The Shipowner spokesperson concurred.
- 340.** Amendment D.19 was adopted and referred to the Drafting Committee.

Appendix A4-I, new (i)

- 341.** The representative of the Government of Belgium introduced amendment D.71, which was co-sponsored with the representatives of the Governments of Denmark and Ireland, and which sought to insert a new point (i) as follows: “an attestation that the financial security cannot cease unless prior notification of the provider of the financial security to the flag State of at least ...; and”. The aim of the amendment was to ensure coherence with the provisions decided as regards repatriation.
- 342.** The Shipowner spokesperson supported the amendment and introduced a subamendment to insert “30 days” after the words “of at least”.
- 343.** The Seafarer spokesperson supported the subamendment.
- 344.** The representative of the Government of Belgium asked for clarification on whether the amendment would be included in the section on Standards.
- 345.** The Shipowner spokesperson introduced amendment D.25 which sought to delete the entire paragraph (i) of Appendix A4-I as it had not been discussed by the Joint Working Group.
- 346.** A representative of the Secretary-General indicated that paragraph (i) had been added in order to ensure consistency throughout the text and to be coherent.
- 347.** The Seafarer spokesperson stated that paragraph (i) should remain for coherence, as the text in Appendix A4-I should be consistent with that in Appendix A2-I.
- 348.** The representative of the Government of Singapore concurred with the views expressed by the Seafarer spokesperson.
- 349.** The representative of the Government of Denmark suggested that the matters concerning point (i) and the proposed new point (i) could be referred to the Drafting Committee to ensure coherence with the decisions made under Regulation 2.5.
- 350.** Amendments D.71 and D.25 were referred to the Drafting Committee which proposed rewording point (i) as follows: “an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1.”.
- 351.** The Committee agreed to the proposal from the Drafting Committee and amendments D.71 and D.25 fell.
- 352.** The representative of the Government of Belgium withdrew amendment D.75 which was co-sponsored by the Governments of Denmark and Ireland.
- 353.** Appendix A4-I was adopted as amended.

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Appendix B4-I

- 354.** The representative of the Government of Greece, speaking on behalf of the Member States of the European Union which had ratified the Convention, introduced the amendment D.78, which sought to add after “ship” the phrase “(name, port of registry and IMO number)” in the first line.
- 355.** Amendment D.78 was adopted.
- 356.** The representative of the Government of Greece introduced amendment D.77, which was co-sponsored by the Governments of Member States of the European Union which had ratified the Convention, and which sought to add in Appendix B4-I, in the second line, after “incident” the phrase “(time, place and description of the incident)”. The amendment sought to make the text more comprehensive and practical by including the time, place and description of the incident. However, the sponsors of the amendment were not opposed to subamending D.77 to replace the term “time” by the term “date” as proposed in amendment D.20.
- 357.** The Seafarer spokesperson introduced amendment D.20 which sought to add a new line in Appendix B4-I with the phrase “Incident date (if known):” below “Incident”. If there was a certificate or document of an incident, there should also be a mention of the date of the incident. The group would support amendment D.77 (“time, place, and description”) on the condition that the date was included.
- 358.** The Shipowner spokesperson opposed amendment D.77, as the reference to the “description” in relation to incidents could involve legal liability issues based on a subjective analysis included in the model receipt and release form. However, his group could support inclusion of the terms “time and place”.
- 359.** The representative of the Government of Greece consequently subamended D.77 to add after “incident” the phrase “(date and place of the incident)”.
- 360.** Amendment D.77 was adopted as subamended and amendment D.20 fell.
- 361.** The representative of the Government of Greece raised the issue of coherence of Appendix B4-I in relation to the text of the Convention. While Appendix B4-I referred to “personal injury and/or death”, the word “sickness”, which should also be included, was missing. She therefore proposed a subamendment which sought to include the word “sickness” in Appendix B4-I, after the words “personal injury and/or death”.
- 362.** The Shipowner spokesperson stated that, since Standard A4.2, paragraph (b), did not cover “sickness”, it was not understandable why it should be included in the release form. He also recalled that this had been discussed previously and a decision had been made not to include “sickness”.
- 363.** The Seafarer spokesperson stated that this was an issue for the Drafting Committee to address, although his group supported inserting “sickness” into the text to ensure harmonization with Standard A4.2.1(b).
- 364.** The representative of the Government of Antigua and Barbuda stated that this was an issue of cause and effect, which were both set out in Standard A4.2.1(b). The seafarers’ “death or long-term disability” under the Standard were the effects which deserved financial compensation. Conversely, there was no intent to pay for the causes, which were the “occupational injury, illness or hazard”.

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365. The representative of the Government of the Philippines agreed with the representative of the Government of Antigua and Barbuda and added that the model release form combined cause and effect.
366. The Seafarer spokesperson stated that, in view of the explanations above, the text could remain as currently proposed.
367. The Seafarer spokesperson introduced amendment D.24, which sought to add in Appendix B4-I in line 8 after “Seafarer’s employment” the word “agreement”.
368. The Shipowner spokesperson opposed this and referred to Standard A2.1, paragraph 1(a), of the Convention, which indicated that not all seafarers would have a seafarer’s employment agreement.
369. The Seafarer spokesperson withdrew amendment D.24.
370. The Seafarer spokesperson introduced amendment D.11, which sought to introduce, in Appendix B4-I, line 12 the phrase “breach of duty” after “tort”.
371. The Shipowner spokesperson expressed his belief that, in principle, the issue was already covered under “tort”. It was unlawful in some countries to breach a statutory duty. Nevertheless, they could accept the amendment.
372. The representative of the United States said his Government could accept the amendment.
373. Amendment D.11 was adopted.
374. The Shipowner spokesperson proposed to replace “its” by “their” before “obligations” in the Model Receipt and Release Form referred to in Guideline B4.2.2 of Appendix B4-I, for reasons of consistency with earlier agreed text.
375. The proposal was agreed and the text of the Model Receipt and Release Form referred to in Guideline B4.2.2 of Appendix B4-I was adopted as amended.
376. Appendix A4-I was adopted as amended.
377. The proposals for new appendices were adopted as amended.

#### Appendix A5-II

378. A Government representative of Belgium, also speaking on behalf of the representatives of the Governments of Denmark and Ireland, withdrew amendment D.72.
379. The proposals relating to Appendices A5-I, A5-II and A5-III were adopted.

#### **Vote by the Special Tripartite Committee on the two sets of joint proposals to amend the Code relating to Regulations 2.5 and 4.2 of the MLC, 2006, as further amended**

380. The Chairperson of the Committee explained that the voting on the proposals for amendments to the Code relating to Regulations 2.5 and 4.2 of the MLC, 2006, would be based on the text contained in document number STCMLC/2014/5 as amended by the

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Committee.<sup>11</sup> He then referred to a typographical error contained in the proposed text of new Standard A2.5.2 concerning financial security. The phrase “paragraph 11” in paragraph 9(b) should be “paragraph 10”.

- 381.** The representative of the Office of the Legal Adviser indicated that the voting on the proposals for amendments would be governed by the provisions of Article XV, paragraph 4, of the MLC, 2006, which contained three requirements, namely: “(a) at least half the governments of Members that have ratified this Convention are represented in the meeting at which the proposal is considered; and (b) a majority of at least two-thirds of the Committee members vote in favour of the amendment; and (c) this majority comprises the votes in favour of at least half the government voting power, half the Shipowner voting power and half the Seafarer voting power of the Committee members registered at the meeting when the proposal is put to the vote.” The votes had to be weighted as provided for in Article XIII, paragraph 4, of the Convention. He added that only titular representatives or any advisers replacing a titular representative were allowed to vote, and with respect to the Government members, only those representatives of member States that had ratified the MLC, 2006, and had not lost their right to vote in accordance with article 12 of the Standing Orders of the Special Tripartite Committee.
- 382.** A record vote was taken. The Chairperson of the Committee announced the results of the vote. Of the 54 member States that had ratified the MLC, 2006, 40 were represented at the meeting and the required quorum was thus obtained.
- 383.** The votes were weighted according to the necessary procedures, which resulted in 8,890 votes in favour of the adoption of the amendments. There were no votes against the adoption of the amendments. There were 140 abstentions. The required two-thirds majority of 5,927 votes was attained. In addition, 61 Government members had voted in favour of the amendments, as well as all ten Shipowner representatives and all 21 of the Seafarer representatives. The votes in favour for each of the three groups represented at least half of their eligible votes, as required. The proposed amendments to the Code relating to Regulation 2.5 and Regulation 4.2 of the MLC, 2006, were adopted.
- 384.** The representative of the Government of Switzerland explained that his Government’s abstention did not signify that it did not support the efforts to resolve issues regarding the difficult situations faced by seafarers. The Swiss Government would need time to analyse the amendments and to assess the necessary adjustment to be made to legislation and the parliamentary measures necessary to bring its legislation into line with the amendments adopted.

**Statement by the representative of the Government of the Republic of Korea concerning joint proposals for amendments as they relate to P&I Clubs rules and responses by the representative of the International Group of P&I Clubs**

- 385.** The representative of the Government of the Republic of Korea made two interventions requesting clarification from the International Group of P&I Clubs on issues concerning the two joint proposals.

<sup>11</sup> As set out in Appendix I.



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- 386.** In his first statement, the representative of the Government of the Republic of Korea said that, in relation to paragraphs 2 and 4 of the first set of joint proposals relating to Standard A2.5, his Government had proposed a specific amendment to paragraph 4 during the Government group's meeting. He indicated that the Government group shared the view that the present text covered situations where a seafarer was abandoned after his/her release from pirates should be regarded as an abandoned seafarer. Therefore, such abandoned seafarer had a right of direct access to the financial security system. If the abandoned seafarer requested the financial security provider to arrange his/her repatriation, financial assistance needed to be made without delay upon request made by or on behalf of the seafarer concerned. He then asked for clarification from the representative of the International Group of P&I Clubs. The so-called "pay to be paid rules" had been changed in 2009 and such changes were found in rule books of the International Group of P&I Clubs. For example, the Shipowners' Mutual Protection and Indemnity Association Rule 9 stipulated that "Notwithstanding the provision of Rule 16 (Payment first by the member), where a Member has failed to discharge a legal liability to pay damages or compensation for personal injury, illness or death of a seafarer, the Association shall discharge or pay such claim on the Member's behalf to such seafarer or dependant thereof ..." and then it went on to say that "provided always that ... the seafarer or dependant has no enforceable right of recovery against any other party and would otherwise be uncompensated". He indicated that his key concern was that conditional provision and asked whether the International Group of P&I Clubs would revoke that provision upon the entry into force of the first amendment to the MLC, 2006.
- 387.** The representative of the Government of the Republic of Korea also made a statement in relation to Standard A4.2.1 of the joint proposals, as amended. The present text required shipowners to provide financial security to assure compensation in the event of death or long-term disability of seafarers due to an occupational accident. His delegation was of the view that this provision also covered seafarers victimized by pirates and that they could therefore directly claim contractual compensation from the financial provider, which had to be paid in full and without delay.
- 388.** The representative of the International Group of P&I Clubs recalled that specific reference had been made to the decision by the 13 International Group Clubs to waive the "pay to be paid" rule in 2009 and the International Groups had informed the meetings in 2009 that the waiver was restricted to seafarer claims for illness, personal injury and loss of life. This was, however, an entirely separate issue from repatriation costs and expenses following insolvency which clubs had, since the 2009 discussions, agreed to cover. Their reading of the proposed amendments suggested that insurers, whether P&I Clubs or other providers, that provided financial security that complied with the proposed amendments would indeed have to provide financial assistance to repatriate the abandoned seafarer, including those abandoned after their release from captivity by pirates, and that this would have to be provided without delay upon request made by or on behalf of the seafarer. Furthermore, in relation to the conditional provisions applying to validate seafarer death and personal injury claims once the MLC, 2006, amendments entered into force, any financial security would need to meet the requirements in amended Regulation 4.2, that is that contractual compensation be paid without delay. Any amendments to Club rules regarding the provisions would ultimately need approval by Club boards.
- 389.** The Shipowner spokesperson, having consulted with the representative of the International Group of P&I Clubs, asked for the following statement to be placed on record concerning insurance industry cover exclusions, in order to bring this to the attention of governments so that they were aware that these exclusions applied to insurance coverage arrangements.

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**390.** These exclusions applied to all forms of insurance and not just to marine or P&I Insurance coverage. It was understood that the Seafarers' group supported the inclusion of a general statement or resolution or other accessible document that made clear to all parties that all insurable policies were subject to exclusions for nuclear, chemical, biological, biochemical and electromagnetic risks. Such exclusions had been recognized in the IMO and the European Union in respect of PAL, 2002, relating to passenger claims for death and injury. The Circular Letter No. 2758 of the IMO (20 November 2006, LEG101/8/3) described this issue in detail. The Seafarer spokesperson indicated agreement to the inclusion of the statement in the record.

## **V. Resolutions**

### **Resolution on the transitional measures relating to the entry into force of the amendments to the Maritime Labour Convention, 2006, concerning financial security requirements in respect of abandonment of seafarers and for shipowners' liability (STC resolution 1)**

**391.** Within the context of the adoption of the resolution, the Shipowner spokesperson recalled that paragraph 8 of Article XV of the MLC, 2006, allowed for flexibility regarding when amendments would come into effect, and he was concerned that, under this provision, amendments could come into effect on different dates for member States.

**392.** The Secretary-General made a distinction between those member States that had ratified the Convention and those that had not. Concerning the former, she stressed that the date of entry into force of an amendment would in principle be the same for all ratifying Members. Pursuant to Article XV, paragraph 8, of the MLC, 2006, an amendment deemed to have been accepted came into force six months after the end of the two-year period prescribed for the consideration of the amendments, except for those ratifying Members which, during that period, had formally expressed their disagreement in accordance with paragraph 7 of the same Article or had made use of paragraph 8(a), which permitted a ratifying Member to make its acceptance of the amendments subject to a subsequent express notification. Under paragraph 13(a) of Article XV, these Members, like those which had expressed their formal disagreement with the amendments, as well as non-ratifying Members, would be subject to the port State control of ratifying Members that had accepted the amendments. The Secretary-General also referred to paragraph 8(b), which allowed ratifying Members to delay entry into force of the amendments for a period which (under paragraph 10) could be up to one year.

**393.** The Shipowner spokesperson also referred to the concern that had been expressed by the insurance companies regarding whether Members could elect for the amendments to enter into effect in their national systems before the prescribed date of their entry into force under the provisions of the MLC, 2006. The P&I Clubs required time to discuss and modify their rules to provide the financial security. Therefore, the Shipowners' group wished to caution Members that, while it might be possible to elect for the amendments to enter into force at an early date, it might not be possible for the insurers to have established the financial security at that time. He clarified that the intention was not to delay the entry into force of the amendments, but only to request caution from Members who might wish to implement amendments before their entry into force.

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- 394.** The Secretary-General expressed the hope that the financial security would be available, in particular as a range of modalities of implementation was foreseen. Moreover, the entry into force of the amendments, which would constitute part of an international instrument, could not be subject to the availability of the financial security. The two issues, namely the entry into force of the amendments and the availability of financial security, were not linked.
- 395.** The Seafarer spokesperson echoed that the concern only applied to international insurance groups. Other providers could implement the financial security system faster.
- 396.** The representative of the Government of Denmark recalled that the maximum implementing period was limited to two years and six months. In case a Member decided to implement the amendments sooner, the consequences would apply only to that Member's ships and could not be enforced against other ships.
- 397.** The representative of the Government of Norway indicated that his Government's policy was not to implement amendments before their entry into force, except in rare cases. It would be unfortunate if the insurance coverage was not available nearing the implementation date, and such situations should be avoided. He agreed with the Secretary-General that the date of the entry into force and the implementation of the financial security system were not linked, but expressed his hope that the amendments could be properly implemented once they were approved by the International Labour Conference.
- 398.** The representative of the Government of the Republic of Korea agreed that, in principle, it was left to the discretion of the member State to determine whether to enforce the amended provisions earlier than the prescribed date of entry, and noted that his Government would have to consult with industry participants and social partners before taking a decision in that respect. He encouraged the industry to ensure the availability of the financial security before the entry into force of the amendments.
- 399.** The resolution as adopted is found in Appendix II.

### **Resolution concerning regular meetings of the MLC, 2006, Special Tripartite Committee (STC resolution 2)**

- 400.** The resolution as adopted is found in Appendix II.

## **VI. Exchange of information related to implementation**

- 401.** The Seafarer spokesperson asked for clarification under Standard A1.4, paragraph 5(b), concerning who bore the costs that were not specifically referred to in the Convention, such as costs to travel to the vessel and the costs associated with obtaining a visa, which could include travel costs.
- 402.** The representative of the Government of Mauritius indicated that this was also an issue identified in his country. As travel was part of the recruitment process, the costs should not be charged to the seafarer. The representative of the Government of the Philippines also agreed and said that, in his country, costs that were specifically induced by the needs of the shipowner in the framework of recruitment or placement, such as travel to the ship, were to be borne by the employer. The representative of the Government of the Bahamas also considered that clarification on the issue of travel costs was necessary. Travel

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arrangements of shore workers travelling for employment abroad were sometimes negotiable with the employer and, with a view to having the same standards for on shore and on board workers, the same should also apply to the maritime sector. The representative of the Government of Denmark agreed that, while Standard A1.4, paragraph 5(b), clearly identified visa costs, it was silent as to costs related to travel to join the vessel and, while her country had not faced the issue, issues such as this should be identified in the employment contract. The representative of the Government of Australia supported further work on those issues as it was not clear when a seafarer became a “seafarer” for the purpose of the Convention.

- 403.** The Shipowner spokesperson noted that, because the Convention was silent on the issue, it should be dealt with by national law or in the collective bargaining agreement (CBA).
- 404.** Responding to a request by the Seafarer spokesperson, the Secretary-General referred to the ILO handbook *Maritime Labour Convention, 2006 (MLC, 2006) – Frequently Asked Questions (FAQ)*, in particular points C1.4.g “Can recruitment and placement services charge seafarers fees?” and C1.4.h on “Who pays for documents that seafarers need to be able to travel to join ship?”.
- 405.** The Seafarer spokesperson referenced the wages provisions in the MLC, 2006, in particular Standard A2.2, paragraphs 3 to 5, and asked who should bear the costs incurred by the use of cash cards when the seafarer did not have a choice between payment by cash card and other types of payment. The Seafarers’ group considered that it was not for seafarers to bear the costs related to the use of cash cards if the decision to use this method of payment was imposed on them. The charges could be levied for withdrawing money, often limited to a set amount, and for checking the balance. One example suggested it could be up to US\$10 per transaction. This would be a significant amount if the costs fell on seafarers. Furthermore, although CBAs contained provisions in this respect, many seafarers were not covered by a CBA.
- 406.** The Shipowner spokesperson indicated that the reason for cash cards to be used was to avoid carrying large amounts of cash on board ships. The system was provided for under the CBA and the transfer from the cash card to a companion card at home was free. Furthermore, information was provided to seafarers as to the charges incurred by the use of cash cards. The Shipowners’ group suggested that future discussions on that issue could be held with a view to a mutually agreeable solution.
- 407.** The Seafarer spokesperson quoted paragraph 15 of the *Provisional Record* of the 94th (Maritime) Session, Geneva, 2006, and expressed his group’s concern that the definition of the term “seafarer”, as was sometimes adopted in national legislation, was overly restrictive. He recalled that, pursuant to Article II, paragraph 1(f), of the MLC, 2006, the term “seafarer” was defined as “any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies”. Concerning the scope of the definition, their group considered that the 2006 International Labour Conference resolution VII – Resolution concerning information on occupational groups – should also be taken into account. They wished to refer in particular to the exclusion of cadets, and “personnel employed under outsourced service agreements” such as security personnel, and repair and maintenance technicians going from one ship to another one and whose main place of work was on a vessel. The Office was requested to bring those comments to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in the framework of the assessment of article 22 reports on the application of the MLC, 2006.

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- 408.** In addition, the Seafarer spokesperson raised the issue of social security provisions under the MLC, 2006, according to which the branches of social security which were declared applicable upon ratification of the MLC, 2006, did not expressly state whether those branches applied to all seafarers including those who were not nationals of the flag State. The Office should provide the information envisaged in the 2006 International Labour Conference resolution XVI concerning social security and an inventory on the provision of social protection and social security for seafarers should be discussed at a future tripartite meeting of experts.
- 409.** The representative of the Government of the United Kingdom indicated that his Government had some concerns with regard to the system of protection of seafarers. Standard A1.4, paragraph 5(c)(vi), of the Convention established a system to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement (SEA) to meet its obligations to them. While the MLC, 2006, aimed to create decent conditions and a level playing field for shipowners, that provision was open to wide interpretation. He expressed the hope that through the present discussions, guidance or proposals for amendments for future meetings could be developed. Specific issues included, *inter alia*, the nature of the losses to be covered; the nature of the organizations to be covered and whether the recruiter and shipowner might be expected to cover the same obligations; the legal feasibility of a legal entity obtaining insurance in respect of seafarers for whom that entity no longer had a contractual relationship; the commercial viability of such insurance for small businesses and possible equivalent appropriate measures.
- 410.** The Seafarer spokesperson raised the question of whether employment agencies were covered under the Convention, because, unlike employment and recruitment services, the Convention was silent with regard to the former. The Private Employment Agencies Convention, 1997 (No. 181), would cover employment agencies, but since the MLC, 2006, was relatively recent, he asked the Office for clarification on this issue.
- 411.** The Chairperson of the Government group, indicated that while there were a lot of similarities between national systems, not all governments had experience with private recruitment services. In the event governments had a legal issue, they could refer to the comments of the CEACR and advice provided by the Office. The representative of the Government of the Philippines indicated that, in his country, employment agencies could directly hire seafarers, were considered as direct employers under the law and were covered by the national Labour Code. Otherwise, the seafarer was hired by an agency, which fell under the national recruitment and placement laws. Those laws went beyond the requirements of Standard A1.4 by instituting a licensing system for recruitment and/or manning agencies with requirements as regards capitalization and an escrow of 1 million pesos for claims. In addition, there was joint and several liability on the part of recruitment and/or manning agencies and shipowners in relation to seafarers' money claims, as well as joint and several liability for officers and employees of such agencies, who could be personally liable. The representative of the Government of Norway considered that the points raised by the United Kingdom pointed to a legal ambiguity in Standard A1.4, paragraph 5(c)(vi), which could result in difficulties to obtain insurance for relevant businesses. This problem had been examined when the principles of the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), had been incorporated in the MLC, 2006, and they might wish to deal with the issue in the future. The representative of the Government of China stated that, even though China had not ratified the Convention, the arrangements in place with regard to Standard A1.4 were in line with the requirements of the MLC, 2006, as laws and regulations required a licencing system for recruitment agencies. It was hoped that the ILO would give further guidance on this item in the future. The representative of the Government of Singapore explained that, in Singapore, there were three situations of recruitment of seafarers: recruitment by recruitment and placement

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agencies; recruitment by shipowner subsidiary companies; and recruitment by the shipping companies. Licences were only required in the first two cases. However, all three cases had to comply with the requirements of Standard A1.4. Recruitment and placement services could opt to use insurance or a bank guarantee, among other options, to provide seafarers with a system of protection under MLC, 2006, Standard A1.4, paragraph 5(c)(vi).

- 412.** The Secretary-General indicated that all the concerns raised in the course of the discussion would be duly reflected in the report of the Special Tripartite Committee. Indicating that the third revised edition of the FAQ had been published recently, she proposed that the Office would address the clarification requests in a separate Information note, which could then be used to update the next edition of the FAQ. So far, the Office had responded to over 500 requests for clarification and information by constituents, including through the MLC, 2006, dedicated webpage accessible on the ILO website. Moreover, the CEACR would begin examining the article 22 reports at its next session in November–December 2014, which could provide further clarity. Concerning the application of Convention No. 181, she recalled that the provisions of the MLC, 2006, were consistent with the former Convention, which broadly dealt with private recruitment and placement services, but which expressly excluded seafarers.
- 413.** The representative of the Government of the Marshall Islands recalled that Article 94 of the United Nations Convention on the Law of the Sea (UNCLOS) required “every State to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag”. It also required every State to take such measures for ships flying its flag “as are necessary to ensure the safety at sea with regard, inter alia, to: ... the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments”. The MLC, 2006, also recognized the jurisdiction of a flag State over its vessels. However, a problem had arisen with respect to the MLC, 2006, and the incorporation of CBAs into SEAs. Some CBAs required the resolution of disputes involving contracts for seafaring labour to be resolved under the laws in the seafarer’s country of residence rather than those of the flag State. This had caused a major conflict and an over-abundance of cases of non-conformity issued by inspectors to Marshall Islands-flagged vessels. Unilateral action had to be taken to accept dispute resolution under other member States’ laws, where those were substantially equivalent or not of a lesser standard, following a review of the laws and regulations of other member States. From a practical standpoint, that placed a significant administrative burden upon member States. Noting that Article I, paragraph 2, of the MLC, 2006, required that “Members shall cooperate with each other for the purpose of ensuring the effective implementation and enforcement of this Convention.”, the Marshall Islands had sought to discuss this issue on a bilateral basis with other member States confronted with similar problems. He requested the Office to provide legal guidance in this respect and would welcome discussion with other member States that were labour supplying States.
- 414.** The Seafarer spokesperson indicated that the concern raised by the representative of the Government of the Marshall Islands had been discussed at considerable length in 2006, when the Convention had been adopted and referred in that respect to paragraphs 903–906 of the report of the Committee of the Whole of the 94th Session of the International Labour Conference. He recalled that in previous meetings, the right of redress had been discussed, a right enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. During the process of negotiation of the text of the MLC, 2006, a compromise had been reached and it was therefore unnecessary to further discuss this issue.
- 415.** The representative of the Government of the Philippines, referring to the MLC, 2006, indicated that member States had responsibilities, which included regulating the recruitment and placement services and the social security coverage of seafarers. His

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Government would gladly accept bilateral negotiations with the Marshall Islands and other member States based on Article I, paragraph 2, of the MLC, 2006.

- 416.** The representative of the Government of the Marshall Islands further wished to exchange information on the implementation of Standard A2.1, paragraph 1(a), of the MLC, 2006, which required that the SEA be signed by both the seafarer and the shipowner or a representative of the shipowner. It was explained that, with respect to “representative of the shipowner”, some registered shipowners required the ship’s master to sign the employment agreement as a representative of the company while others provided separate crewing agencies with the authority to implement and sign the employment agreements and others vested their ship management companies with such authority. This was causing a problem in practice, as port State control was citing ship deficiencies because the SEA had not been signed by the same company that had signed Part II of the DMLC and had been named on the Maritime Labour Certificate. Importantly, there needed to be transparency – the entity signing the SEA needed to be vested with the authority to do so via contractual arrangements which were clearly articulated in Part II of the DMLC. He therefore requested clarification from the Office on that issue, more specifically for inspection personnel, and suggested that it could possibly be addressed in courses and activities on the MLC, 2006, offered by the ILO and the International Training Centre in Turin.
- 417.** The Shipowner spokesperson, referring to Parts I and II of the DMLC, indicated that it was a port State control issue and that similar issues would be raised until all parties got used to the implementation of the Convention.
- 418.** The representative of the Government of Greece stated that this issue had already been dealt with and referred to page 33 of the 2012 edition of the ILO FAQ. She believed that the SEA could be signed by a representative of the shipowner, accompanied by appropriate documentary evidence.
- 419.** The representative of the Government of Australia shared the view that this issue was related to port State control, indicating that his Government had also been having implementation issues in that respect. Referring to Standard A2.1, paragraph 1(a), stating that “where they are not employees, evidence of contractual or similar arrangements”, he questioned whether all seafarers on board would necessarily need to have an SEA. He supported the request for clarification from the Office made by the representative of the Marshall Islands in this regard. The representatives of the Governments of the Bahamas and Denmark also supported the request for clarification. The representative of the Government of Greece indicated that, based on her understanding, the provision referred to self-employed persons. The representative of the Government of the Russian Federation recalled that his country had been among the first 30 that had ratified the MLC, 2006, in 2012 and had taken a number of implementing steps, which had required coordination between the Ministry of Transport in collaboration with shipowners’ and seafarers’ organizations. These steps included seminars and special courses for 500 shipping company and maritime administration personnel; training of managers; and a new training programme for cadets on social and labour relations. The Ministry of Transport had authorized the Maritime Register of Shipping to inspect vessels on its behalf, and 300 inspectors were employed and had conducted nearly 3,000 inspections since the Convention had come into force. The Register conducted voluntary inspections for recruitment and placement companies and, when the inspection results were positive, had issued certificates of compliance. Although the provisions of the MLC, 2006, were not doctrine, they were geared towards further development of labour relations and shipping. His Government paid great interest to the proposals for amendments to the Code of the MLC, 2006, and, in principle, his Government supported them.

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- 420.** The Seafarer spokesperson recalled that the MLC, 2006, established international minimum standards; however, there were still higher standards and best practices in the industry. In this respect, he quoted the 11th paragraph of the Preamble of the Convention.
- 421.** The representative of the Government of China indicated that China was one of the largest labour-supplying countries for seafarers in the world, with some 650,000 nationals in service. Working conditions of seafarers were therefore of great interest. The process of ratification had been intensified, and the Government and social partners had agreed to the request for ratification. His Government was now at the next stage which focused on two tasks. Firstly, the existing national legislation needed to be assessed to ensure that it was in line with the Convention. Secondly, the competent authority was conducting flag State inspections with a view to issuing the Maritime Labour Certificates and the Declarations of Maritime Labour Compliance to certify that the vessels met the requirements of the MLC, 2006. The Government wished to strengthen consultations and cooperation at the regional level, including with the Member States of the Association of Southeast Asian Nations (ASEAN) and of the Memorandum of Understanding on Port State Control in the Asia–Pacific Region (Tokyo MOU), in order to improve understanding and awareness of the Convention, as well as establish communication channels among port States. His Government wished to work pragmatically with other countries to focus on implementation and application of the MLC, 2006.
- 422.** The representative of the Government of the Republic of Korea requested clarification from the Office on how certificates, such as the Maritime Labour Certificates, ship’s cook certificates and medical certificates, issued by his Government, could be treated or recognized by other Members before the date of entry into force of the Convention for his country, on 9 January 2015. The Republic of Korea had implemented the Convention before ratifying it, while other countries had decided to ratify first and implement later. In either case, the date of entry into force of the Convention should be understood as being the deadline by which each Member should undertake to give complete effect to the Convention, which would include issuing the certificates in accordance with the relevant provisions of the Convention. Such certificates should then be accepted and recognized by other member States bearing in mind resolution XVII and paragraph 52 of the *Guidelines for port State control officers*.
- 423.** The representative of the Government of the Bahamas stated that his country had issued 14,000 Maritime Labour Certificates and that documentation had been one of the principal areas identified in the inspection findings, particularly concerning elements discussed by the Government representative of the United Kingdom, such as contractual agreements and SEAs. In relation to the current definition of the term “shipowner”, he noted that the reference to the “assumption of responsibility for the operation of the ship” had various requirements for documentation to clearly demonstrate that assumption as well as the acceptance of such responsibility. He further recalled the statements by the Government representative of the United Kingdom concerning contractual agreements as they related to persons employed on ships that were not directly employed by the shipowner, per se, or the companies which had assumed the responsibility. His Government was of the view that this question had to be clarified in the FAQs.
- 424.** The representative of the Government of Turkey stated that his Government attached great importance to being a party to the MLC, 2006. The Government of Turkey and the Seafarer and Shipowner sides fully supported the ratification of the MLC, 2006. The national ratification process had begun and the text of the Convention, its Turkish translation, and other related documents had been submitted to the Prime Minister. In order to accelerate the harmonization of Turkish legislation with the Convention, an MLC, 2006, subcommittee at the Ministry of Labour and Social Security with coordination of the Ministry of Transport, Maritime Affairs and Communications composed of the tripartite



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stakeholders had been established. This subcommittee had started to review the national legislation in order to identify legislative gaps. He cited statistical information concerning the decreasing detention rate of ships flying the Turkish flag from 19 per cent in 2002 to 5 per cent in 2008 and 2.99 per cent in 2013 in the Paris MOU region. Turkey had also been voluntarily audited by the Audit Team of the Voluntary IMO Member State Audit Scheme (VIMSAS) the prior year with successful results.

- 425.** The representative of the Government of the Philippines indicated that, through the Department of Labour as the competent authority, certain policies and mechanisms were in place in the Philippines for the implementation of the MLC, 2006. Nine recognized organizations had been authorized to inspect and certify ships. Some 128 ships were registered and, of those, 123 had been issued a DMLC, Part I, and 86 had been issued Maritime Labour Certificates. The tripartite council had enacted policies to further implement the Convention, such as through maritime safety and health guidelines and conciliation and mediation provisions for dispute settlement in SEAs. Recent legislation had provided for further conciliation at all levels. The POEA had a responsible contact for on-board seafarer inquiries concerning the MLC, 2006. As regards recruitment and placement, 379 manning agency audits had been carried out, and recruitment and employment legislation was currently under review to align it with the provisions in the MLC, 2006. A new centre with recreational facilities for seafarers had been created. There would also be new rules with regard to labour law compliance, and a roster for trained labour law compliance officers, in inter-island trade.
- 426.** The representative of the Government of Antigua and Barbuda indicated that his Government, which had ratified the MLC, 2006, in August 2011, implemented the provisions of the Convention by virtue of the Merchant Shipping (Maritime Labour Convention, 2006) Regulations 2012. Prior to its coming into force, the Administration had issued information letters, guidance notes and circulars, and had informed clients of the requirements of the Convention and how to prepare for the audits. Although approximately 98 per cent (over 1,000 vessels) of their fleet was certified, there had been some difficulties in certifying the remaining vessels as some were laid up, changing flags or changing shipowners. The main implementation challenges concerned a lack of preparation, as some companies had delayed their inspections and certification. There had also been difficulties in scheduling non-compliant vessels and companies due to the unavailability of surveyors and the various recognized organizations involved in the inspection and certification of ships. The majority of their shipowners cited local laws which allowed for a variation in the definition of the term “seafarer”, which had complicated efforts to define “cadets” as seafarers who were engaged in training on board ships. In the operational phase, some vessels had difficulties when manually recording hours of rest where the voyage was affected by time zone changes.
- 427.** The representative of the Government of Tunisia indicated that his Government had already adopted measures for the ratification of the MLC, 2006. A tripartite working group at the Ministry of Transport had been set up and had carried out a gap analysis of the relevant legislation in the area of maritime labour law and was currently preparing a legislative draft for the implementation of the Convention. Furthermore, a draft law foreseeing the ratification of the MLC, 2006, had been prepared and submitted to Parliament for adoption. He expressed the hope that his country would soon be among the members to the MLC, 2006.
- 428.** The representative of the Government of the United States recalled that, in May 2010, the Secretary of Labor had convened a meeting of the President’s Committee on the International Labour Organization to consider United States policy on a number of ILO issues. Underscoring the value of national ratification of certain ILO Conventions and reaffirming support for the tripartite ground rules governing national ratification, the

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President's Committee had called upon the Tripartite Advisory Panel on International Labor Standards (TAPILS) to review the legal feasibility of ratification of selected ILO maritime Conventions, including the MLC, 2006. They were actively proceeding through this process. The United States Coast Guard had completed the gap analysis of all the applicable laws, regulations and practices with a view to determine the legal implications of ratification. They had carried out that analysis in consultation with their social partners, other government agencies and other interested parties. They had also consulted with the ILO secretariat on a number of issues. Based on this analysis, they were finalizing the law and practice reports and were engaged with the Department of Labor with a view towards securing ratification of the Convention. The United States continued to support the intent and the content of the MLC, 2006, as the fourth pillar of the maritime regulatory framework.

- 429.** The representative of the Government of Viet Nam indicated that the maritime economy in general and the shipping industry in particular were playing a special role in Viet Nam with more than 30,000 Vietnamese seafarers who should be benefiting from rights and benefits as well as decent working and living conditions. Following the ratification of the MLC, 2006, a National Plan for Implementation and Enforcement of the MLC, 2006, had been approved in 2013 and a national tripartite council consultation mechanism for dealing with MLC, 2006, issues had been established to secure the implementation and enforcement of the Convention. The Special Tripartite Committee was an excellent forum for exchange of information to ensure the implementation of the Convention. His Government thanked the ILO for the meaningful support and assistance provided over the years in respect of the implementation of international labour standards.

## **VII. Adoption of the arrangements for consultation under Article VII of the MLC, 2006**

- 430.** The Chairperson of the Committee observed that although no request for consultations under Article VII of the MLC, 2006, on Consultation with Shipowners' and Seafarers' Organizations had been submitted, it was important for the Special Tripartite Committee to decide on the arrangements which would enable the Committee to perform its consultation function.
- 431.** The Secretary-General recalled the text of Article VII, which clearly identified the role of the Special Tripartite Committee. In addition, article 14 of the Standing Orders of the Special Tripartite Committee called for the Committee to make arrangements to provide the advice that it may be required to give in the performance of its consultative function. The lack of requests for consultation under this provision of the Convention was possibly due to the fact that the practical arrangements had not yet been established. In this regard, the speaker referred to paragraphs 55–57 of the Background paper, which listed possible elements based on the criteria provided in article 14 of the Standing Orders. Paragraph 56 of the Background paper suggested that the Committee might wish to consider the possibility of entrusting to the Office the task of preparing, under the guidance of the Officers of the Committee or a subcommittee, a draft proposal for detailed arrangements. The two main decisions that were to be considered by the Committee were the following: (i) whether the Committee would consider delegating to the Office, under the guidance of the Officers of the Committee, taking into account any elements discussed at its first meeting, the preparation of a draft proposal for the detailed arrangements; and (ii) whether the Committee would consider delegating the authority to the Officers, a subcommittee or a working group, to consider any request that could be received by the Office between this meeting and the Committee's next meeting, if no meeting was foreseen within six months of the receipt of such request.

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- 432.** The Shipowner spokesperson considered it important that, when a request was made, the advice would be given expeditiously. Regarding the various alternatives, the Officers of the Special Tripartite Committee should be empowered to establish a subcommittee or a working group to provide expeditious advice between meetings, if requested. During previous preparatory meetings, the Shipowners' group had emphasized that consultations should mirror national practices. The tripartite panel should give advice and not make decisions.
- 433.** The Seafarer spokesperson indicated that his group disagreed with the proposals contained in the Background paper. The practicalities of establishing the consultation mechanism raised many questions, such as how the Officers would recommend that a derogation from the Convention be heard by the Special Tripartite Committee; the payment for the advice mechanism; action taken if the Committee disagreed with the advice from the working group; and whether the Special Tripartite Committee would facilitate the ratification of the MLC, 2006, in States that did not have seafarers' and shipowners' representative organizations. Consistency and transparency were key. Consultation requests should be brought before regular meetings of the Committee which should, in turn, be careful not to undermine tripartism at the national level by allowing governments to undermine trade unions or to use the "substantial equivalence" provisions of the Convention to avoid consultations. The proposal was thus a slippery slope and was not the way forward. In accordance with Article VII of the MLC, 2006, consultation requests should be addressed at the next meeting of the Special Tripartite Committee.
- 434.** The representative of the Government of Denmark said that the issue was how to facilitate tripartite consultation for countries in which seafarers' and shipowners' organizations did not exist. This was an issue that ought not to be postponed. The Special Tripartite Committee needed to meet frequently, but resources would be needed to convene the next meeting. With increasing ratifications of the Convention, the high number of members of the Committee would increase even further, and it was therefore important that the Committee as a whole focused on those issues which were relevant for the majority of States while a smaller group addressed specific issues regarding individual States. While the Officers could act as intermediaries, there was a clear need for arrangements to be put in place. Commitment to tripartism was not the question as the intention of Article VII was precisely to allow States to fulfil their obligation to consult in the absence of the necessary social partners.
- 435.** The Shipowner spokesperson concurred that Article VII of the MLC, 2006, acknowledged that States might not have social partners in the maritime sector. While his group understood the Seafarers' group's concerns, the Convention had sufficient mechanisms to ensure that consultations effectively took place, under article 14 of the Standing Orders of the Special Tripartite Committee, which called for a mechanism to provide advice. The Officers of the Committee should be empowered or should delegate to a subcommittee the authority to provide advice consistent with Article VII of the Convention. Responding to the concern raised by the Seafarers' group, he indicated that the provisions permitting "substantial equivalence" were only found in Part A of the Code and not in the Regulations.
- 436.** A representative of the Government of Norway asked the Office for clarification as to whether member States needed to consult the social partners prior to invoking "substantial equivalence".
- 437.** The Secretary-General said that the MLC, 2006, provisions differed from those in other ILO Conventions since they would not allow a Government to derogate from the Convention without consultation with the maritime social partners. The Convention recognized, however, that in practice, those organizations did not exist in some countries.

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While it might not be possible to make the necessary arrangements under article 14 of the Standing Orders during the first meeting, the Committee must give due consideration as to how to establish the needed institutional mechanism. No requests for consultation had been made thus far, since no mechanism existed at the time of the meeting. However, those Governments that would be submitting article 22 reports in 2014, and which did not presently have maritime social partners, should not be able to justify the lack of recourse to the consultations provisions simply due to the absence of procedural arrangements. Regarding the question of prior consultation of the social partners for the use of substantial equivalence, she recalled that Article VI, paragraph 3, provided for the possibility of implementing measures which were substantially equivalent to the provisions of Part A of the Code. Each specific example must be addressed based on the specific language of that section of the MLC, 2006. The use of substantial equivalence was, therefore, not a way to avoid consultation with the social partners.

- 438.** The Shipowner spokesperson added that the major provisions of the MLC, 2006, which required consultation, that is the definition of the “seafarer” and that of the “ship” were located in Article II, to which “substantial equivalence” did not apply. Concerning the issue of transparency, which was the most important issue to his group, if consultations were requested before the next meeting of the Special Tripartite Committee, a working group could be formed on the basis of five representatives nominated by each group. Once the Chairperson received the request, he could submit it to the working group, which would then nominate two representatives from each group with the required language skills and expertise concerning the specific request.
- 439.** The Seafarer spokesperson concurred that transparency was an important issue but indicated that further discussion was needed. He asked for clarification as to whether it would be for the Officers to decide who had the specific expertise for requests. Five members for each group seemed limited, taking into account the different languages spoken in the member States. The issue of how the consultations would be financed was raised and clarification was requested concerning the financing of working group meetings.
- 440.** Responding to the financing query, the Shipowner spokesperson stated that Article VII of the MLC, 2006, referred to consultations and not to the examination of complaints or amendments. Meetings of the working group could therefore be organized through electronic means. The issue of transparency would be adequately ensured as the working group would report back to the Special Tripartite Committee.
- 441.** The Secretary-General recalled that geographical balance was another important element that needed to be taken into consideration when nominating members to a working group.
- 442.** The Chairperson of the Committee read the proposed arrangements for responding to requests for consultation made under Article VII between meetings of the Special Tripartite Committee:

*Arrangements for responding to requests for consultation  
made under Article VII between meetings of the Committee*

Pursuant to article 14 of its Standing Orders, the Special Tripartite Committee agreed upon the following interim arrangements for responding to any requests made by a ratifying Member between meetings of the Committee, for consultation under Article VII of the Maritime Labour Convention, 2006:

1. There will be a panel made up of representatives of the Government group the Shipowners’ group and the Seafarers’ group who will be available to provide advice, on behalf of the Committee, in the case of requests for consultation received from a government in accordance with Article VII of the Convention between meetings of the Committee.

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2. Upon receipt of a request for consultation pursuant to paragraph 1 of article 14 of the Standing Orders, the Officers of the Committee will, taking account of all relevant factors such as the subject matter of the request and the language needed to communicate with the government concerned, form a working group to provide the requested advice to the government concerned. Each Vice-Chairperson will select two members of the working group from their respective group.

3. The Officers will determine unanimously how consultation will proceed. This consultation process should not incur significant cost.

4. In accordance with paragraph 3(e) of the Committee's Standing Orders, the advice provided will be made available to the Committee at its next meeting and – to the extent approved by the Committee – to all Members of the Organization.

5. The government concerned will communicate to the Office the result of its determination made after consultation. The Office will then communicate it to the Committee.

**443.** The Shipowner and Seafarer spokespersons supported the proposed text and the latter observed, for the record, that the Seafarers' group considered that it was important that article 14, paragraph 3(b), of the Standing Orders be understood to also include an indication of the translation facilities which may be required for the consultation.

**444.** The Chairperson of the Government group also supported the proposed text.

**445.** Referring to Article VII of the MLC, 2006, and to article 14 of the Standing Orders, the Chairperson of the Committee declared that the arrangements for responding to requests for consultation made under Article VII between meetings of the Special Tripartite Committee were adopted, and five members were nominated by the Shipowners' group and the Government group as follows:

*Shipowners:*

Mr Springett  
Mr Ludwiczak  
Mr Cox  
Mr Borromeo  
Mr Koltsidopoulos

*Government:*

Mr Schwartz (Australia)  
Mr Moussat (France)  
Mr Mbatha (South Africa)  
Ms Villamonte Santos (Panama)  
Mr Krezel (Poland)

## **VIII. Closing remarks**

**446.** The Shipowner spokesperson said that the main task of the Committee had been to produce acceptable texts concerning the issues of abandonment and crew claims. The Committee was tasked to consider amendments to the MLC, 2006, in view of the nine Joint Working Group meetings held over ten years. The Government representatives and the social partners had spent an enormous amount of time, energy and resources to prepare for the meeting and the success of the latter was due, almost exclusively, to the good spirit and wide cooperation and compromise exhibited by all parties. The discussions at the first meeting of the Special Tripartite Committee marked a major step forward in the history of the MLC, 2006, and confirmed the wisdom of those who created the unique concept of the Special Tripartite Committee within the ILO. Shipowners, as well as governments, as flag States, port States or labour supply States, had a role to play with regard to the issue of

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abandonment of seafarers. The resolution of that issue further strengthened the MLC, 2006. The Committee's successful completion of this important work and the clarification of the application of Standard A4.2 to claims for death and long-term personal injury were a solid achievement. He concluded by recalling his group's request to the Office to send a letter to governments before future meetings of the Committee in order to clearly articulate the process of nomination of social partners to attend future meetings of the Special Tripartite Committee.

- 447.** The Seafarer spokesperson echoed the sentiments of the Shipowner spokesperson and indicated that his group was pleased with the work that the Committee had accomplished with respect to the adoption of the first set of amendments to the MLC, 2006, marking a historic day for the shipping industry. Abandonment was an important issue for seafarers and had been adequately dealt with by the Committee. Recalling the work that had been done by the Joint Working Group over the nine preparatory meetings, he looked forward to the entry into force of the amendments.
- 448.** The Chairperson of the Government group thanked the Shipowners' and Seafarers' groups and said that the work performed would prove very important to abandoned seafarers. Every case of abandonment was serious and had important consequences for the seafarers and their families who needed to be ensured financial security through repatriation and compensation. The work of the Committee was important to ensure that the MLC, 2006, remained relevant with a view to providing decent working and living conditions for seafarers and a level playing field for shipowners.
- 449.** The representative of the Government of the Republic of Korea thanked the participants for successfully addressing the outstanding issues, which had existed for 15 years, concerning abandonment of seafarers and financial security for contractual compensation in the event of occupational accidents or sickness. The rapid entry into force of the amendments, following adoption by the International Labour Conference, would address the urgency in resolving the pending issues. He stressed that direct access to financial security providers by seafarers should be possible for all injuries covered by their financial security providers, recalling that, according to article 19, paragraph 8, of the ILO Constitution, which was restated in the Preamble of the MLC, 2006, the adoption of a Convention should not affect any law or practice which ensures more favourable conditions to workers. He expressed appreciation to the representatives of the International Group of P&I Clubs for their answers regarding abandoned seafarers, and stressed that direct access to financial security providers by seafarers should be possible for all injuries covered by their financial security providers.
- 450.** The representative of the Government of Greece, speaking on behalf of the Member States of the European Union which had ratified the MLC, 2006, recalled that the Convention was of significant importance. The result of the first meeting of the Special Tripartite Committee showed that the amendment process operated well and served the enterprise, which had started a decade ago, for the benefit of the shipping industry and the continuous improvement of seafarers' working and living conditions. He was confident that the procedures set out in Article XV of the Convention would facilitate the effectiveness of the amendment process and stressed that the European Union Member States remained committed to the coherent implementation of the MLC, 2006, and would review the new provisions constructively.
- 451.** The representative of the Government of the Philippines, speaking on behalf of 360,000 Filipino seafarers expressed satisfaction at the adoption of the proposed amendments to the Convention.

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**452.** The Chairperson of the Committee expressed his appreciation for the work accomplished by the Committee and the valuable contribution of all parties – the Shipowners', Seafarers' and Government groups, in the discussions during the meeting, stating that he looked forward to continuous collaboration in the future. The Chairperson declared the meeting closed.





## Appendix I

### Final text of the proposed amendments

#### Proposal for amendments to the Code relating to Regulation 2.5 of the MLC, 2006

##### A. *Proposals relating to Standard A2.5*

In the present heading, “Standard A2.5 – Repatriation”, replace “A2.5” by “A2.5.1”.

Following paragraph 9 of the present Standard A2.5, add the following heading and text:

##### *Standard A2.5.2 – Financial security*

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.

2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers’ employment agreement, the shipowner:

- (a) fails to cover the cost of the seafarer’s repatriation; or
- (b) has left the seafarer without the necessary maintenance and support; or
- (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners’ and seafarers’ organizations concerned.

4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer on a ship flying the flag of the Member.

5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.

6. Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

7. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A2-I. It shall be in English or accompanied by an English translation.

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8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 above.

9. Having regard to Regulations 2.2 and 2.5, assistance provided by the financial security system shall be sufficient to cover the following:

- (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant CBA or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
- (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10; and
- (c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.

10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.

13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.

14. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

**B. Proposal relating to Guideline B2.5**

At the end of the present Guideline B2.5, add the following heading and text:

*Guideline B2.5.3 – Financial security*

1. In implementation of paragraph 8 of Standard A2.5.2, if time is needed to check the validity of certain aspects of the request of the seafarer or the seafarer's nominated representative, this should not prevent the seafarer from immediately receiving such part of the assistance requested as is recognized as justified.

C. *Proposal for a new appendix*

Before Appendix A5-I, add the following appendix:

APPENDIX A2-I

*Evidence of financial security under Regulation 2.5, paragraph 2*

The certificate or other documentary evidence referred to in Standard A2.5.2, paragraph 7, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A2.5.2.

D. *Proposals relating to Appendices A5-I, A5-II and A5-III*

At the end of Appendix A5-I, add the following item:

Financial security for repatriation

In Appendix A5-II, after item 14 under the heading *Declaration of Maritime Labour Compliance – Part I*, add the following item:

15. Financial security for repatriation (Regulation 2.5)

In Appendix A5-II, after item 14 under the heading *Declaration of Maritime Labour Compliance – Part II*, add the following item:

15. Financial security for repatriation (Regulation 2.5)

At the end of Appendix A5-III, add the following area:

Financial security for repatriation

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## **Proposal for amendments to the Code relating to Regulation 4.2 of the MLC, 2006**

### **A. *Proposals relating to Standard A4.2***

In the present heading, “Standard A4.2 – Shipowners’ liability”, replace “A4.2” by “A4.2.1”.

Following paragraph 7 of the present Standard A4.2, add the following text:

8. National laws and regulations shall provide that the system of financial security to assure compensation as provided by paragraph 1(b) of this Standard for contractual claims, as defined in Standard A4.2.2, meet the following minimum requirements:

- (a) the contractual compensation, where set out in the seafarer’s employment agreement and without prejudice to subparagraph (c) of this paragraph, shall be paid in full and without delay;
- (b) there shall be no pressure to accept a payment less than the contractual amount;
- (c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;
- (d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and
- (e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.

9. National laws and regulations shall ensure that seafarers receive prior notification if a shipowner’s financial security is to be cancelled or terminated.

10. National laws and regulations shall ensure that the competent authority of the flag State is notified by the provider of the financial security if a shipowner’s financial security is cancelled or terminated.

11. Each Member shall require that ships that fly its flag carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

12. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

13. The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.

14. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A4-I. It shall be in English or accompanied by an English translation.

Add the following heading and text following the present Standard A4.2:

*Standard A4.2.2 – Treatment of contractual claims*

1. For the purposes of Standard A4.2.1, paragraph 8, and the present Standard, the term “contractual claim” means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarers’ employment agreement or collective agreement.

2. The system of financial security, as provided for in Standard A4.2.1, paragraph 1(b), may be in the form of a social security scheme or insurance or fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners’ and seafarers’ organizations concerned.

3. National laws and regulations shall ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1, paragraph 8, through expeditious and fair procedures.

**B. Proposals relating to Guideline B4.2**

In the present heading, “Guideline B4.2 – Shipowners’ liability”, replace “B4.2” by “B4.2.1”.

In paragraph 1 of the present Guideline B4.2, replace “Standard A4.2” by “Standard A4.2.1”.

Following paragraph 3 of the present Guideline B4.2, add the following heading and text:

*Guideline B4.2.2 – Treatment of contractual claims*

1. National laws or regulations should provide that the parties to the payment of a contractual claim may use the Model Receipt and Release Form set out in Appendix B4-I.

**C. Proposals for new appendices**

After Appendix A2-I, add the following appendix:

APPENDIX A4-I

*Evidence of financial security under Regulation 4.2*

The certificate or other documentary evidence of financial security required under Standard A4.2.1, paragraph 14, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;

- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' contractual claims;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1.

After Appendix A4-I, add the following appendix:

APPENDIX B4-I

***Model Receipt and Release Form***  
*referred to in Guideline B4.2.2*

Ship (name, port of registry and IMO number): .....

Incident (date and place): .....

Seafarer/legal heir and/or dependant: .....

Shipowner: .....

I, [Seafarer] [Seafarer's legal heir and/or dependant]\* hereby acknowledge receipt of the sum of [currency and amount] in satisfaction of the Shipowner's obligation to pay contractual compensation for personal injury and/or death under the terms and conditions of [my] [the Seafarer's]\* employment and I hereby release the Shipowner from their obligations under the said terms and conditions.

The payment is made without admission of liability of any claims and is accepted without prejudice to [my] [the Seafarer's legal heir and/or dependant's]\* right to pursue any claim at law in respect of negligence, tort, breach of statutory duty or any other legal redress available and arising out of the above incident.

Dated: .....

Seafarer/legal heir and/or dependant: .....

Signed: .....

*For acknowledgement:*

Shipowner/Shipowner's representative:

Signed: .....

Financial security provider:

Signed: .....

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\* Delete as appropriate.

D. *Proposals relating to Appendices A5-I, A5-II and A5-III*

At the end of Appendix A5-I, add the following item:

Financial security relating to shipowners' liability

In Appendix A5-II, as the last item under the heading *Declaration of Maritime Labour Compliance – Part I*, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2)

In Appendix A5-II, as the last item under the heading *Declaration of Maritime Labour Compliance – Part II*, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2)

At the end of Appendix A5-III, add the following area:

Financial security relating to shipowners' liability

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## Appendix II

### Final text of the resolutions

***Resolution on the transitional measures relating to the entry into force of the amendments to the Maritime Labour Convention, 2006, concerning financial security requirements in respect of abandonment of seafarers and for shipowners' liability***

The Special Tripartite Committee established by the Governing Body under Article XIII of the Maritime Labour Convention, 2006,

Having met in Geneva from 7 to 11 April 2014,

Having considered and adopted amendments to the Code of the Maritime Labour Convention, 2006,

Recognizing that these amendments are to be submitted to the International Labour Conference for approval in accordance with Article XV of the Convention,

Noting that the amendments establish measures to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment and that financial security is provided for seafarers' claims for compensation in the event of death or long-term disability due to an occupational injury, illness or hazard,

Noting also that the amendments will require important additions to the existing documents provided for under the Maritime Labour Convention, 2006, particularly Parts I and II of the declaration of maritime labour compliance,

Stressing that the amendments are not intended to affect the validity of Maritime Labour Certificates or declarations of maritime labour compliance already issued at the time when the amendments enter into force;

1. Requests Members to recognize the need for a transitional period to issue or renew Maritime Labour Certificates and the related declarations of maritime labour compliance in accordance with the requirements of the Convention as amended;

2. Further requests Members to acknowledge that entry into force of the amendments should not in any way serve to invalidate the Maritime Labour Certificates or declarations of maritime labour compliance that have been duly issued previously in accordance with the Convention and which are still in effect;

3. Urges Members to ensure that the Maritime Labour Certificates and the declarations of maritime labour compliance are issued or renewed so as to comply with the requirements of the Convention as amended, on ships that fly their flag, no later than the date of the first renewal inspection following entry into force of the amendments;

4. Draws the attention of Members to the fact that the above transitional measures relate only to the Maritime Labour Certificates and the declarations of maritime labour compliance and are not in any way intended to affect the rights and obligations of Members, seafarers or shipowners, including the obligation to ensure that all ships are



covered by financial security in accordance with the Convention as amended, from the date when the amendments enter into force;

5. Requests Members, including in the exercise of port State control, to recognize Maritime Labour Certificates and declarations of maritime labour compliance, while they are still valid in accordance with the Convention, until the first renewal inspection following entry into force of the amendments.

### ***Resolution concerning regular meetings of the MLC, 2006, Special Tripartite Committee***

The Special Tripartite Committee established by the Governing Body under Article XIII of the Maritime Labour Convention, 2006, having met in Geneva between 7–11 April 2014,

Noting the long and unique history of the Maritime Sector within the ILO and the important contribution it has played in addressing key labour issues within the globalized shipping industry and thereby ensuring that ILO activities remain relevant to the realities of the global shipping industry,

Noting that the Maritime Labour Convention, 2006, has been cited as being the fourth pillar of the global maritime regulatory regime, the others being the IMO SOLAS, MARPOL and STCW Conventions,

Noting the desire since the Geneva Accord was adopted to be able to update and review the implementation and effectiveness of the Convention on a regular basis,

Recalling the obligation of the Special Tripartite Committee to keep the Convention under continuous review and the need for the Special Tripartite Committee to provide a forum for consultation under Article VII for those Members where representative organizations of shipowners or of seafarers do not exist with that Member,

Considers that the next three years will be crucial in securing the effective implementation of the Convention,

Noting that continuous evolution and technical developments in the shipping industry and the importance of taking the social and labour aspects into account, in order to maintain decent work for the seafarers who crew the world's fleet,

Noting also the importance of the effectiveness of the Convention to the global maritime regulatory regime, the shipping industry, the seafarers and global community, with 90 per cent of world trade transported by sea,

Requests that adequate budget and resources are made available to host regular sessions of the Committee over the next three years, with the frequency of meetings to be reviewed after this initial period, and

Invites the Director-General to ensure that adequate resources are provided to maintain the relevance and the effective implementation of the Convention in future years through regular meetings of the Committee.



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**Liste des participants**  
**Lista de participantes**



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TOKYO 106-0032  
Japon

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