

INTERNATIONAL LABOUR ORGANIZATION
Sectoral Activities Programme

Final report

**Tripartite Expert Meeting to Adopt Guidelines on
Flag State Inspections under the Maritime Labour
Convention, 2006**

Geneva, 15–19 September 2008



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Introduction

1. In accordance with a decision taken by the Governing Body at its 298th Session (March 2007), the Tripartite Expert Meeting to Adopt Guidelines on Flag State Inspections under the Maritime Labour Convention, 2006 was held in Geneva from 15 to 19 September 2008.

Composition

2. The Tripartite Meeting was attended by ten Government experts, ten Employer experts nominated after consultation with the Employers' group and ten Worker experts nominated after consultation with the Workers' group. The Government experts were from the Bahamas, Egypt, Greece, Japan, Republic of Korea, Marshall Islands, Panama, Philippines, Russian Federation and the United Kingdom. In addition, representatives of governments of 47 other ILO member States attended the Meeting as participating observers.
3. A number of observers from intergovernmental and non-governmental organizations were also present. A list of participants is annexed to this report.
4. The Tripartite Meeting unanimously elected the following Officers:

Chairperson: Mr Nigel Campbell (Government expert, South Africa)

Vice-Chairpersons: Ms Mary Martyn (Government expert, United Kingdom)

Mr Joseph Cox (Shipowner expert, United States)

Mr Brian Orrell (Seafarer expert, United Kingdom)

5. The Meeting also established a Technical Drafting Committee, chaired by Ms Mary Martyn (Government expert, United Kingdom), to work throughout the Meeting, consisting of:

Ms Mayte Medina (Government representative, United States)

Mr Alain Moussat (Government representative, France)

Mr Peter McEwen (Seafarer expert, United Kingdom)

Mr Michael Rodriguez (Seafarer expert, United States)

Ms Theresa Hatch (Shipowner expert, Australia)

Mr Guy Sulpice (Shipowner expert, France)

Documentation

6. The Meeting had before it a *Proposal for Guidelines for flag State inspections under the Maritime Labour Convention, 2006* (MEFS/2008).

Opening of the Meeting

7. The Chairperson, in opening comments, thanked participants for the honour of presiding over a Meeting of Experts aimed at adopting guidelines to ensure the efficient

implementation of the Maritime Labour Convention, 2006 (hereafter, “the MLC” or “the Convention”). He recalled the work of the high-level meetings that paved the way for the 94th (Maritime) Session of the International Labour Conference, 2006. The success of those meetings had been due to the high degree of common purpose and the spirit of compromise to reach a common goal. The flag State guidelines were much needed in many countries, especially to promote the harmonized implementation of the Convention. The Meeting had not been convened to rewrite the MLC, but to assist with its implementation. The enforcement provisions were one of the major innovations of the MLC and would be a critical element in its success. The current Meeting would examine flag State guidelines, while keeping in mind that those and the port State guidelines, to be considered by another meeting of experts to be held the following week, needed to be compatible. Both expert meetings were therefore closely linked and should be seen as a whole. The outcome of the two meetings should lay the basis for the successful implementation of the Convention and facilitate its ratification.

8. The Secretary-General (Mr Tayo Fashoyin, Acting Executive Director, Social Dialogue Sector) welcomed participants to the ILO. He recalled that the 94th (Maritime) Session of the International Labour Conference that had adopted the MLC had also adopted a number of resolutions. Resolution IV requested that the Director-General of the ILO convene a tripartite expert meeting to develop suitable guidance for port State control officers, while Resolution XIII requested a tripartite expert meeting to develop suitable guidance for flag State inspection. The Governing Body had approved the work necessary to prepare for the implementation of these resolutions at its 298th Session (March 2007), and had decided that the two meetings would be held back-to-back at its 301st Session (March 2008), as the enforcement of the MLC would depend on flag State and port State inspections of ships being done on the basis of uniform principles and globally agreed practices.
9. The Secretary-General thanked those Governments that had assisted in recent months in preparing for the present Meeting, notably the United Kingdom, which had led the informal working group whose work had been used as a basis to prepare the draft flag State inspection guidelines. The working group, composed of experts from several governments and the international organizations of shipowners and seafarers, had provided the Office with helpful advice and guidance and had met twice in Geneva. The Secretary-General noted that the strong attendance illustrated the interest raised by the two sets of guidelines. The guidelines needed to be as helpful as possible to maritime administrations and their inspectors in ensuring that inspections of ships in application of the MLC were carried out efficiently. In concluding, the Secretary-General noted that the MLC had already received three ratifications of major flag States covering approximately 20 per cent of the world fleet. The European Union (EU) Council had decided in June 2007, to authorize all EU Member States to ratify the MLC before 31 December 2010, and the EU social partners had signed an agreement which would transpose the provisions of the MLC into EU law through an EU Directive. Many other countries, in all regions, were already taking concrete steps to move towards ratification. This Meeting, and the subsequent Meeting concerning port State control guidelines, could boost preparations for ratification in many countries and the adoption of inspection guidelines would remind all ILO member States of the urgency of ratification.

Introduction of the proposed guidelines for flag State inspections under the MLC, 2006

10. A Deputy Secretary-General of the Meeting, Ms Cleopatra Doumbia-Henry, Director, International Labour Standards Department, presented the Office’s proposal for the guidelines for flag State inspections under the MLC. The document was intended to give guidance to States that may find it useful, in line with the resolution adopted by the

International Labour Conference in 2006 when it had adopted the Convention. At that time there had been recognition that many countries already inspected their ships for labour standards and other international standards. The MLC contained very specific obligations relating to flag State inspections and important innovations connected to labour standards and mandatory flag State certification for certain categories of ships. Those obligations built on prior ILO Conventions and Recommendations, as well as existing practice under conventions of the International Maritime Organization (IMO).

11. While many aspects of the Convention would be familiar to inspectors in most countries, even countries with established inspection systems would require adjustments to their practices, owing to the breadth of the Convention, the range of matters identified for inspection, and the focus on inspecting and certifying for conformity with the appropriate national provisions. Those elements explained the need for additional guidance for governments, and especially for the persons carrying out shipboard inspections. Ships trading internationally needed clear documentation from their flag State to ensure fair treatment under port State control.
12. The guidelines for flag State inspections provided practical guidance for flag State authorities setting up inspection and certification systems and for their inspectors or authorized organizations carrying out those inspections. The status of the guidelines after their adoption was important. The Convention already contained a number of guidelines in Part B of the Code, which explained what was expected of countries implementing their obligations under the Convention. The guidelines in Part B had a specified legal status and formed part of the Convention, as set out in the Articles and clarified in the explanatory note of the Convention. On the other hand, the inspection guidelines under discussion at the forthcoming meetings were not binding international legal instruments and did not establish obligations for governments, but rather were intended as useful guidance.
13. The proposed guidelines were divided into four chapters. Chapter 1 was a descriptive text drawn mainly from the MLC text. Chapter 2 was aimed at authorities establishing flag State inspection and certification systems under the MLC, including responding to complaints. The resolution and discussion at the 94th (Maritime) Session of the International Labour Conference had indicated that flag State guidance should provide information on flag State inspection systems as well as for flag State inspectors. The guidelines for port State control officers, however, contained only brief information for administrators. Chapter 3 provided guidance on what inspectors should check to verify compliance with MLC requirements. That guidance would be adjusted by authorities to reflect national provisions. Chapter 4 outlined actions to be taken if deficiencies were identified, and provided information on some of the factors to be considered in determining the appropriate response. Those actions would also be adjusted by each country when developing national policies and training.
14. The Deputy Secretary-General further noted that it was important to consider the relationship between the flag State guidelines and port State control guidelines. When the MLC had been developed, it had been understood that the port State control inspections of ships should complement the flag State inspection, at least with respect to the 14 items to be certified. Chapter 3 of the guidelines for flag State inspections therefore formed the basis of Chapter 4 of the guidelines for port State control officers. Under the Convention, however, the role of the flag State inspection was much broader than that of port State control, since flag States must inspect all ships coming under the Convention, even if they were not certified.
15. She concluded by saying that the text proposed by the Office was necessarily general and generic on some points in order to strike a balance between providing practical “how to” information and reflecting the fact that the guidance was intended for governments.

Greater detail would come when training courses were designed based on the adopted guidelines.

General statements

16. The Seafarer Vice-Chairperson said that his group generally supported the text as proposed by the Office, and therefore hoped that the forthcoming discussions would be successful. Although the guidelines were not legally binding, they constituted an important aspect of the implementation and enforcement process for the MLC. While discussing the guidelines no attempts should be made to reopen debate on issues that had previously been agreed during the drafting of the Convention. The guidelines should be referred to as established minimum standards for the industry and should deal with all issues covered by the Convention. Furthermore, Chapter 1 of the guidelines should refer to the decision of the Maritime Session of the International Labour Conference that the MLC should stand alone and should not be linked to international safety management (ISM) audit procedures.
17. The expert from the Government of Panama said that while many aspects of the guidelines would require discussion, he believed that the outcome of the forthcoming Meeting would be positive.
18. The expert from the Government of Greece said that the draft presented by the Office constituted an excellent basis for further discussion and that both the guidelines for flag State inspections and those for port State control officers would provide assistance to countries in ratifying the Convention and ensuring its full implementation. The discussions on the guidelines should serve as follow-up to the adoption of the MLC, and the agreements that had been reached in 2006 should therefore not be revisited.
19. The representative of the Government of Algeria welcomed the work of the group of experts, who had drafted a high-quality, relevant document, which would contribute to improving understanding and implementation of the MLC, and ensuring decent work in the maritime sector. His country was making the necessary efforts to complete its maritime labour legislation in order to ensure full compliance with the MLC.
20. The Shipowner Vice-Chairperson agreed that the MLC was pre-eminent. The guidelines were important, but should not reinterpret the MLC. Some parts of the proposed text appeared to be repetitive. However, the guidelines represented useful guidance for implementation, but should neither add to, nor subtract from, the requirements of the MLC.

Consideration of the draft guidelines

Chapter 1. Introduction

1.1. Explanation of the objectives and content of the guidelines

Paragraph 7

21. The expert from the Government of the Bahamas said that the list of elements to be checked in a compliance inspection was not exhaustive, and the word “would” should therefore be replaced by “might”. The Shipowner Vice-Chairperson, supported by the

Seafarer Vice-Chairperson, disagreed, since the Convention required such checks to be carried out. The use of the word “might” was considered too weak in the given context.

1.2. Brief overview of the MLC, 2006, structure

22. The proposal by the Technical Drafting Committee to change the title of this section to “1.2. Brief overview of the MLC, 2006” was accepted. Following extensive debate on whether the MLC should be considered “minimum standards” or “international minimum standards”, the Meeting considered text proposed by the Office to insert two new paragraphs before paragraph 9. The text read:

“The Preamble to the MLC, 2006, sets out the intentions and the objectives of the Members of the International Labour Organization in adopting the Convention. The Preamble refers to the global nature of the shipping industry and the need for seafarers to have special protection. It also links the MLC, 2006, to the other key international Conventions that establish minimum standards for the shipping industry in connection with safety, security and marine environmental protection. **The MLC, 2006, complementing other major international conventions, reflects international agreement on the minimum requirements for working and living conditions for seafarers.**”

Like other international labour standards, the MLC, 2006, only sets out minimum international standards. However, recalling paragraph 8 of article 19 of the Constitution of the International Labour Organization, the Preamble goes on to clarify that in no case shall the adoption of any Convention and Recommendation by the Conference or the ratification of any Convention by any Member be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.

23. The expert from the Government of Greece strongly suggested that, in the sentence “The MLC, 2006, complementing other major international conventions, reflects international agreement on the minimum requirements for working and living conditions for seafarers” should be amended by inserting the word “maritime” between “international” and “convention” to reflect its maritime character.
24. The Meeting decided to retain the text in the form proposed by the Office, as it did not wish to confine this reference to maritime Conventions only.

Paragraph 10

25. The Meeting agreed to a proposal from the expert from the Government of the United Kingdom to insert, for clarification purposes, the words “for certification” at the end of the first bullet point in paragraph 10.
26. The Shipowner Vice-Chairperson considered that the second bullet point ought to be deleted, as this matter was more relevant to discussion of port State inspections. The Meeting agreed to delete the bullet point. The text proposed by the Technical Drafting Committee was adopted with one minor change. Having eliminated Appendix A5-III from the list, the Meeting decided to delete the word “the” between “account of” and “three” so that the wording would read “it is important to take account of three of the four appendices”.

1.3. Key concepts in the MLC, 2006

1.3.1. Application

Paragraph 12

27. The Shipowner Vice-Chairperson said that paragraph 12 should be worded in line with the resolution concerning information on occupational groups adopted at the 2006 Maritime Labour Conference. A new sentence, to be inserted after the first sentence of paragraph 12, might read, “Further guidance may be found in the resolution concerning information on occupational groups adopted at the Maritime Labour Conference, 2006.” The Seafarer Vice-Chairperson accepted the idea of referring to the resolution, but said that this text had to be carefully drafted to avoid misuse and must respect Article II, paragraph 3, of the MLC, which, inter alia, calls for consultation with the shipowners’ and seafarers’ organizations on such questions.

1.3.3. Ships

Paragraph 16

28. The expert from the Government of the Marshall Islands asked whether, for the sake of continuity, paragraph 16 could be incorporated into section 1.3.1. This was agreed. The text proposed later on by the Technical Drafting Committee, however, did not incorporate section 1.3.3 into section 1.3.1 as previously discussed. The expert from the Government of the United Kingdom, speaking on behalf of the Technical Drafting Committee, explained that section 1.3.1 referred to both seafarers and ships, whereas section 1.3.3 was limited to ships. Given the importance of seafarers’ rights, the Meeting thus decided to leave the text as it was.

1.3.4. Compliance and enforcement *(ship inspection and certification)*

Paragraph 20

29. The Meeting agreed to a proposal by the Shipowner Vice-Chairperson to insert the words “if authorized” after the word “RO” in the first sentence of paragraph 20.
30. The Meeting agreed to a proposal by the Seafarer Vice-Chairperson to bring the wording of the final sentence in line with Regulation 5.1.3, paragraph 4, of the MLC, by replacing the word “procedures” by “measures” and deleting the words “or will”.

Paragraph 21

31. Regarding paragraph 21, the Shipowner Vice-Chairperson thought that “where warranted” could be deleted and replaced by “clear grounds” to tie the paragraph to MLC language. The Seafarer Vice-Chairperson suggested that the first sentence in paragraph 21 could be deleted. Following advice from the Deputy Secretary-General, it was agreed to delete the first sentence of paragraph 21 and add the second sentence of paragraph 21 to paragraph 20. The text proposed later on by the Technical Drafting Committee on paragraphs 20 and 21 was adopted without further discussion.

Paragraph 22

32. The expert from the Government of the Philippines referred to discussions (in the context of Chapter 2, which had been discussed earlier) relating to inspection of ships that are not certified, and that the Office had clarified the extent of inspections of such ships. He suggested that the second sentence of paragraph 22 might be misread as limiting the extent of such inspections to the 14 items referenced list in Part I of the DMLC when, in fact, all requirements of the MLC are to be inspected. The expert from the Government of the United Kingdom suggested that the last sentence in paragraph 22 be deleted.
33. While the Seafarer Vice-Chairperson agreed with the comments by the expert from the Government of the Philippines, he was not sure that the last sentence should be deleted. Wording could be added to reinforce the fact that uncertified ships had to comply with all MLC provisions. It was agreed that this paragraph required rewording. The text proposed by the Technical Drafting Committee was adopted. In addition, the Meeting agreed to replace the word “referenced” with “normally identified” to bring it into line with the rest of the text.

Chapter 2. The flag State inspection system

2.1. Overview of flag State responsibilities

2.1.1. General note (paragraphs 24–27)

34. The Meeting recognized different levels of sophistication in governments’ ability to inspect. Since some countries would benefit from more detailed guidance, the present text was considered helpful. The representative of the Government of Norway felt that subsection 2.1.1 was too wordy.

Paragraph 26

35. The representative of the Government of China stated that the bullet points of paragraph 26 referred to inspection and control but not to monitoring, even though this was a major responsibility of flag States under Regulation 5.1.4(1). Regular monitoring was necessary to ensure that governments allocated the appropriate resources to ensure adequate inspection. The Meeting thus decided to add a reference to monitoring in paragraph 26.
36. The expert from the Government of Greece further proposed to delete the brackets around the words “(or ROs, if used by the flag State, to carry out some flag State tasks)” in the first bullet point, in order not to undermine the possibility for flag States to delegate their responsibilities. While some participants agreed, others favoured retaining the brackets or inserting commas, to signal that, although a primary flag State responsibility, recognized organizations (ROs) were an option. The Technical Drafting Committee proposed text to delete the brackets.
37. The expert from the Government of the Philippines noted that the second bullet point did not clearly distinguish between inspection and inspection with certification. The Meeting agreed to amend the bullet point accordingly. The text of paragraph 26 as proposed by the Technical Drafting Committee was adopted. In addition, the Meeting agreed to replace the word “used” with the word “authorized” in the first bullet point and insert the word “renewal” after the word “issuance” in the second bullet point.

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38. The representative of the Government of Algeria noted discrepancies between the English and French texts of paragraph 26: in French, the third bullet point concerning complaints was missing, and the fourth bullet point referred to “flag State” rather than “port State”.

Paragraph 27

39. Concerning paragraph 27, the expert from the Government of Panama considered that since the paragraph largely explained the intention of the guidelines, it should be moved to the beginning of the subsection. The Meeting supported this change.
40. As to the query of the expert from the Government of the Philippines about the reason for the bold text in paragraph 27, it was explained that it had been added in the guidelines for emphasis to draw attention to particularly important points.

2.1.2. Overview of the MLC, 2006, national flexibility (determinations/exemptions on application of the requirements) – paragraphs 28–43

Paragraph 28

41. The expert from the Government of Panama proposed to delete the wording of paragraph 28 as it was unclear what purpose it served.

Paragraphs 29–33

42. Similarly, paragraphs 29–33 seemed to be outside the scope of the MLC and should be rephrased and merged to reduce the overall length of the document. The Meeting disagreed, believing that such guidance would help countries without national regulations to clarify remaining areas of doubt as regards the definitions of “ship” and “seafarer”.

Paragraphs 35–37

43. The Seafarer Vice-Chairperson believed that the reference in paragraph 36 to “substantial equivalence” was important but too vague as currently worded and proposed to incorporate the wording from Article VI, paragraph 4, of the MLC. The expert from the Government of the Philippines also found that Article VI, paragraph 3, should be stated verbatim, and that the guidelines should contain information on the MLC provisions that could not be subject to “substantial equivalence”. The Meeting supported the points raised. The text proposed by the Technical Drafting Committee was adopted without further discussion.
44. The expert from the Government of the Marshall Islands questioned the use of the term “variations” in paragraphs 35 and 37. The Deputy Secretary-General of the Meeting explained that the term “variations” had been drawn from Standard A3.1, which concerned accommodation and recreational facilities, specifically paragraph 19. Concerns were expressed that, according to the Convention text, variations were not explicitly contained in Part I of the Declaration of Maritime Labour Compliance (DMLC), whereas the last sentence of paragraph 37 was asking for their inclusion. The Shipowner Vice-Chairperson stated that paragraph 43, which could be placed before paragraph 37, required taking care of different needs of changing crews but it was difficult to prove the quality and appropriateness of temporary adjustments to the port State inspector. The Deputy Secretary-General of the Meeting acknowledged that in Appendix A5-II of the MLC, the DMLC contained space for exemptions but none for variations. Standard A5.1.3(10)(a)(ii), however, provided room for supplying “concise information on the main content of national requirements”, which could include variations. A simpler solution would be to replace “must” in the last sentence of paragraph 37 with “should”. Yet, it would be in the

interest of shipowners to indicate variations in place in Part I of the DMLC, so as to notify the port State inspector. The Seafarer Vice-Chairperson clarified that the term “should” would only apply to variations and not to exemptions. The Meeting later discussed the text of paragraph 35 prepared by the Technical Drafting Committee, which no longer contained the term “variations”. It was decided to change the wording to read “National substantial equivalencies, and exemptions in accordance with Standard A3.1, paragraph 19”, in order to clarify that, while national substantial equivalencies could refer to any provision of Part A of the Code, throughout the whole Convention, Standard A3.1 was the only place in the MLC where reference was made to exemptions. As a consequential amendment, the Meeting further agreed to delete the words “Regulation 3.1 and” in paragraph 34. The Meeting then discussed the text of the last sentences of paragraph 35 prepared by the Technical Drafting Committee. The Office was requested to better reflect that variations, contrary to exemptions, did not have to be noted in Part I of the DMLC while equivalents and exemptions did.

45. The Seafarer Vice-Chairperson proposed to amend the first sentence of paragraph 37 to read “Regulation 3.1, Standard A3.1 and Guideline B3.1 relate to the international minimum requirements for seafarers’ accommodation and recreational facilities on ships”. The purpose of the MLC was to set minimum standards, and while some shipping companies and governments had standards well above those required by the MLC, others did not. As an alternative, the words “international minimum” could be inserted into the third sentence. The Shipowner Vice-Chairperson felt that every written international instrument was a minimum standard and signalled that the term “requirements” in the first sentence seemed inappropriate, as it also related to a Guideline of the MLC. In this context, the expert from the Government of the Marshall Islands suggested that the sentence could read “Regulation 3.1, Standard A3.1 and Guideline B3.1 relate to seafarers’ accommodation and recreational facilities on ships”. The representative of the Government of Norway proposed that the first sentence should be deleted, and that the second sentence should begin with the words “The purpose of these minimum requirements ...”.
46. The Shipowner Vice-Chairperson could agree to the words “minimum standards” but without the word “international”. The Seafarer Vice-Chairperson said a paragraph referring to “international minimum standards” could be included earlier in the guidelines, and that it was important to clarify that the standards, especially concerning accommodation and recreation facilities, were, in fact, “minimum standards”. The Government Vice-Chairperson said his group had the same concerns as the Shipowners. It was agreed that the secretariat, together with the Technical Drafting Committee, should prepare a paragraph to be inserted earlier in the guidelines, referring to the MLC as “international minimum requirements”.
47. The Deputy Secretary-General drew attention to the Preamble of the MLC, and to article 19 of the ILO Constitution, and noted that all international labour standards are considered international minimum standards.
48. The Government Vice-Chairperson said that his group did not wish the first sentence of paragraph 37 to refer to Guideline B3.1 of the MLC. The expert from the Government of the Philippines noted that while the “textbook principle” is that international labour standards are international minimum standards, the flag State guidelines were concerned with enforcement, which was only relevant to the Regulations and Part A, the Standards, of the MLC and not the Guidelines in Part B. The Technical Drafting Committee proposed new text for paragraph 37. The Meeting adjusted the text to reflect concerns expressed by the Seafarer Vice-Chairperson and to ensure consistency with the agreement reached regarding the two new paragraphs included in Chapter 1 under section 1.2, “Brief overview of the MLC, 2006”. During the debate, the expert from the Government of Greece expressed his concern that the text now read “The purpose of the minimum requirements

...” whereas the guidelines generally referred only to “requirements” but not to “minimum requirements”. The paragraph was adopted with the word “minimum” included.

Paragraph 39

49. In paragraph 39, the expert from the Government of the United Kingdom requested to make it clearer that countries which had ratified the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) would need to continue to apply those standards to existing ships. She raised the question as to the standards applicable to existing ships of countries that had not ratified Conventions Nos 92 and 133. The Deputy Secretary-General of the Meeting indicated that, for ships constructed before the coming into force of the MLC, the requirements of earlier ILO Conventions continued to apply “to the extent that they were already applicable under the law or practice of the Member concerned”. These earlier ILO Conventions were Conventions Nos 92 and 133, but also the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) and its Protocol of 1996, which, although not explicitly mentioned in Regulation 3.1, encompassed the obligations of Conventions Nos 92 and 133. If a Member had, however, not ratified any of these Conventions, it would still need to comply with Regulation 3.1(1), which provides that Members shall ensure that ships that fly its flag “provide and maintain decent accommodation and recreational facilities for seafarers”, and, if it had national laws and regulations equivalent or superior to those Conventions in place, article 19, paragraph 8, of the ILO Constitution required it to maintain these standards. The text proposed by the Technical Drafting Committee was adopted. In addition, the Meeting agreed to replace the words “before that date” with “before the entry into force date” for purposes of clarity.
50. Whereas the expert from the Government of Panama stated that paragraphs 37–42 were outside the scope of the MLC and should be deleted, the Meeting expressed a desire for greater clarity of paragraphs 38–41. The language should be carefully examined to render it more in line with the Meetings’ intentions, and a move of these paragraphs to subsection 2.2.8 could be envisaged. Furthermore, an erroneous translation of the term “food provisions” into French was signalled in paragraph 43.

2.1.3. Flag State inspection system responsibilities

Paragraphs 44–47

51. The expert from the Government of the United Kingdom suggested that in the first bullet point of paragraph 44, the word “national” be inserted between “developing” and “documents”, to avoid flag States developing their own documents when there were already documents in the MLC. The Meeting supported the change while cautioning that the requirements of international documents needed to be met. Paragraph 46 could be amended likewise. The expert from the Government of the United Kingdom further requested that the words “of inspectors” should be added to the fifth bullet point (“identification credentials”) for purposes of clarification. The text proposed by the Technical Drafting Committee was adopted without further discussion.
52. The expert from the Government of the Marshall Islands suggested referring to the forms appended to the MLC in the second sentence of paragraph 46. The expert from the Government of the Philippines, speaking on paragraphs 46 and 47, noted that the development of documents seemed to be intertwined with the task of inspection. The subtitle “Developing documents” was misleading, as it dealt more with documents for shipowners that were not to be developed but rather requested by inspectors. The text proposed by the Technical Drafting Committee was adopted without further discussion.

Paragraphs 51 and 52

53. In paragraph 51, the Shipowner Vice-Chairperson requested clarification as to whether, following the initial certification, the renewal inspection needed to have the same depth or whether there was some flexibility given the solid information already available to the government. The Deputy Secretary-General of the Meeting responded that the MLC only specified that the scope and depth of an interim inspection should be equivalent to a renewal inspection (A5.1.3(2)). But paragraph 88 stated that “for a Maritime Labour Certificate renewal inspection, all requirements need to be inspected”. Furthermore, the representative of the Government of Greece suggested replacing the word “may” with the word “must”, to bring paragraph 51 into line with Standard A5.1.3. The text proposed by the Technical Drafting Committee was adopted. In addition, the Meeting agreed to replace the word “may” with the word “must”.
54. The expert from the Government of the Marshall Islands stated that, in the third sentence of paragraph 52, “DCML” should be changed to “DMLC”. The expert from the Government of the Russian Federation further indicated that the wording “issued only once” was probably inappropriate, since under Standard A5.1.3(5)–(7) consecutive interim certificates could be issued. The expert from the Government of the Philippines noted that there was no mention of intermediate inspections and inquired about their frequency. The Deputy Secretary-General of the Meeting replied that, according to Standard A5.1.3(6) and (8), interim certificates could only be issued for a period of six months, and no further interim certificates were to be issued following the initial six months. Paragraph 87 addressed the question of intermediate inspections. The Meeting discussed the text prepared by the Technical Drafting Committee. While the idea that no consecutive interim certificates may be issued by the same flag State was accepted, it was felt that additional wording was necessary to restrict the prohibition of issuing consecutive interim certificates by the same flag State to a particular ship and to the same shipowner (Standard A5.1.3(5)(c)).

Paragraphs 53–55

55. The expert from the Government of the Russian Federation questioned the use of the term “amplify” under paragraph 53, second sentence, since there was no requirement to amplify MLC requirements at the national level. The representative of the Government of France drew attention to the mistranslation of the word “amplify” in the French text. In paragraph 54, it was decided that reference to other shipboard documentation should be added, as this would be indicative of compliance with the MLC. The text proposed by the Technical Drafting Committee was adopted without further discussion.
56. Concerning paragraph 55, it was felt that it would be better not to refer to “guidance”, as Standard A5.1.4 was mandatory. The expert from the Government of the Marshall Islands found that the last sentence was redundant. The text proposed by the Technical Drafting Committee was adopted without further discussion.

Paragraph 60

57. In paragraph 60, the Meeting decided to add the word “required” after “competent authority is”. The representative of the Government of Malaysia queried whether the annual report was intended for ILO use only, or for public distribution. The Deputy Secretary-General of the Meeting responded that, according to Standard A5.1.4(13), the annual report should be made public and should be submitted to the ILO supervisory bodies for review. The text proposed by the Technical Drafting Committee was adopted. In addition, the Spanish version needed to be brought into line with the English text.

58. Regarding paragraphs 64 and 65, the Shipowner Vice-Chairperson asked whether flag States could stipulate that complaints be received in national language or in English. The expert from the Government of the Marshall Islands felt that more expansion was required on the process to be established to respond to complaints. The insertion of paragraph 65 at the beginning of paragraph 62, as proposed by the Technical Drafting Committee, was accepted without further discussion and the text proposed by the Technical Drafting Committee was adopted. In addition, the Meeting agreed to replace the term “process” with “procedure” to better reflect the MLC text. A repeated proposal to specify in which language complaints could be lodged was rejected, since the development of a system for receiving and responding to complaints as well as the decision on the language of complaints lodged should be left with the flag State as a matter of implementation.
59. The representative of the Government of Norway, expressed concern that the flowchart sequence “Can the complaint be resolved on board?” appeared to imply that ROs could be involved in resolving complaints. The resolution of a dispute between seafarers and the captain or the shipowner should, however, be the responsibility of the competent authority and should not be delegated to RO inspectors, while complaints concerning such matters as poor accommodation could be dealt with by ROs. The content of the flowchart might cause confusion rather than clarification, and should therefore be given careful consideration. The Shipowner experts and other participants shared the reservations. The representative of the Government of Liberia said that the flowchart sequence “Is the ship in a flag State port?” was redundant, as nomination of an inspector was required regardless of the port’s location. The Deputy Secretary-General of the Meeting replied that paragraph 66 stated clearly that responsibility for the resolution of a complaint remained with the flag State. Flowcharts were not designed to cover all eventualities. Several participants said that a paragraph introducing the flowchart was needed. The Meeting decided to include such a paragraph prior to the flowchart to explain that it was merely an example of a possible process that would not fit every national context. A reference to the need to respect confidentiality in case of complaints should be added.
60. The Shipowner Vice-Chairperson suggested that the flowchart should be made consistent with the MLC. The Government Vice-Chairperson asked for an introductory paragraph for the flowchart for insertion in the main body of the guidelines. The flowchart should be considered as an example of the process and should be moved to an annex. The Seafarer Vice-Chairperson did not see the flowchart as an example but as a guide to useful decision-making.
61. The Deputy Secretary-General recalled that article 19, paragraph 3, of the ILO Constitution, referring to the development of ILO Conventions and Recommendations, called for “due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different”, and that for this reason there was a responsibility to provide guidance for all. This was why a flowchart had been developed.
62. The Meeting agreed not to include the flowchart in the guidelines but to incorporate it in training material for inspectors under development by the ILO’s International Training Centre in Turin.

2.2. Maritime labour inspection and certification process

63. The Shipowner Vice-Chairperson noted that implementation of the Convention would require the training of inspectors in a rather short period of time. The Seafarer

Vice-Chairperson said the text was excellent and supported inclusion of the flowchart on page 25. The expert from the Government of Panama, speaking as Chairperson of the Government group, said that the general note provided useful guidelines. The expert from the Government of France noted that there were problems with the French translation – in paragraphs 55, 63, 70, 73, 87, 89, 94 and 96 – that could be dealt with by the drafting committee.

2.2.1. General note

Paragraph 68

64. The Shipowner Vice-Chairperson said that paragraph 68 should be redrafted for clarification purposes. The representative of the Government of Japan, supported by the expert from the Government of Panama and the representative of the Government of the Bahamas, said that this paragraph indicated that Part I of the DMLC would be relevant to the inspection of non-certified ships. This paragraph should be deleted or at least revised to clarify what discretion competent authorities have with respect to inspection of non-certified vessels.
65. The expert from the Government of the Marshall Islands suggested that the term “standard” before DMLC should be defined in order to avoid any confusion as to whether Part I of the DMLC was required for non-certified vessels.
66. The expert from the Government of the Philippines said that Appendix A5-I of the MLC, 2006, stipulated 14 areas that were to be inspected and approved by the flag State, whereas Regulation 5.1.4, paragraph 1 of the MLC, 2006, referred to compliance with “the requirements of this Convention”. He wished to see a distinction between the 14 areas and the general requirements of the Convention. Broader inspection powers should be granted in respect of non-certified vessels.
67. The Deputy Secretary-General of the Meeting suggested that there might be some confusion between Part I of the DMLC and the issue of inspection. Regulation 5.1.4 of the MLC, 2006, required inspection of all aspects of all ships, not only the 14 items required for certification. The Meeting decided that the paragraph should be redrafted. The text of paragraph 67 proposed by the Technical Drafting Committee was adopted without further discussion. The Meeting discussed the text of paragraph 68 proposed by the Technical Drafting Committee. As inspectors could not refer to Part I of the DMLC in case of non-certified ships, the Meeting preferred to specify that inspectors may refer to “the national provisions that are normally found in” the DMLC, Part I.

Paragraph 69

68. The expert from the Government of Greece proposed inserting the words “human security” after “ship safety” in the first sentence of paragraph 69 in order to bring it into line with the seventh paragraph of the Preamble of the MLC, 2006. The Meeting agreed to that proposal.
69. The representative of the Government of Norway suggested that the final sentence of paragraph 69 should be deleted, since it seemed to provide a definition of “inspection” but in fact did not and was therefore not helpful. The Meeting agreed. The Seafarer Vice-Chairperson noted that the issue of inspections would be discussed under section 2.2.4. After this, consideration could be given to whether the sentence in paragraph 69 should be deleted as a consequential amendment. The Meeting discussed the text prepared by the Technical Drafting Committee. Given the deletion of the last sentence and the confusion as to whether renewal or intermediate inspections constituted “full”

inspections, the Seafarer Vice-Chairperson suggested that this should be clarified in the guidelines. The Meeting felt, however, that Chapter 3 of the guidelines clearly stipulated the scope and depth of all elements to be inspected at all levels of inspection.

Paragraph 70

70. The Shipowner Vice-Chairperson, speaking on paragraph 70, said that the meaning of the term “different strategies” in the last sentence required clarification. While he agreed that issues of sensitivity arose regarding the process of interviewing seafarers, privacy should also be mentioned. He suggested that the paragraph should be redrafted.
71. The Seafarer Vice-Chairperson expressed gratitude to the Shipowners for having highlighted the issue of privacy. Further amendments in that vein would be required in Chapter 3 of the guidelines. The text must be consistent on that issue throughout the document. The text proposed by the Technical Drafting Committee was adopted without further discussion.

Paragraph 75

72. The representative of the Government of the Russian Federation, turning to paragraph 75, suggested that the word “substantial” should be inserted before the term “equivalences” in order to ensure a clear understanding that the text referred to substantial equivalences as stipulated in the MLC, 2006, rather than other, unspecified equivalences. The Meeting agreed, and the change was made by the Technical Drafting Committee.

Paragraphs 76 and 77

73. The representative of the Government of Norway, supported by the Seafarer Vice-Chairperson, said that paragraph 76 required further clarification. A certificate could not be a starting point in the process of a first inspection. The Shipowner Vice-Chairperson agreed that the text should be reworded for clarification purposes. Paragraph 77 should be dealt with similarly. The expert from the Government of the Marshall Islands said that the term “standard” before DMLC required clarification, as had been discussed with regard to paragraph 68. The expert from the Government of the Philippines said that it was not necessary to refer to the DMLC. The paragraph should be redrafted. A revised version of the text of paragraph 76, proposed by the Technical Drafting Committee, was adopted without further discussion. The Technical Drafting Committee also proposed a new paragraph which concerned the situation where a ship does not already carry a DMLC. This was adopted without further discussion. Revised text for paragraph 77 was proposed by the Technical Drafting Committee and adopted by the Meeting in keeping with an amendment by the expert from the Government of the Bahamas. The amendment added the words “national provisions which are normally found in” before the words “the DMLC”.

Paragraph 78

74. The expert from the Government of Japan, supported by the representatives of the Governments of the Bahamas and Malaysia, said that the same issue arose in respect of paragraph 78 as had arisen during the discussion of paragraph 68 with regard to the inspection of uncertified vessels. The paragraph should therefore be redrafted.
75. The representative of the Government of Norway said he shared the concerns expressed by the representative of Japan. The term “several other matters” could cause confusion with regard to the certification process. This second point was supported by the representative of the Government of Malaysia. The Shipowner Vice-Chairperson said the paragraph could be redrafted to take account of Japan’s concerns.

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76. A representative of the Office said that there appeared to be a misunderstanding on the issue of inspection. Uncertified and certified ships alike must be inspected for compliance with all requirements of the Convention, pursuant to paragraph 1 of Standard 5.1.4 of the MLC, 2006. The 14 elements listed in Appendix A5-I were required for certification.
77. The representative of the Government of Norway agreed with this clarification, however, supported by the expert from the Government of Greece, and said that it was important that there should be no uncertainty regarding what was required to issue a certificate, and the paragraph should be redrafted. The expert from the Government of the Philippines agreed that there was a misunderstanding regarding certified and non-certified ships, and that the discussion of the 14 areas to be inspected for certified ships was spilling over into the discussion of inspection of non-certified ships. This could, for example, create a potential for litigation where a ship might pass the 14 areas for inspection but not comply with another MLC regulation and thus not be given a certificate.
78. The Chairperson acknowledged that further clarification was needed. The Shipowner Vice-Chairperson suggested that, when the provision was being redrafted, consideration should be given to the provision in the Maritime Labour Certificate providing that “This is to certify: 1. That ship has been inspected and verified to be in compliance with the requirements of the Convention ...”. Text proposed by the Technical Drafting Committee was the subject of considerable discussion concerning the wording that set out that both certified and uncertified ships must be inspected for compliance with all the requirements of the Convention. Some participants suggested including a reference to “living and working conditions” while others called for a reference to the “Maritime Labour Convention”, as they thought that the words “living and working conditions” might not cover all matters to be inspected. The text was amended to clarify this matter and adopted.

Paragraph 79

79. The expert from the Government of Greece, supported by the expert from the Government of the Philippines and the Shipowner Vice-Chairperson, stated that in the case of a ship carrying an MLC, the first inspection would be before the issue of the certificate. If the ship had an MLC, then it must have been inspected. Therefore, the words “a first inspection and any other” should be deleted from the first sentence.
80. A representative of the Office stated that the issue of first and subsequent inspections was clarified later in the text. For the first inspection, the DMLC would, in fact, be a draft DMLC.
81. The Seafarer Vice-Chairperson found that these matters should be explained in the guidelines. He noted that there were different cases when a ship would need a new Maritime Labour Certificate. A ship could be up for its five-year issuance of a new MLC, could have changed ownership or flag, or could have been altered during repairs. In two of these cases, the certificate would be issued by the same flag State but in all cases it would be a first inspection. This was not clear in paragraph 79. Regarding the relationship between certification and inspection, there seemed to be an assumption that the same flag State would re-issue the certificate, which was not necessarily the case. This was confusing in this paragraph and other paragraphs.
82. The Chairperson suggested that the drafting committee expand on the scenarios related to first inspections in order to remove confusion. The expert from the Government of Greece asked that the examples cited by the Seafarer Vice-Chairperson be taken into account during the redrafting, perhaps even be provided in the guidelines.
83. The representative of the Government of France identified a problem between the English and French versions of the guidelines for paragraph 79. The phrasing in the English

version was not identical to the French version with regard to present and future issuance of Maritime Labour Certificates. The drafting committee should review the logical order, particularly of the English text.

84. The expert from the Government of the Philippines referred to Article 5.1.3, paragraph 14, of the Maritime Labour Convention, 2006. He asked whether a ship whose certification ceases to be valid is considered to be holding a certificate. He said he understood that a ship could not have a first inspection if it was already carrying a certificate.
85. The Deputy Secretary-General said that it was up to the inspector to check the certificate and determine whether it was valid or not. This issue would only arise at the time of inspection. The master should also know whether the certificate was or was not valid.
86. The Seafarer Vice-Chairperson said that there was a difference between ships whose certification was being renewed and those which changed flag and required a full inspection. If there was a change of flag, the certificate was no longer relevant. The issue of the first inspection and the certificate required clarification, perhaps in an explanatory note.
87. The expert from the Government of the Republic of Korea noted that there were two processes to consider. One was for inspecting and certifying for a normal five-year period. The other was the interim certification, which was only for six months. In the IMO, the term “initial inspection” was used in one case and “interim inspection” in the other. When the flag or owner changed, and an interim certificate was issued, an interim inspection was required. Six months later, a normal full inspection was required for the five-year certificate.
88. The expert from the Government of the Marshall Islands supported looking at the comment made by the expert from the Government of the Republic of Korea. He suggested using “any” before “inspections”.
89. The representative of the Government of Norway agreed with the statement made by the expert from the Government of the Republic of Korea. However, he noted that neither “first” nor “initial” inspections appeared in the Convention. If these words were left in, further clarification was required.

2.2.4. First inspection

90. The proposal to change the heading “2.2.4. First inspection” to read “Inspections prior to the issue of the first certificate” was accepted.

Paragraph 80 and the “Inspection and certification process flowchart”

91. The representative of the Government of Norway stated that the flowchart was trying to do too many things at once. He suggested that it should be revised. The Shipowner Vice-Chairperson supported revision. The Chairperson indicated that this could be submitted when the members of the drafting group had been selected.
92. The Meeting decided not to include the flowchart in the guidelines but to instead incorporate it in training materials for inspectors under development by the ILO’s International Training Centre in Turin.

Paragraph 81

- 93.** The Shipowner Vice-Chairperson agreed with the comment from the expert of the Government of the Republic of Korea that there should be recognition of the interim certificate. This should be taken into account in section 2.2.4 as well as in the earlier paragraph 79.
- 94.** The Seafarer Vice-Chairperson liked the reference to the first inspection because it was the one that resulted in the issuance of the Maritime Labour Certificate. He noted that there were contradictions in paragraph 81 between the first sentence “A first inspection may need to be carried out during construction of the ship.” and the second sentence “It would always be carried out at the point when it first enters service.” The concept of the first inspection seemed only to be related to ships under construction or entering service, which was misleading. Paragraph 86 seemed to imply that a certificate could be issued before there were any seafarers on board the ship. There was also no reference to interim certification. Paragraphs 81–85 should be about an interim certification that would cover such matters as employment agreements, interviews with seafarers, etc. This seemed to narrow down the idea of the first inspection. The paragraphs must therefore be redrafted.
- 95.** The representative of the Government of Malaysia said that paragraphs 81–86 did not address existing ships in service going through the first inspection. The Chairperson explained that the issue of ships in service prior to entry into force of the MLC would be dealt with under section 2.2.8.
- 96.** The expert from the Government of Panama pointed out that paragraph 81 involved the issuance of an interim certificate, but that there were no guidelines for this. A proposal by the Technical Drafting Committee to delete old paragraph 81 was accepted.

Paragraph 82

- 97.** Text proposed by the Technical Drafting Committee to replace old paragraph 82 was amended to remove the words “in the flag State” from the first sentence and to change the word “may” to “should” in the last sentence.

Paragraph 83

- 98.** The text proposed by the Technical Drafting Committee to replace paragraph 83 with a new paragraph was accepted without discussion.

Paragraph 84

- 99.** The expert from the Government of the United Kingdom said that the first sentence was long and not clear. She asked for the reason for reference in the second sentence to “onshore review of documents”.
- 100.** The Deputy Secretary-General suggested that this point required redrafting in order to remove the impression that the review should normally be an onshore review.
- 101.** Text proposed by the Technical Drafting Committee to replace paragraph 84 with a new paragraph was accepted with a minor change, proposed by the representative of the Government of Korea, to change the words in one sentence from “The inspector must review these Part II measures for the competent authority to certify the ship in accordance with” to “The inspector must review these Part II measures for the competent authority to certify it in accordance with” in order to make it consistent with Standard A5.1.3, paragraph 10, of the MLC.

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- 102.** The Technical Drafting Committee proposed a new paragraph reading “a Maritime Labour Certificate, including the DMLC, can be issued to the ship upon satisfactory completion of a full inspection, including the document review.” The Meeting reformulated this to read: “A full inspection, including the document review, must be satisfactorily completed before a Maritime Labour Certificate and DMLC can be issued”. As a result of this, the representative from the Government of Norway expressed concern that this formulation could be read to say that, in order to receive a Maritime Labour Certificate, a ship would have to be inspected in not only the 14 areas cited in Appendix A5-I of the MLC but for all requirements of the Convention. The Deputy Secretary-General and the other participants confirmed that this was correct: inspections must cover the entire MLC and not only those 14 areas.

Paragraph 85

- 103.** The text proposed by the Technical Drafting Committee to revise paragraph 85 was adopted without discussion.

Paragraph 86

- 104.** The text proposed by the Technical Drafting Committee to replace paragraph 86 was accepted without discussion. The proposal by the Technical Drafting Committee to delete old paragraph 86 was adopted without discussion.

2.2.5. Intermediate inspection

Paragraph 87

- 105.** The expert from the Government of the Philippines suggested to amend the wording “An intermediate inspection is required between the second and the third anniversary dates”. Standard A5.1.3(2) provided that if only one intermediate inspection was carried out, it had to take place between the second and third anniversary dates of the certificate. The Meeting agreed to allow for more flexibility in case that governments wished to undertake more than one intermediate inspection. The Meeting also decided to make specific reference to Standard A5.1.3(14) in the last sentence dealing with the invalidation of the certificate, in view of the importance of that event. Furthermore, the expert from the Government of the Philippines suggested including wording regarding “additional inspection” as mentioned in the model Maritime Labour Certificate in Appendix A5-II of the MLC. The Meeting agreed to insert a new paragraph on additional inspection after subsection 2.2.5 “Intermediate inspection”. Flag States should record additional inspections in the certificate.
- 106.** The Meeting considered text proposed by the Technical Drafting Committee, which brought the text in line with the text of Standard A5.1.3. Following discussion on the difference between “intermediate” inspections (the subject of a paragraph) and “additional inspections” (another matter), the text was adopted in the form proposed by the Technical Drafting Committee.

2.2.6. Renewal inspection

Paragraph 88

- 107.** The expert from the Government of Greece wished to add wording to make it clear that the term “all requirements” in the first sentence referred to the 14 items enumerated in the DMLC. The Deputy Secretary-General of the Meeting noted that the words “from the date of completion of the renewal inspection” needed to be added after the term “valid” in the

second sentence to more closely reflect the MLC text. Similarly, the Seafarer Vice-Chairperson suggested to replace the words “When the renewal inspection commences up to three months before the expiry date of the existing certificate” with the language from Standard A5.1.3(3). The new paragraph suggested by the Technical Drafting Committee was adopted without further discussion.

Paragraph 89

- 108.** The Seafarer Vice-Chairperson explained that this paragraph referred to the procedure for an early inspection, i.e. more than three months before the expiry date. The representative of the Government of Algeria highlighted that there were discrepancies between the French and the English versions. The representative of the Government of France felt that the scope and depth of a renewal inspection needed to be specified in greater detail, since the scope and depth of an intermediate inspection was to be equal to it. A text proposed by the Technical Drafting Committee was adopted without further discussion.

2.2.7. Changes of flag/re-registration, ownership change, substantial alteration

Paragraph 90

- 109.** The expert from the Government of the United Kingdom asked for an example of “substantial changes”. The Chairperson encouraged flag States to define substantial changes with the social partners, as no international definition existed. The conversion of a day-trip ferry to a live-aboard ferry was provided as an example.
- 110.** Several Government participants suggested that reference should also be made to Standard A5.1.3(14), which dealt with circumstances where the certificate ceased to be valid. The Seafarer Vice-Chairperson noted that Standard A3.1(3) referred to Regulation 5.1.4, which provided for full inspection not limited to the 14 certifiable items. The Meeting agreed that all accurate references should be inserted.
- 111.** Clarification was sought concerning the validity of certificates in the case of change of RO. The Deputy Secretary-General of the Meeting referred to Regulation 5.1.1(3), which established the relationship between flag state and RO and stated that in “all cases, the Member shall remain fully responsible for inspection and certification”. A change of RO would not impact on the validity of the certificate. It was further decided that the term “substantial changes” should be replaced by “substantial alterations”, to remain in line with the wording of the MLC.
- 112.** The expert from the Government of the Philippines proposed that reference should be made to Standard A5.1.3(14)(d) which covered the case of a shipowner ceasing to assume responsibility for the operation of a ship. The representative of the Government of the United States said that the ability to operate a vessel was more important than ownership, and that individual flag administrations should be able to use their discretion to judge whether there had been substantial alterations. The Chairperson pointed out that pursuant to Article II(j) of the MLC, the term “shipowner” referred not only to the owner of the ship but also to “another organization or person, such as the manager, agent or bareboat charter, who has assumed the responsibility for the operation of the ship from the owner”. The Meeting agreed that the term “ownership” should be interpreted in the light of the MLC definition of “shipowner” and decided to adhere to the text of Standard A5.1.3(14)(d) instead of using the words “change of ownership”. The Shipowner Vice-Chairperson requested that the fact that shipowners could delegate to other entities to take responsibility for the ship should be taken into account.

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113. Several Government participants also supported the inclusion of a reference to re-registration, since a change of flag was not necessarily identical with re-registration. Finally, the expert from the Government of the Philippines cautioned that the question of scope and depth of inspection could also be relevant to this paragraph.
114. The text proposed by the Technical Drafting Committee was adopted without further discussion.

2.2.8. *Ships in existence prior to entry into force of the MLC, 2006, for the flag State*

Paragraph 92

115. The expert from the Government of Greece believed that, following the discussion that had taken place with regard to paragraph 39, reference and explanations should be added with regard to Convention No. 147 and its Protocol, to ensure that flag States had a clear picture of their obligations. The expert from the Government of the Marshall Islands felt that the final sentence was out of place, and should be moved to paragraph 91 for the sake of consistency. The latest unified IMO definition of “date of construction” should be used. The Deputy Secretary-General of the Meeting agreed to using this definition, provided the IMO definition was in line with the definition used in Regulation 3.1(2). Referring to a query on the term “similar stage of construction” in the MLC, the Chairperson replied that the percentage of completion of construction took better account of differing vessel sizes than the tonnage of steel. The text proposed by the Technical Drafting Committee on paragraph 91 and 92 was adopted without further discussion.

Paragraph 93

116. The expert from the Government of the Philippines indicated that the words “as implemented nationally” appeared superfluous. Given that the preceding paragraphs referred to different dates, he requested, for clarity, that the words “these ships” should be replaced with “ships constructed before the entry into force of the MLC for the Member concerned”. The text proposed by the Technical Drafting Committee was adopted without further discussion.

2.2.9. *Ships where owners have requested certification*

Paragraph 94

117. It was suggested that the term “shipowners” rather than “owners of ships” should be used. The text proposed by the Technical Drafting Committee was adopted. In addition, the Meeting decided to replace, in heading 2.2.9, before paragraph 94, the word “owners” with “shipowners”.

2.2.10. *Ships that are not certified*

Paragraph 95

118. The Shipowner Vice-Chairperson proposed that this paragraph should be amended to replace the words “will not have completed a DMLC, Part II” with “is not required to have completed a DMLC, Part II”.
119. Several Government participants felt that this paragraph raised similar concerns as paragraph 68, regarding the need for clarification as to whether a DMLC, Part I, was

obligatory for non-certified ships. In case of non-certified vessels, reference should be made to Regulation 5.1.4, and the correlation between non-certified ships and certification items should be avoided.

120. The expert from the Government of Panama indicated that inspections of non-certified ships were not similar to those of certified ships. In case of non-certified vessels, the items inspected were different and at the discretion of the flag State administration. DMLCs were not applicable to non-certified vessels, which were mostly exempted from national regulations because they were in territorial waters. The Chairperson cautioned that, while ships in the domestic fleet would not carry a DMLC, inspection of domestic ships could not go below the standards in the MLC, as that was a minimum standard. The Seafarer Vice-Chairperson pointed to subsection 1.3.3 of the guidelines and recalled that the MLC normally applied to all ships, and it had only been decided to limit the certification requirements to ships of more than 500 gt because of the administrative burden related to certification. The differentiation between certified and non-certified ships should not be overemphasized. Regulation 5.1.1(1) provided that Members were responsible for implementing regulations for all ships flying their flag. While supporting the Seafarer Vice-Chairperson, the representative of the Government of Norway found that the wording “in the same way” in the second sentence was too strong, given that the inspection process was not identical for all ships, e.g., the review of the DMLC was part of the process for certified ships but not for non-certified vessels. The text proposed by the Technical Drafting Committee was adopted. In addition, the Meeting agreed to replace in the last sentence the words “as summarized” with “which are normally identified”.

2.2.11. Flag State inspectors’ reports

Paragraphs 96 and 97

121. The Meeting decided to incorporate a sentence in the guidelines to reflect Standards A5.1.4(12) and A5.1.3(11), which allowed for copies of records to be made available in accordance with national laws or regulations. The text proposed by the Technical Drafting Committee was adopted without further discussion.

Chapter 3. Inspecting the MLC, 2006, maritime labour requirements

122. The Shipowner Vice-Chairperson noted that some of the examples of deficiencies were clear-cut while others required judgement on the part of inspectors. Since the use of judgemental deficiencies might cause confusion, the examples should be made more definitive for inspectors. The representative of the Government of France mentioned that there were translation errors in the French version.
123. The representative of the Government of Denmark stated that a clear reference to the MLC should be added for each example of deficiency. He then sought clarification on the scope of the obligation to inspect. In view of the options given in Regulation 5.1.4(1) (“inspection, monitoring and other control measures”) and the definition of “full inspection” in Standard A5.1.3(8), inspection seemed to be mandatory only for the 14 certification items and not for all matters covered by the Convention.
124. The Deputy Secretary-General responded to the request for clarification by noting that there were two Regulations in the Convention that required flag State inspection. Regulation 5.1.3 covered inspections for the purpose of certifying a ship for compliance and Regulation 5.1.4 covered inspections in general. The inspection under Regulation 5.1.3 was limited in two senses: it only covered the 14 areas listed in Appendix A5-I and only

covered ships of a certain size engaged in international voyages and other ships requesting certification. Inspection under Regulation 5.1.4 was unlimited. It was not limited to the 14 areas, and under paragraph 1 in the key provisions, inspectors had to verify that the shipowner was following the measures relating to working and living conditions as set out in the DMLC, where applicable (a 5.1.3 matter limited to the 14 areas), but they also had to verify that the requirements of the Convention were met. The term “requirements of this Convention” had a special meaning. In accordance with Article II, paragraph 1(e), in the key provisions, it referred to the requirements in the Articles and Regulations and Part A (Standards). The inspection would, in principle, therefore include all areas of working and living conditions covered by the Convention. Ships not covered by Regulation 5.1.3 had under any interpretation to be inspected for compliance with all the requirements of the Convention, to the extent that they were relevant to a ship inspection. It was sufficiently clear from the Convention, read as a whole, that in the case of ships that had to be certified, both Regulations 5.1.3 and 5.1.4 applied. For example, Regulation 5.1.1(2) required effective inspection and certification systems “in accordance with Regulations 5.1.3 and 5.1.4, ensuring that the working and living conditions for seafarers ... meet ... the standards in this Convention”. Regulation 5.1.3 and Appendix A5-I concerned only the inspection needed to issue a certificate for the purpose of providing prima facie evidence of compliance in the 14 areas that could, in principle, be the subject of port State control. In accordance with Regulation 5.1.4, all other areas of the relevant national law had also to be inspected. She noted, in closing, that the Committee of Experts would ask for such information. The Shipowner Vice-Chairperson and the Seafarer Vice-Chairperson noted that full, explicit, accurate guidelines on how to implement the Convention were clearly needed.

125. The expert from the Government of the Marshall Islands found it problematic that some examples of deficiencies related to Part B of the Code. This should be signalled by adding some language such as “if applicable”.

3.1. General note

Paragraph 98

126. The expert from the Government of the Marshall Islands again drew attention to the expression “standard DMLC”, which should be clarified.

Paragraph 99

127. The Shipowner Vice-Chairperson suggested that this paragraph be reworded as it appeared to place undue prominence on the role of the inspector or RO in the identification of gaps in coverage, rather than on the responsibility of the ratifying State to bring its national law and practice into compliance with the MLC. Several Government participants endorsed the position of the Shipowner experts. It was suggested that after the phrase “including ROs” the words “should request clarification” be replaced by “must request clarification”. The last sentence was considered unacceptable. The Seafarer Vice-Chairperson recalled the requirement to consult the social partners in the development of national law and noted that conflicts between the requirements of the Convention and the provisions of national law could well come to light through a complaint made to an inspector. This paragraph might need to accommodate such a situation.
128. The Deputy Secretary-General of the Meeting recognized the concern with ROs acting on behalf of member States, but stressed the seriousness of the problem being addressed in this paragraph. The bulk of the work of the Committee of Experts identified divergence between the requirements of Conventions and the provisions of national law and dealt with issues of non-compliance. She noted the impact for port State control of certification by

flag States and stressed the importance of sending a message to ratifying Members on their obligations. The paragraph called on inspectors to seek clarification from the competent authority in the event of a discrepancy. Rewording might be necessary, but the reality was that inspectors were inspecting for compliance with national requirements. The Chairperson stressed the importance of a feedback mechanism through which problems could be brought to the attention of competent authorities, including legislators.

129. While noting the importance of the issue, the Shipowner Vice-Chairperson still felt clearer guidance should be provided to inspectors, and that the guidelines should not simply tell inspectors to tell their bosses that they are wrong! The Seafarer Vice-Chairperson agreed that the paragraph needed redrafting and pointed to the particular problem of expecting ROs, basically commercial contractors, to be capable of judging compliance or non-compliance with the MLC. It was to be expected that there would be gaps in coverage, but it was best to identify these in the flag State, rather than in the port State where non-compliance could lead to detention of the ship. Complaints would be made and they were one way to test the gaps. Flag States had to be made to deliver on their obligations.
130. The Deputy Secretary-General of the Meeting concluded by citing Guideline B.5.1.4(8)(g), which provided that inspectors should have proper credentials under the national law. They should be able, whether they work for the competent authority or a recognized organization, to alert the relevant authorities regarding lacunae in law or practice and submit appropriate suggestions for improvement.
131. The expert from the Government of Greece stated that the purpose of the guidelines was to provide guidance to flag States for the adoption of legislation in line with the MLC as well as to inspectors for conducting inspections. A member State ratifying the MLC was obliged by its Article III to respect the principles of collective bargaining and freedom of association.
132. The expert from the Government of the Philippines wanted to bring in the perspective of a developing country inspectorate by sketching out the situation in his country: Filipino inspector administrations were undermanned and faced constraints in regard to equipment and facilities. Filipino inspectors used checklist-based tools to assist with inspections. It might be too much to expect from inspectors that they should have a perfect understanding of the MLC. To enable national inspectors to identify “apparent conflict between national laws and the MLC” would require significant capacity building and technical cooperation. The text proposed by the Technical Drafting Committee was adopted without further discussion.

Paragraph 100

133. The expert from the Government of Japan requested consistency between the titles used in the guidelines and those in the MLC. He also wanted the text to distinguish between the 14 items listed in Appendix A5-I and the other five additional areas in the proposed guidelines.

Paragraph 101

134. The Shipowner Vice-Chairperson said the protection of the seafarer’s privacy and the minimization of disturbances during inspections were to be taken into account.
135. The representative of the Government of China noted that the reference to “birth certificates” as an example of documents to be verified was incorrect. It was not customary for seafarers to carry their birth certificates. The expert from the Government of Greece agreed that specific reference to “birth certificates” should be removed and should be replaced with “official documents”. The expert from the Government of Panama and the

representative of the Government of Denmark supported this position. The latter suggested that an explanation of the term “official document” could be introduced.

136. The expert from the Government of the Bahamas suggested the replacement with “seafarer identity documents”, while the expert from the Government of the Philippines expressed the opinion that a passport and payroll records would suffice to determine the identity.
137. The expert of the Government of Malaysia suggested guidance on what was meant by the term “representative number of seafarers”. The Chairperson said it was impracticable to define the term “representative number of seafarers” and preferred to leave this to the professional judgement of the inspector.
138. The representative of the Government of Norway suggested it was not the documentation that was being inspected but the requirements of the Convention.
139. In order to avoid any misunderstanding about the necessity for port State inspectors to inspect certain items or not, the representative of the Government of Denmark proposed a chapeau for the whole Chapter 3 of the guidelines, explaining that the MLC did not require the inspection of some documents mentioned in Chapter 3.
140. The text proposed by the Technical Drafting Committee was adopted. A suggestion made by the expert from the Government of Panama to change the wording in bullet point three to read “seafarers’ work *or* rest schedules” was not accepted, since the determination of the regime rested with the member State.

Paragraph 102

141. The representative of the Government of the United States suggested that the words “and scheduling” should be inserted after the word “context”, since inspections should be arranged when ships were operational and carrying a full crew.
142. The representative of the Russian Federation said that a reference to interim certificates should be added, since a vessel with an interim certificate would not have a DMLC.
143. The Shipowner Vice-Chairperson said that all inspections would not be the same. Though an example was provided in the third sentence, it was not possible to give examples for every situation. Therefore, the paragraph should be clearly written to recognize this.
144. The representative of the Government of Ireland said that this paragraph was not clear and should be redrafted. The text proposed by the Technical Drafting Committee was adopted with a minor correction in the last sentence.

Paragraph 103

145. The expert from the Government of the Bahamas, said that while his delegation agreed with the general content of this paragraph, the word “must”, in Part II of the DMLC, should be replaced by “should”, as it was not possible to account for every possible situation. The representative of the Government of Canada recalled that the MLC required the review of Part II of the DMLC. He suggested therefore that the text might instead read “must be reviewed as a preliminary step”, to bring it into line with the Convention. The text proposed by the Technical Drafting Committee was adopted without further discussion.

146. The expert from the Government of the Philippines, supported by the expert from the Government of Panama, said that the reference to a sampling process should be deleted. The reference to professional judgement should also be removed, since the Philippines wanted its inspectorate to have very clear checklists and a clearly defined mandate. The exercise of individual discretion and judgement should be kept to a minimum.
147. The Chairperson said that there was no reason why a flag State administration should not develop more specific instructions for inspection than those suggested in the guidelines. The guidelines would also serve as a model for flag State administrations to develop training courses for inspectors, and would not necessarily be used by the inspectors themselves. The removal of the reference to professional judgement would render the Guidelines overly prescriptive to other flag States. The representative of the Government of Norway agreed with the Chairperson and said that the paragraph should not be amended.
148. The expert from the Government of the Marshall Islands said the term “professional judgement” should be used with caution.
149. The Seafarer Vice-Chairperson stated that the reference to Standard A5.1.4, paragraph 15, of the MLC, 2006, and unreasonable detention should either be separated into a new paragraph 105 or deleted altogether. The current discussion called into question the decisions that had been taken during the drafting of the MLC, 2006, which had been based on the consideration that inspectors were professional, competent and able to determine the extent of the inspection required. That had resulted in the adoption of Standard A5.1.4, paragraph 3, which stipulated that provisions should be made “to ensure that the inspectors have the training, competence, terms of reference, powers, status and independence necessary to enable them to carry out the verification”.
150. The Chairperson added that Standard A5.1.4, paragraph 9, stipulated that inspectors should have the discretion to give advice instead of instituting or recommending proceedings when there was no clear breach of the requirements of the Convention that endangered the safety, health or security of the seafarers concerned, and where there was no prior history of similar breaches.
151. The expert from the Government of the Philippines, supported by the Shipowner Vice-Chairperson, suggested that the second part of the paragraph, which referred to avoidance of unreasonable detention should become a separate new paragraph 105. The text proposed by the Technical Drafting Committee was adopted without further discussion.

3.2. The MLC, 2006, requirements to be inspected and, where applicable, certified

152. The expert from the Government of the Marshall Islands asked whether the headings of Chapter 3 were to be harmonized with the MLC text or with the DMLC text. The Deputy Secretary-General of the Meeting said that headings should be those used in the main body of the Convention and not in the DMLC, as the requirements to be inspected related to both certifiable and non-certifiable ships.
153. The Seafarer Vice-Chairperson stated that the guidance in section 3.2 addressed the MLC but was not an interpretation of the Convention. The guidelines should help inspectors in identifying “deficiencies”.

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154. The Shipowner Vice-Chairperson endorsed the statement of the Seafarer Vice-Chairperson and stated that any document, even without being an MLC document, would assist those carrying out inspections.

Regulation 1.1 – Minimum age

Basic requirements

155. The Shipowner Vice-Chairperson said that a reference to Standard A4.3, paragraph 2(b), should be added.
156. The expert from the Government of the Philippines asked that the exception clause under Standard A1.1(3) of the MLC be added. The Chairperson noted that issues related to the exceptions (e.g., night work in the case of certain training programmes) were already reflected. The text proposed by the Technical Drafting Committee under this heading was adopted without further discussion.

How to check the basic requirements

157. The Shipowner Vice-Chairperson noted that the text should reflect the requirement to check against national laws and regulations.
158. Regarding the issue of privacy, the Seafarer Vice-Chairperson said he would leave it to the Office to ensure consistency throughout the text.
159. The expert from the Government of Greece requested a clarification on the checking of accident reports and safety committee reports. He questioned the value of referring to historical reports. This created confusion and needed further clarification from the Office. The expert from the Government of Japan further suggested that, before checking reports, inspectors should identify the types of work likely to jeopardize health and safety of young persons, as determined by national regulations. The Seafarer Vice-Chairperson noted that, while there were exemptions that allowed for working under the age of 18 in Standard A1.1.1(4), even when in training, no work should involve persons under the age of 18 if the conditions were hazardous.
160. The Deputy Secretary-General, referring to the intervention of the expert from the Government of Greece, noted that the Convention made special reference to work that could be undertaken by seafarers between 16 and 18 years of age. Accident report could indicate if there were accidents involving seafarers under 18 years, and could be worth checking. She suggested that perhaps *recent* accident reports should be checked.
161. The expert from the Government of the Philippines suggested that as work schedules might be prepared prior to service it might be useful to check time records, which show actual service. After further discussion, the Meeting agreed that the schedule and the records of hours of work or rest could be checked.
162. The Seafarer Vice-Chairperson recalled that interviews with seafarers should be “private”, and the Meeting agreed to reflect this. The text proposed by the Technical Drafting Committee under this heading was adopted without further discussion.

Regulation 1.2 – Medical certificate

Basic requirements

- 163.** The representative from the Government of Denmark pointed out that the medical practitioner need not be recognized. Standard A1.2(4) only required the competent authority to recognize persons qualified to issue a certificate solely concerning eyesight. He preferred that the text be changed to accurately reflect the text of the Convention. The expert from the Marshall Islands added that a similar correction was needed for the last paragraph (marked with two asterisks) under Basic requirements. The Meeting agreed to these changes.
- 164.** The representative from the Government of France pointed out a translation difference for the word “practitioners” as used in the MLC and “medecins” as used in the French version. It was important to reflect the discussions regarding the terms used in the English version.
- 165.** The expert from the Government of the United Kingdom stated that the IMO Subcommittee on Standards for Training and Watchkeeping (STW) had started work on the development of international medical fitness standards for seafarers, as well as a standard form for a seafarer medical fitness certificate. The work would be based on the ILO/WHO Guidelines for Conducting Pre-sea and Periodic Medical Fitness Examinations for Seafarers developed in 1997 to which reference was made in Guideline B1.2.1 of the MLC. In line with the 2006 Resolution V concerning the review of international medical fitness standards, a proposal for the ILO’s participation in the STW Subcommittee’s work would be made to the 303rd Session of the ILO Governing Body (GB) in November. This would also enable the IMO to respect the timeframe for the revision of the STCW Convention. The International Maritime Health Association (IMHA) had been charged with the development of the draft medical standards and the content of a standardized medical certificate in accordance with Regulation 1.2 of the MLC and Regulation 1/9 of the STCW Convention. Participants were encouraged to support the proposal before the GB. The Deputy Secretary-General of the Meeting added that a meeting had recently been held with the WHO and IMHA, and that the ILO Sectoral Activities Branch was preparing a document for submission to the Governing Body. The Meeting endorsed the initiative since the development of a standard form would decrease difficulties during port State control. The text proposed by the Technical Drafting Committee was adopted, with the exception of the second footnote (**) in the third bullet point. Several Government participants stated that, in earlier discussions, it had been decided to amend the relevant text, to bring it into line with Standard A1.2(4), which did *not* require that a medical practitioner be recognized by the competent authority. It was confirmed that the deletion of the second footnote (**) would reflect the decision made in plenary. The Seafarer Vice-Chairperson pointed out that Standard A1.2(4) mentioned “duly qualified practitioners” and wondered who would determine whether they were duly qualified. The Deputy Secretary-General of the Meeting indicated that this might be an oversight in the MLC itself, which required recognition by the competent authority only for persons issuing certificates on eyesight. The Meeting agreed on the deletion.

How to check the basic requirements

- 166.** The expert from the Government of the United Kingdom suggested adding at the end of bullet point three the words “where appropriate”, as not all seafarers required a colour vision certificate, and colour vision was often covered by the main medical examination. The representative of the Government of China was of the opinion that, since Standard A1.2(6) referred to colour vision as part of the medical certificate, bullet point three should be deleted, and bullet point two amended to also cater for colour vision. The participants accepted the proposal made by the expert from the Government of the United

Kingdom. The text proposed by the Technical Drafting Committee under this heading was adopted without further discussion.

Examples of deficiencies

- 167.** As a consequential amendment, the Meeting agreed to add in the first bullet point the words “where appropriate” after “colour vision certificate”. The text proposed by the Technical Drafting Committee under this heading was adopted without further discussion.

Regulation 1.3 – Training and qualifications

How to check the basic requirements

- 168.** The expert from the Government of Panama requested clarification concerning a possible redundancy, since the check of the SMD (bullet point one) was identically repeated in the first bullet of Regulation 2.7 under “How to check the basic requirements”. The Deputy Secretary-General explained that the two examples related to different parts of the MLC and thus were not repetitive. The meaning of “check” in the sense of the guidelines was that the SMD should be referred to so as to verify compliance with the relevant requirement. It did not mean that the SMD had to be inspected twice.
- 169.** In the opinion of the expert from the Government of the Bahamas, the “check of minimum safe manning document (SMD) to verify the qualifications of the seafarers” in the first bullet point was too broad and should be limited to the qualifications required by the flag State. The Meeting agreed that the term “required” should be added before “qualifications”, since the SMD did not actually contain qualifications.
- 170.** The expert from the Government of the Philippines made reference to Regulation 1.3(3), which recognized compliance with mandatory IMO instruments as meeting MLC requirements. As most countries had ratified STCW, the check of all bullet points would be tedious. Verification should be limited to certificates and endorsements. Several Government participants stressed that the list was neither exhaustive nor restrictive and suggested inserting clarification that the items listed were examples and that inspection of more or less items was conceivable. The Deputy Secretary-General of the Meeting confirmed that the guidelines were understood to stipulate examples, and stated that such wording could be inserted, if considered necessary, in paragraph 23 that dealt with the status of the guidelines.
- 171.** Following a query concerning the last bullet point on interviews, the Seafarer Vice-Chairperson re-emphasized that privacy needed to be observed for interviews of a representative number of seafarers. In his opinion, that last bullet point was closely linked to bullet point two: Basic requirements on successful training completion.
- 172.** As for wording agreed in the framework of the flag State guidelines, several Government participants reserved their position with regard to the guidelines for port State control, as that guidance had to be more clear-cut to achieve utmost uniformity.
- 173.** The representative of the Government of the United States suggested adding in bullet point two the words “and endorsements” after “certificates”. The Meeting accepted the proposal, given that certificates could also be endorsed by governments.
- 174.** The expert from the Government of Panama found that the check of training material (bullet point five) should not be part of the inspection of the basic requirements. While asking for clarification on the nature of the training material, he favoured the deletion of that bullet. It was clarified that the training material consisted of guidance specific to the

ship such as a map indicating escape routes, documents on familiarization training, documents concerning life-saving appliances pursuant to the SOLAS Convention or on-board training material for the crew as required by the ISM Code. It was agreed to replace the word “issued” by “available” since training material could rest with the master and be available on board without having to be issued to the crew. In the opinion of the expert from the Government of the Russian Federation, the term “training material” was too broad given that Regulation 1.3(2) only mentioned training for personal safety on-board. The Meeting decided to insert the word “appropriate” before “training material”. The text proposed by the Technical Drafting Committee under this heading was adopted without further discussion.

Examples of deficiencies

175. As a consequential amendment, the Meeting agreed to insert the words “and endorsements” after “certificates” in the third bullet point. The text proposed by the Technical Drafting Committee under this heading was adopted without further discussion.

Regulation 1.4 – Recruitment and placement

Basic requirements

176. In view of the importance of the second sentence of the first bullet point “Seafarers shall not be charged for use of these services”, it was agreed to move it into a separate bullet point.
177. In the second bullet point, the Seafarer Vice-Chairperson observed that while, according to Standard A1.4(9), shipowners using services based in States not party to the MLC needed to ensure as far as practicable that these services conformed with the MLC, Regulation 1.4(3), the ultimate responsibility was with the flag State. According to the legal opinion provided to Japan, Members’ obligations as flag States included ensuring that shipowners had a proper system in place to verify that recruitment and placement services in non-ratifying States acted in line with the Convention. A reference to the flag State’s responsibility in that regard should be included in the “Basic requirements” and in paragraph 4 of the second bullet point in “How to check the basic requirements”. Furthermore, the Seafarer Vice-Chairperson wondered what sort of documentation could be checked to verify that the flag State has fulfilled its obligation to require shipowners to ensure that supply agencies acted in compliance with the provisions of the MLC. The Shipowner Vice-Chairperson concurred that the flag State obligation under Regulation 1.4(3) should be included in the “Basic requirements”. Shipowners could only act in accordance with the directions of the flag State. Several Government participants (Bahamas, Denmark, Greece, Norway, Philippines) endorsed in principle the position of the social partners.
178. Various ideas as to how to discharge that flag State obligation were put forward. Flag States could expect shipowners to enter into a dialogue with placement services and receive a statement on the practices used. They could also verify the compliance of recruitment and placement agents with the relevant government entity in the non-ratifying supply State, rather than merely relying on the word of the recruitment agency. Flag States could expect shipowners to conduct a series of basic checks to satisfy the State that the correct recruitment procedures had been followed and that the requirements of the MLC had been met, e.g. by interviewing seafarers. A reliable approach would also be to use independent verification. The expert from the Government of Greece further pointed to Article I(2) of the MLC which provided that Members should cooperate with each other. In that regard, one Member that had information about non-compliance of a specific manning agent in a country that had not ratified the MLC, could share that information with other

Members. The expert from the Government of the Philippines noted that the ILO document on the recruitment experience of different States and the files of the International Organization for Migration (IOM) on recruitment and placement practices in different countries could be consulted by flag States.

- 179.** Some Government participants felt that, even if a supply State had not ratified the MLC, it might have ratified other ILO Conventions on recruitment. They inquired whether manning agencies that were based in States that had ratified the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), could be accepted. The Deputy Secretary-General of the Meeting replied that elements of information on the ratification and implementation of that Convention by States that have not ratified the MLC could be taken into account by flag States. She confirmed that the primary onus was on flag States to require that shipowners ensured that activities of recruitment services complied with the MLC. A suitable text would be drafted on that point, with particular consideration of Guideline B.1.4.1(3) on exchange of information.
- 180.** The text proposed by the Technical Drafting Committee under this heading was adopted without further discussion. In addition, a working group established to rewrite the recruitment and placement provisions proposed text for two “notes” to be included after the three bullet points. These notes provided further guidance to flag States with regard to two situations: the first being when the private recruitment and placement service was operating on the territory of the flag State; the second, when the recruitment and placement service was based in a State not party to the MLC. The Meeting adopted these notes.

How to check the basic requirements

- 181.** On the first bullet point, the expert from the Government of the Philippines indicated that not all flag States would have relevant national web sites. The bullet point should contain a more general statement allowing to check the registry of private seafarer recruitment agencies. The Meeting agreed and decided to refer to “competent authority” rather than “flag State”. In this context, the Chairperson mentioned that some flag States had marine notice web sites that stipulated which recruitment agencies were reputable. The words “or regulation” were added after “licensing” to cater for differing national systems. The representative of Norway felt that the first bullet point was superfluous and had a too prominent position. He also suggested that the third sentence in paragraph 3 of the second bullet point should be deleted and paragraph 3 separated into two subparagraphs, one describing the scenario whereby a recruitment service was located in the flag State, and the other where the service was located in another State that had ratified the MLC. The Shipowner Vice-Chairperson was also concerned by this bullet point and it was agreed that it should be reworded.
- 182.** The Shipowner Vice-Chairperson noted that paragraph 4 of the second bullet point assumed that shipowners had information on the compliance with the MLC of recruitment and placement services based in non-ratifying countries. Shipowners, however, could only meet an obligation to have documentation, if the flag State required them to have that specific documentation.
- 183.** The Seafarer Vice-Chairperson stated that, in case of recruitment through services not based in countries party to the MLC, it could be useful to check the contract between the shipowner and the supply agency, since it should identify clear links to the MLC in evidence of compliance. Private interviews with seafarers on whether they had been charged for the use of recruitment services would not necessarily be useful, since seafarers would fear that reporting to the agency concerned would result in them losing future employment opportunities. He sought guidance from governments on what else they could look for when seeking proof of compliance with the MLC in relation to recruitment and placement. Seafarers had placed considerable faith in the MLC to eliminate exploitation

from the seafaring industry and hoped that flag States were determined to ensure that shipowners only used placement agencies acting in accordance with the MLC.

- 184.** Some Government participants (Japan, Marshall Islands, Panama) expressed concern that it would not be possible to check for documentary evidence that recruitment services were acting in accordance with the MLC. The Convention did not refer specifically to the provision of documentary evidence, and it was difficult to pin down one method for verifying compliance, as this was an implementation issue and went beyond the remit of the guidelines. The expert from the Government of the Philippines, supported by the Seafarer Vice-Chairperson, believed that verification to determine compliance with Regulation 1.4 required going beyond on-board inspections and undertaking inspections of the offices of shipowners and recruitment and placement services. Inspectors did not necessarily need to travel to other countries, but the flag State could inquire with the labour-supplying State about its inspection system as regards recruitment and placement.
- 185.** The Deputy Secretary-General of the Meeting concluded that paragraph 4 of the second bullet point needed to be modified in the light of the new text to be drafted under the “Basic requirements”. If the flag State failed to meet its obligation under Regulation 1.4(3), shipowners may suffer the consequences if flag States do not fulfil their responsibilities. The Shipowner Vice-Chairperson, supported by the Seafarer Vice-Chairperson, reiterated that shipowners could not step in to take on the responsibilities which flag States had assumed by virtue of ratification. It was not possible to produce acceptable documentation if flag States had not met their obligation. The expert from the Government of the Republic of Korea, supported by other Government participants, wished to put on record that, according to Regulation 1.4(3), Standard A.1.4(9) and the legal opinion, the responsibility placed on the flag State was to make the relevant requirements (“require”) and not to actually “ensure” or issue documentation. The obligation to ensure the compliance of recruitment agencies and provide evidence thereof rested with the shipowners.
- 186.** The Deputy Secretary-General of the Meeting indicated that, due to a translation error in the French version, the word “private” had been used incorrectly in the first line of paragraph 4 and in the body of the text and should be deleted.
- 187.** The text proposed by the Technical Drafting Committee on the first, third and fourth bullet points was adopted without further discussion. The Meeting discussed the text to be included in the second bullet point, that was proposed by a working group established to rewrite the recruitment and placement provisions. The proposed text reflected changes agreed by the Meeting and redrafted the third and fourth subparagraphs under the second bullet point. The third subparagraph concerned seafarers recruited through a private service (or a service operated by a seafarers’ organization) in a country that has ratified the MLC. This was divided into two parts. The first part dealt with seafarers engaged through private recruitment and placement services in the flag State; the second addressed private employment services engaged in another State that had ratified the MLC. The fourth bullet point concerned seafarers recruited through a service that is based in a country that has not ratified the MLC. These texts were adopted.

Examples of deficiencies

- 188.** The Shipowner Vice-Chairperson said that his previous comments regarding documentary evidence also applied to the first bullet point. The expert from the Government of Greece, referring to the second bullet point, noted that, in practice, an inspector who finds a deficiency would take action to rectify the deficiency. Since the deficiency in this bullet point had been caused not by the seafarer but the private seafarer recruitment and placement service, it was essential to clarify that such situations should not lead to the

discharge of the seafarer. The Chairperson suggested that this point should be dealt with in the discussion of Chapter 4.

189. Text for the fourth bullet point, as proposed by the working group established to rewrite the recruitment and placement provisions, was adopted without further discussion.

Regulation 2.1 – Seafarers’ employment agreements

Basic requirements

190. In the second bullet point, the Meeting decided to use the word “contain” instead of “address”, as per the MLC. Given that people on certain categories of ships may not be the direct employees of the shipowner, the participants agreed that the words “where they are not employees” should be inserted before “other evidence of contractual or similar arrangements”, in line with Standard A2.1(1)(a).
191. Concerning the third bullet point, it was confirmed that in countries where discharge books were stamped when the seafarer was leaving the ship, the existence of a procedure to stamp the discharge books would suffice. The text proposed by the Technical Drafting Committee under this heading was adopted, with one minor correction to the first bullet point to more closely reflect the wording of Standard A2.1(1)(a).

How to check the basic requirements

192. Following a query as to the purpose of verifying records of employment (third bullet), it was clarified that Standard A2.1(3) required that there be no statement on the quality of the seafarer’s work contained in the record of employment. The text proposed by the Technical Drafting Committee under this heading was adopted without further discussion.

Examples of deficiencies

193. The Seafarer Vice-Chairperson asked that a new bullet point be added reading: “The SEA contains clauses infringing seafarers’ rights.” The Shipowner Vice-Chairperson accepted the proposal provided that the term was understood as per the MLC.
194. As a consequential amendment, the participants decided to replace the term “address” with “contain” under the second bullet point. The text proposed by the Technical Drafting Committee under this heading was adopted without further discussion.

Regulation 2.2 – Wages

195. The proposal of the expert from the Government of Japan that the title be changed to “Payment of wages” as per Appendix A5-I was not accepted, since it had been agreed to rather use the headings in the MLC text.

Basic requirements

196. The Meeting decided that, in the first bullet point, the words “at no greater than monthly intervals” be added as per Standard A2.2(1).
197. Referring to bullet point four, the expert of the Government of the Philippines proposed to change it to read “Reasonable charges for remittances/allotment transmission services and exchange rates must be in accordance with national requirements”, as, according to Standard A2.2, paragraph 5, of the MLC, only exchange rates needed to be in accordance with national requirements and that the reasonableness only applied to charges. The

Meeting agreed to this suggestion. The text proposed by the Technical Drafting Committee under this heading was adopted without further discussion.

How to check the basic requirements

- 198.** The expert from the Government of the Marshall Islands suggested that the text of the second bullet point should be amended to read “Check that the wages set out in the SEA are consistent with national wages for seafarers, if national laws or regulations governing seafarers’ wages have been adopted, if applicable”. This would reflect that this was drawn from the MLC Guidelines (Part B). The Seafarer Vice-Chairperson remarked that amending “if applicable” was not necessary as the wording already implied this.
- 199.** The Deputy Secretary-General drew attention to two sentences in paragraph 98 of the “General note”, which provided that: “The guidance in section 3.2 takes account of the requirements of the Convention as set out in the Articles and the Regulations and in Part A of the Code, including the obligation on ILO member States to give due consideration to implementing their responsibilities in the manner provided for in the non-mandatory Part B of the Code. This means that there may be differences of detail between provisions of the MLC, 2006, and national provisions (or other measures) that have been adopted to implement the MLC, 2006”.
- 200.** In order to accommodate collective bargaining agreements, the representative of the Government of Sweden suggested changing the wording of the second bullet point to “Check that the wages set out in the SEA are consistent with national wages for seafarers, if national laws, regulations, or collective bargaining agreements, governing seafarers’ wages have been adopted”. The Meeting agreed with this suggestion. The text proposed by the Technical Drafting Committee under this heading was adopted without further discussion.

Regulation 2.3 – Hours of work and rest

- 201.** The representative of the Government of the United States gave a brief overview on the discussions within the IMO at the recent Ad Hoc Intersessional Meeting of the STW Working Group relating to the Comprehensive Review of the STCW Convention and Code. She said that the Meeting was aiming, inter alia, at harmonizing the provisions of the STCW Convention with those of the MLC on hours of work and rest. So far, no agreement had been reached on the hours of rest/hours of work. Furthermore, no agreement had been reached as to whether only seafarers on watch or all seafarers performing designated safety, pollution prevention and security duties, should be included in the new regime. She explained that the proposal for the amendments of the STCW was foreseen to be presented to the Conference of the International Maritime Organization in 2010.
- 202.** The Secretary of the Shipowners’ group remarked that during the abovementioned discussion on the revisions of the STCW Convention, the Shipowners had said that if the goal was to harmonize the STCW and the MLC hours of rest provisions, then the STCW text should reflect all the related provisions of the MLC and not be selective.

Basic requirements

- 203.** The expert from the Government of the Marshall Islands, supported by the expert from the Government of Greece, proposed to change the wording of the first bullet point to “Seafarers’ working time must be in accordance with the MLC, 2006, requirements regarding hours of work or hours of rest” (as opposed to “and”) to reflect Standard A2.3, paragraphs 4, 5 and 6. This would lead to consequential amendments elsewhere in this

section. The text proposed by the Technical Drafting Committee was adopted, after introducing a minor correction and merging the bullet points on the limits on hours of work and hours of rest to highlight that the relevant national law could relate to either one. On the suggestion of the Chairperson of the Technical Drafting Committee, the Meeting further decided to delete the first bullet point, since it duplicated the text in the newly developed bullet points afterwards.

How to check the basic requirements

- 204.** The expert from the Government of Greece, supported by the expert from the Government of Panama, and the EU Member States present, indicated that provisions of Standard A2.3, paragraph 13, of the MLC needed to be referred to and proposed to insert a new sub-point under bullet point three which should read: “– or maximum hours of work or minimum hours of rest are in accordance with a collective agreement permitting exceptions to the abovementioned limits, if such an agreement exists and is authorized or registered by the competent authority”.
- 205.** The Shipowner Vice-Chairperson was generally willing to accept the proposal from Greece if it had the same content as Standard A2.3, paragraph 13, of the MLC and if it was supported by the Government participants.
- 206.** The Seafarer Vice-Chairperson recalled the discussions leading to the adoption of the MLC, as well as the Seafarers’ Hours of Work and the Manning of Ships Convention, 1996 (No. 180), and the discussions within the European Union concerning implementation of the latter instrument. Convention No. 180 and the MLC had been drafted bearing in mind to provide some flexibility but not to lead to less rest than provided for watchkeepers under the STCW. He was concerned at efforts to expand the scope of the STCW to cover seafarers other than watchkeepers and was also concerned at efforts to use the MLC to reduce existing STCW rest requirements for watchkeepers. He accepted the need to refer to the flexibility provided in Standard A2.3, paragraph 13, and also drew attention to Standard A2.3, paragraph 3, and, in paragraph 13, to the words “Such exceptions shall, as far as possible, follow the provisions of this Standard ...”.
- 207.** The Meeting agreed that bullet point three should be redrafted, based on the proposal of the expert of the Government of Greece and Standard A2.3, paragraphs 3 and 13, of the MLC.
- 208.** The expert from the Government of Japan suggested that bullet point four should be changed requiring the inspector to inspect the listed documents before checking the actual hours of work/hours of rest. The text proposed by the Technical Drafting Committee under this heading was adopted without further discussion. In addition, in the light of the discussion concerning fatigue under the heading “Examples of deficiencies”, the Meeting decided to include a new bullet point with wording suggested by the expert from the Government of the United Kingdom: “Check for seafarer fatigue, possibly indicated by hours of work that are consistently at the upper limits by other contributory factors, such as disrupted rest periods”. The Shipowner Vice-Chairperson added that the indications for individual seafarer fatigue should also be included.

Examples of deficiencies

- 209.** The Seafarer Vice-Chairperson wondered whether a further bullet should be added on inspecting for evidence of fatigue, and asked whether inspectors were aware of how to recognize fatigue among crew members on board a vessel.
- 210.** The Shipowner Vice-Chairperson said that it might be difficult to instruct an inspector on how to inspect fatigue. Although fatigue could be caused by excessive working hours, it

could also be caused by inappropriate use of rest hours. His group would be willing to add a new bullet point on the issue, provided it took account of the ambiguity of the situation.

211. The representative from the Russian Federation suggested that the fifth bullet point should be amended to change “logbook” to “logbooks and other documents”. The expert from the United Kingdom further suggested that the fifth bullet point needed to be aligned with the MLC so that it did not inadvertently refer to “exceeding limits of hours of rest”.
212. The Seafarer Vice-Chairperson suggested that wording along the following lines should be added as a sixth bullet point:
- “Seafarer fatigue as evidenced by hours of work consistently at the upper limits and evidence of other contributory factors such as disrupted rest periods. Evidence of individual seafarer fatigue may include symptoms such as inability to concentrate or slow reaction times, etc. The inspection might check for:
 1. Irrelevant and inconsistent reply to questions posed to seafarers.
 2. Lack of concentration or attention.
 3. Unstable gait and delayed response to stimuli (verbal).
 4. Physical observation of possible fatigue – feeling sleepy, yawning and poor physical appearance.”
213. The Shipowner Vice-Chairperson said that inspectors needed objective criteria. The language proposed by the Seafarer Vice-Chairperson contained objective criteria and was an appropriate place to start. However, he pointed out that fatigue was not always related to excessive work but could also result from other causes (e.g., staying up late for recreational purposes) that were themselves not violations of the MLC. The text therefore required careful consideration and drafting.
214. The text proposed by the Technical Drafting Committee on the third and fifth bullet points was adopted without further discussion. The Meeting discussed a new bullet point prepared by the Technical Drafting Committee concerning fatigue. The Shipowner Vice-Chairperson said that, while strongly believing that the issue of fatigue should be dealt with in the guidelines, he could not accept fatigue as an example of deficiencies. He suggested to delete the new bullet point stating that, since flag States fixed the limits on hours of work or rest, the inspector should restrict inspection to violations of the roster provided by the master. The Seafarer Vice-Chairperson expressed his considerable disappointment with the Shipowners’ disregard for the safety of seafarers on board ships. He could not conceive how evidence of seafarers being fatigued should not be considered to be a deficiency in application of the MLC provisions on hours of work and hours of rest. Seafarers had died as a result of fatigue on board, despite on-board regulations on hours of work. The Shipowner Vice-Chairperson and several Government participants suggested moving the content of the bullet to “How to check the basic requirements”, as it rather provided criteria to the inspector on how to conduct the inspection. It was so agreed.

Regulation 2.4 – Entitlement to leave

Examples of deficiencies

215. The Shipowner Vice-Chairperson, referring to the first bullet point, said that in some cases payment for annual leave was factored into wages. Payment was not necessarily made at

the time of annual leave. He wondered whether the bullet point could be amended to reflect this reality.

216. The Seafarer Vice-Chairperson pointed out that, pursuant to Standard A2.4, paragraph 3, which was mentioned in bullet point four, a seafarer could not forgo the minimum annual leave with pay except in cases provided for by the competent authority.
217. The Shipowner Vice-Chairperson said that he would accept the first bullet point without amendment. However, turning to the fifth bullet point, he suggested that it might be amended to reflect only the situation when the shipowner did not permit shore leave, as shipowners might not have control over situations when the port State denied such leave. This matter would also be raised during the forthcoming discussion of port State control inspections related to the MLC. The text proposed by the Technical Drafting Committee under Regulation 2.4 was adopted without further discussion.

Regulation 2.5 – Repatriation

How to check the basic requirements

218. The Shipowner Vice-Chairperson, supported by the expert from the Government of the Marshall Islands, asked why references were made to two guidelines of the MLC, which were not mandatory. The Deputy Director-General, added that the question raised by the Shipowner Vice-Chairperson, explained that the two clauses citing guidelines from the MLC carried the proviso of compliance with “national provisions”. The Shipowner Vice-Chairperson said that while he accepted the Office’s explanation, he suggested that the final bullet could be redrafted to improve clarity.
219. The expert from the Government of the Philippines suggested that inspectors should be required to check past cases of repatriation by looking at travel documentation, invoices and receipts, to provide evidence that seafarers had actually been repatriated. The Chairperson noted that it was within the right of the flag State to formulate instructions for their inspectors in that regard. The text proposed by the Technical Drafting Committee under Regulation 2.5 was adopted without further discussion.

Regulation 2.7 – Manning levels

How to check the basic requirements

220. As a consequential amendment, the Meeting decided to amend the text in bullet point four to read: “Interview, in private, a representative number of seafarers ...”.

Regulation 3.1 – Accommodation and recreational facilities

Basic requirements

221. Responding to a suggestion by the expert from the Government of Namibia that the text of the first bullet point be clarified, the Seafarer Vice-Chairperson suggested that the words “must provide” should be replaced by “, as a minimum, must be in compliance with the international minimum standards established by the MLC”. The Shipowner Vice-Chairperson, responding to the Seafarers’ proposal to amend bullet point one, said that the Meeting had already discussed the question of the term “international minimum standards”, and his group had stated clearly its views on the matter. His group would not accept the use of the term, since it was not in line with the terminology of the MLC. The

Deputy Secretary-General said that the Office would prepare such an introductory paragraph for consideration by the Meeting.

222. The expert from the Government of Japan, supported by the representative from the Government of Namibia, said that the wording of the third bullet should be brought into line with Standard A3.1, paragraph 18, by replacing the word “regular” by “frequent” and by providing that the results of the inspections shall be recorded and available for review”. The Meeting agreed.
223. The expert from the Government of the Marshall Islands suggested inserting the words “in accordance with national requirements applicable at that time” at the end of the fourth sub-bullet of bullet point three. The Meeting agreed.
224. The expert from the Government of the Bahamas suggested that the “Note” paragraphs should be reorganized or formatted to distinguish between requirements for ships coming into service and for ships in existence. The Meeting agreed. The text proposed by the Technical Drafting Committee under this heading was adopted. In addition, the Meeting agreed, in view of the consensus achieved during the discussion on international minimum standards, to insert the following wording between “Ships must” and “provide” in the first bullet point: “be in compliance with the minimum standards established by the MLC, 2006, and must”.

How to check the basic requirements

225. The expert from the Government of Panama, speaking on the third bullet point (sub-indent on hospital accommodation) suggested that “when applicable” be added as the requirement applied to ships carrying 15 or more people. The expert from the Government of Greece did not support this, cautioning against attempts to write all the wording of the MLC in the guidelines.
226. The expert from the Government of the Philippines said it might be useful to include guidance in the text concerning each regulation, on how the inspector should deal with variations and substantive equivalents. A representative of the Office said that the introductory section of Chapter 3 provided only general guidance on this matter, as it was not possible to foresee all possible equivalents and variations.

Regulation 3.2 – Food and catering

Basic requirements

227. The expert from the Government of the Philippines suggested that, in the fourth bullet point, the word “Regular” should be replaced by “Frequent”, as a consequence of changes already agreed under Regulation 3.1.

How to check the basic requirements

228. The expert from the Government of the Marshall Islands drew the attention of the Meeting to the fact that in the second bullet point, the fourth sub-point should become a separate bullet point. The text proposed by the Technical Drafting Committee was adopted, after inserting the words “in private” after “interviewing”.

Examples of deficiencies

229. The expert from the Government of the Philippines suggested inserting the word “frequent” at the beginning of the sixth bullet point. The expert from the Government of

the United Kingdom suggested that a new bullet point be added reading “food or drinking water significantly past its use-by date”. The Seafarer Vice-Chairperson supported the idea but questioned the use of the term “significantly”. The Meeting agreed to the general concept.

Regulation 4.1 – Medical care on board ship and ashore

230. The representative of the Government of Denmark suggested that the words “in principle” should be inserted after “provided” in the second bullet point. The Deputy Secretary-General drew attention to Standard A4.1, paragraph 1(d), particularly the words “to the extent consistent with the Member’s national law and practice”.
231. The Seafarer Vice-Chairperson said that, if it was agreed to accept the insertion of the words “in principle” then guidance on its meaning was needed. Following further discussion (see below under “How to check the basic requirements”) it was agreed that the second bullet point should include the words “in accordance with national law and practice”. The text proposed by the Technical Drafting Committee was adopted by the Meeting.

How to check the basic requirements

232. The Seafarer Vice-Chairperson suggested inserting the words “without charge” after “services” in the first and seventh bullet points.
233. The Shipowner Vice-Chairperson, replying to this, drew attention to two subparagraphs in Standard A4.2. Subparagraph (d) concerned medical care and health protection services while a seafarer is on board ship or landed in a foreign port. This was clearly free of charge. Subparagraph (c), however, concerning the right of the seafarer to visit a qualified medical doctor or dentist ashore, and did not necessarily imply that such visits were at “no cost”. This should be looked at when looking into possible changes to the wording of the bullet point.
234. The observer from the International Christian Maritime Association (ICMA) noted that access to shore leave for the purpose of medical care, and who pays for medical care, were separate issues. He supported the proposal by the Seafarer Vice-Chairperson, as without such words, bullet point seven could mislead inspectors.
235. The Shipowner Vice-Chairperson did not see the value of the second sentence in the footnote (“The DMLC, Part II, should be reviewed to check what provision the shipowner has made for these situations”), as it was difficult to envisage the various scenarios when the port State would refuse to grant the seafarer shore leave and it would be difficult to identify “measures adopted to ensure ongoing compliance between inspections” for such situations.
236. The expert from the Government of Greece said that in the footnote the words “if the port State refuses a seafarer access or” only served to encourage negative behaviour and should be deleted.
237. The Seafarer Vice-Chairperson sought clarification as to whether a port State that had ratified the MLC was obliged to provide access to seafarers. The Deputy Secretary-General referred to Regulation 4.1, paragraph 3, and Standard A4.1.1(d), and said this was an obligation on ratifying States. She suggested that the entire footnote could therefore be deleted. The Meeting agreed.

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238. The expert from the Government of the Philippines noted that the bullet points did not reflect the requirement in Standard A4.1, paragraph 4(d), concerning pre-arranged medical advice and requested the insertion of a bullet point to that end. The expert from the Government of the Marshall Islands said that, while it was possible to check some aspects on the ship, it would be difficult to inspect those aspects that were the responsibility of the competent authority itself, e.g. installing a pre-arranged system of medical advice by radio, etc. The representative from the Government of Korea further said that this was purely a matter for the competent authority and it was not necessary to address it in the guidelines. The representative from the Government of the Russian Federation noted that certain aspects of this issue were related to requirements under the STCW Convention.
239. The representative of the Government of France, supported by the expert from the Government of the United Kingdom, suggested that a new bullet point on this matter could call for the inspector to check if procedures exist on board. The Meeting agreed to this approach.
240. The Meeting considered the reference to training documents in the context of a requirement to carry a qualified medical doctor on board as inappropriate, and decided to delete in bullet point four the word “training” before “documents”.
241. When the Meeting considered text proposed by the Technical Drafting Committee concerning the first bullet point, the Seafarer Vice-Chairperson proposed dividing the first bullet point into two separate bullet points and to put it in line with Standard A4.1. The Meeting subsequently adopted the following two bullet points:
- Check documents (such as the SEA) to confirm that the seafarers have access to medical care and health protection services while seafarers are on board ship, or are landed in a foreign port, free of charge.
 - Check that seafarers are given leave to visit a medical doctor or dentist, without delay, when calling at a port, as practicable and to the extent consistent with national laws and regulations, without charge.
242. The Meeting also amended the text of the bullet point referring to interviews with seafarers by inspectors to ensure that such interviews were conducted in private.
243. The Technical Drafting Committee proposed a new, eighth bullet point, which was adopted following further minor amendments by the Meeting, to read: “Check procedures are in place for radio or satellite communication for medical assistance.”

Examples of deficiencies

244. Due to the possibility of insufficient qualification of medical personnel, the expert from the Government of the Russian Federation proposed to add at the end of bullet point four the words “or improperly trained”. The participants supported the proposal as being an appropriate example of deficiency while seeking to find more appropriate wording, as STCW-certificated personnel should not be improperly trained.
245. Considering that the requirement to provide health protection and care at no cost to the seafarer was not reflected in the examples of deficiencies, the Meeting decided to add a new bullet reading “Evidence for charging for health protection and medical care”. The text proposed by the Technical Drafting Committee for the sixth bullet point was adopted without discussion.

Regulation 4.2 – Shipowners’ liability

Basic requirements

246. The Meeting agreed to add the words “until the sick or injured seafarers have recovered, or until the sickness or incapacity has been declared of a permanent character” at the end of the second bullet point, in order to bring it more in line with Standard A4.2(1)(c). Similarly, it was suggested to use the words “shall be liable” and add the wording “occurring between the date of commencing duty and the date upon which they are deemed duly repatriated, or arising from their employment between those dates”, to reflect more closely the language of Standard A4.2(1)(a). The Technical Drafting Committee revised the second bullet point, and this was adopted by the Meeting without further discussion.

Regulation 4.3 – Health and safety protection and accident prevention

Basic requirements

247. In the third bullet point, the Meeting accepted to include wording from Standard A4.3(2)(d) with regard to the right of the seafarers appointed or elected as safety representatives to participate in meetings of the ship’s safety committee. The text proposed by the Technical Drafting Committee was adopted without further discussion.

How to check the basic requirements

248. The Shipowner Vice-Chairperson and a few Government participants requested clarification as to whether the examples enumerated under the last bullet point were drawn from Part B of the Code, as this would elevate non-binding guidelines to items subject to inspection. The flag State inspector would end up inspecting the implementation of the competent authority rather than the compliance of the ship. Moreover, Guideline B4.3.1(2) of the MLC mentioned another layer of guidelines, namely national guidelines for occupational safety and health management addressing the listed items. The fact that the present guidelines now elevated the national guidelines referred to in the non-binding B4.3.1(2) to items inspected by the inspector was unacceptable. The inspector should only inspect items laid down in national law.
249. A representative of the Office confirmed that the examples were mainly taken from the Guidelines in the MLC. However, the fact that Part B of the Code was non-mandatory but member States had to give due consideration to it, would mean that member States implementing the provisions of the Guidelines in the MLC could choose to translate them into national laws and regulations. While countries were free to decide, the wording of Standard A3.1(2)(a) required them to take the Code provisions on health and safety protection, including B4.3.1(2), into account, which could narrow down possible actions of the country. The Seafarer Vice-Chairperson believed that it was appropriate that the inspector took Part B of the Code into account and satisfied himself that national guidelines were applied aboard ship.
250. The expert from the Government of the United Kingdom suggested changing the chapeau of the last bullet to read “Check that, with respect to health and safety protection and accident prevention, special consideration is given to any national requirements covering:”. The Meeting so decided, as the language made it clear that Governments could decide whether or not to translate Part B of the Code into national laws or regulations.

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251. Regarding ILO Conventions and Recommendations dealing with health and safety protection and accident prevention, without excluding certain categories of workers like seafarers, e.g. the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) and the related Recommendation No. 197, the question was raised whether it was possible for an administration to implement those ILO standards in the framework of the inspection system under the MLC. The Deputy Secretary-General of the Meeting replied that, under Convention No. 187, Members needed to develop a national health and safety policy, system and programme, and nothing prevented them from taking a holistic approach provided it met the MLC requirements for occupational safety and health.
252. The text concerning the seventh and eighth bullet points, as proposed by the Technical Drafting Committee was adopted without further discussion.

Regulation 4.5 – Social security

How to check the basic requirements

253. In the first bullet point, the expert from the Government of Japan expressed practical concerns as to how to conduct inspections related to social security. It seemed impossible for a flag State to check that proper social security had been provided on board by the resident State according to Standard A4.5(3). It was clarified that, in case of seafarers covered by their national social security system, flag State inspection only needed to ensure that the appropriate contributions had been made, which would involve checking payment records.
254. Concerning a possible contradiction pointed out in the third bullet point (“mandatory contributions, if any”), the Deputy Secretary-General of the Meeting explained that this wording tried to reflect social security systems where seafarers benefited even when they did not contribute, such as in Scandinavian countries. The Technical Drafting Committee inserted the words “in private” in the second bullet point, and the Meeting adopted the text without discussion.

Standard A5.1.1 – General principles

255. The expert from the Government of the Philippines asked why this item was tagged as “inspected” when the Standard dealt with general principles of inspection. It was explained that the tag simply indicated that those issues had to be looked at.
256. The Seafarer Vice-Chairperson inquired in what language the on-board MLC copy should be, since the idea was that seafarers should be able to consult the authoritative text to determine their rights. It was noted that the MLC was silent on this point, and that this possible oversight might need to be considered at future revisions of the Convention.
257. The expert from the Government of Panama asked whether it would suffice if the MLC was available on board electronically. The Deputy Secretary-General of the Meeting indicated that Standard A5.1.1(2) required that a copy of the Convention be on board, i.e. preferably a hard copy, or possibly a CD-ROM if accessible to all.

Regulation 5.1.5 – On-board complaint procedures

258. While there was no explicit reference to the language of on-board complaint procedures in the MLC, the Seafarer Vice-Chairperson held that the “fairness and effectiveness requirement” in Regulation 5.1.5(1) of the MLC would support the argument that

procedures seeking to provide advice and assistance to seafarers needed to be understood by them. The Meeting thus agreed to include wording that a copy of the on-board complaint procedures should be provided to the seafarer in the working language of the ship.

Chapter 4. Action to be taken if deficiencies are identified

4.1. General note

Paragraphs 105 and 106

- 259.** The Shipowner Vice-Chairperson expressed concern that, according to the text, ROs that were allowed to identify deficiencies would not be authorized to determine the action to be taken. The Meeting agreed that paragraphs 105 and 106 needed to be brought into line with Standard A5.1.2(2), according to which authorizations granted to ROs with respect to inspection should, as a minimum, empower the RO to require the rectification of deficiencies. It should, however, be made clear that the flag State would have to authorize the RO to take certain action.
- 260.** The text for paragraph 106 proposed by the Technical Drafting Committee was amended to remove a sentence stating that “Moreover, action to enforce the national requirements is a matter for the flag State” (Standard A5.1.4) and to add, to the final sentence “and to carry out inspections in this regard at the request of the port State”. These changes were aimed at bringing the text into line with Standard A5.1.4, paragraph 17, concerning penalties and corrective measures.

Paragraph 107

- 261.** The expert from the Government of the Marshall Islands said that there appeared to be confusion in relation to the use of the term “flag State inspector”, which encompassed not only those working under the competent authority, but also those working on behalf of the competent authority, i.e. ROs. Since ROs would not have the same scope of responsibility as flag State inspectors with regard to the imposition of penalties, it was suggested that the words “flag State inspector or” should be deleted from the second sentence. The Deputy Secretary-General of the Meeting pointed out that, according to the text, national laws or regulations may enable flag State inspectors to impose penalties and corrective measures, and it was therefore the choice of the individual flag State administration as to whether or not to authorize ROs in this regard. It was therefore decided to leave the paragraph as is.
- 262.** The expert from the Government of the Bahamas said that when detaining a ship, the inspector should be aware that the possibility of an appeal existed and should inform the master of the detained vessel about this possibility. He suggested the insertion of an additional paragraph after paragraph 107 reflecting the text of Standard A5.1.4, paragraph 8, of the MLC. The Shipowner Vice-Chairperson shared this view but suggested that this text might instead be inserted after paragraph 113. With the support of the representative of the Government of Denmark, he further suggested that the text might read “The flag State inspector shall also provide information on any right of appeal”. The Seafarer Vice-Chairperson indicated that the text proposed by the Shipowner Vice-Chairperson was not entirely consistent with the MLC, and that he preferred the proposal from the Bahamas. It was agreed the wording should reflect Standard A5.1.4, paragraph 8, of the MLC.

Paragraph 110

- 263.** The representative of the Government of Denmark, referring back to the discussion and changes agreed with respect to paragraphs 96 and 97, suggested to insert “, in accordance with national law and practice” after “in English)”. This was agreed.

Paragraph 111

- 264.** The expert from the Government of the Marshall Islands proposed the usage of bold script for paragraph 111. In his opinion, the content of paragraph 110 was closely linked to paragraph 112 and he suggested moving paragraph 111 to the beginning of the section.

Paragraph 112

- 265.** The expert from the Government of the United Kingdom stated that the Government participants had discussed paragraph 112 in some detail and that there was a common concern that the example given in this paragraph would not exhaustively reflect Standard A5.1.4, paragraph 7(c), of the MLC. She suggested redrafting:

“However, if the lighting is faulty or inadequate in a number of sleeping rooms and/or there is a history of this problem then it may be a basis to keep the ship in port until it is addressed. In other instances, to continue with the example, a deficiency related to lighting on the ship may well constitute a general occupational safety and health problem and the ship should not sail until it is rectified.”

to read:

“However, if there was a history of this problem or if faulty or inadequate lighting in areas including sleeping rooms indicated an overall occupational safety and health problem, meeting of criteria in Standard A5.1.4, paragraph 7(c), of the MLC, a decision may be taken that a ship should not sail until deficiencies are rectified.”

- 266.** The Seafarer Vice-Chairperson aligned himself with the change suggested by the expert from the Government of the United Kingdom but expressed concern that the example did not draw sufficient attention to the breach of seafarers’ rights. It was agreed that the text should be considered for possible redrafting.
- 267.** The expert from the Government of Greece stated that he agreed that all deficiencies had to be rectified. However, referring to deficiencies related to the use of private recruitment and placement agencies, he suggested inserting in paragraph 112 “The rectification of deficiencies in relation to implementation of recruitment and placement service requirements of the MLC, 2006 should not involve the affected seafarers.” This would protect the seafarer.
- 268.** The Shipowner Vice-Chairperson, commenting on the above proposal, said that the text should take into account situations when a seafarer was well aware that he or she had been engaged through an illegal process.
- 269.** The Seafarer Vice-Chairperson, supported by the expert from the Government of the Philippines, supported the proposal of the expert from the Government of Greece if it could be understood to mean that:
- if the seafarers’ employment agreements were faulty due to an illegal clause, rectification would not mean the removal of all seafarers on board but the removal of that illegal clause;

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- if the crew had been charged fees for being hired by a private recruitment and placement service, although they knew that this practice was illegal, the rectification would not lead to the discharge of the seafarer(s) concerned but to action (perhaps “blacklisting”) against the private recruitment and placement service.

270. The expert from the Government of the Bahamas, while expressing his sympathy with the proposal of the expert from the Government of Greece, wanted to ensure that for the case of the private recruitment and placement service’s illegal recruitment of an under-age seafarer, the seafarer could not remain on board. The representative of the Government of Denmark further noted that this would also be the case for unqualified seafarers.

271. The Seafarer Vice-Chairperson agreed that under-aged and unqualified/uncertified seafarers constituted a risk not only to themselves and should be taken off the vessel.

Paragraph 114

272. The expert from the Government of the Philippines, referring to paragraph 114, first bullet point, said that his Government would welcome support from the ILO with respect to scientific and technical advice needed by inspectors.

273. The Seafarer Vice-Chairperson pointed out that under the MLC a maritime labour certificate could not be endorsed following a renewal inspection but that a new certificate must be issued. It was therefore agreed that the third bullet point should be reworded.

Adoption of the guidelines

274. The guidelines were adopted by consensus.

Report

275. The draft report of the Meeting could be circulated to participants by email following the closing of the Meeting. The final report would incorporate appropriate changes proposed by the participants.

Closing of the Meeting

276. The Chairperson proposed that the draft guidelines should be adopted on the understanding that the Technical Drafting Committee, with the supervision of the Office, would later confirm that the text contained all amendments that the Meeting had agreed. The Shipowner Vice-Chairperson, the Seafarer Vice-Chairperson and the expert from the Government of Panama, speaking as Chairperson of the Government group, agreed to this proposal.

277. The Meeting adopted the Guidelines for flag State inspections under the Maritime Labour Convention, 2006.

278. The Shipowner Vice-Chairperson, the Seafarer Vice-Chairperson and the Government Vice-Chairperson expressed their appreciation to the Office, their own groups and the other participants for the excellent work done and cooperation throughout the week.

279. The Deputy Secretary-General of the Meeting expressed her thanks to all participants and the ILO secretariat. She gave particular thanks to Mr Neil Atkinson, from the Government of the United Kingdom, who had made an extremely valuable contribution in the drafting of the guidelines.

Revised list of participants
Liste révisée des participants
Lista de participantes revisada

Chairperson
Président
Presidente

Captain Nigel Campbell
Head, Occupational Health and Safety Unit
South African Maritime Safety Authority
Carnavon Place, Humeral
Port Elizabeth
SOUTH AFRICA
Fax: +27 41 585 0051
Fax: +27 41 582 1213
Email: ncampbell@samsa.org.za

Governments experts
Experts des gouvernements
Expertos de los gobiernos

Mr Robin Phillips
Deputy Director
Bahamas Maritime Authority
120 Old Broad Street
London EC2N 1AR
UNITED KINGDOM
Tel.: +44 20 7562 1330
Fax: +44 20 7614 0680
Email: rphillips@bahamasmaritime.com

Adviser/Conseiller technique/Consejero técnico

Mr Michael Crye
2111 Wilson Boulevard
8th Floor
Arlington, VA 22201
UNITED STATES
Email: mcrye@cruising.org

EGYPT EGYPT EGIPTO

Mr Salah Mohamed El Torgoman
General Manager, Ship Registration & Crew Affairs
Egyptian Authority for Maritime Safety
6 Ahmed Youssef St.
Bulky Alexandria 21513
EGYPT
Tel.: 010 56 409 36
Fax: 002035434138
Email: salaheltorgoman@yahoo.com

GREECE GRÈCE GRECIA

Captain Georgios Boumpopoulos
Director of Seamen's Labour Directorate
Ministry of Mercantile Marine, The Aegean and Island Policy
Gr. Lambraki 150
Piraeus 18518
GREECE
Tel.: +30 2104191743
Fax: +30 2104191561
Email: dner@yen.gr

Adviser/Conseiller technique/Consejero técnico

Mr Nikolaos Isakoglou
Staff Officer of Seamen's Labour Directorate
Ministry of Mercantile Marine, The Aegean and Island Policy
Gr. Lambraki 150
Piraeus 18518
GREECE
Tel.: +30 2104191108
Fax: +30 2104191561
Email: dner@yen.gr

JAPAN JAPON JAPÓN

Mr Naoki Saito
Special Assistant to the Director
Safety Management & Seafarers Labour Division
Maritime Bureau
Ministry of Land, Infrastructure, Transport and Tourism
2-1-3 Kasumigaseki, Chiyoda-ku
Tokyo 100 8918
JAPAN
Tel.: +81 3 5253 8652
Fax: +81 3 5253 1643
Email: saitou-n25x@mlit.go.jp

Advisers/Conseillers techniques/Consejeros técnicos

Mr Daisuke Shoya
Deputy Director
Safety Management & Seafarers Labour Division
Maritime Bureau
Ministry of Land, Infrastructure, Transport and Tourism
2-1-3 Kasumigaseki, Chiyoda-ku
Tokyo 100 8918
JAPAN
Tel.: +81 3 5253 8652
Fax: +81 3 5253 1643
Email: shoya-d2yx@mlit.go.jp

Mr Seiichi Tajima
First Secretary
Permanent Mission of Japan
3, chemin des Fins
1211 GENEVE 19
SWITZERLAND
Tel.: +41 22 717 3105
Fax: +41 22 717 9870
Email: seiichi.tajima@ge-japan.ch

REPUBLIC OF KOREA RÉPUBLIQUE DE CORÉE REPÚBLICA DE COREA

Mr Bong Su Jang
Deputy Director
Ministry of Land, Transport and Maritime Affairs
No. 1 Jung-dong Kyeong gi-do
Seoul
REPUBLIC OF KOREA
Tel.: +82 02 45 5499
Office: +82-02-2110 8591
Fax: +82-02-2110 2699

Advisers/Conseillers techniques/Consejeros técnicos

Mr Yeong Woo Jeon
Professor/Legal Adviser to the Ministry
Korean Institute of Maritime and Fisheries Technology
No. 123 Yong-Dang, Nam-Gu
Busan
REPUBLIC OF KOREA
Tel.: +82 51 620 5822
Fax: +82 51 624 9081
Email: jyw@seaman.or.kr

Mr Jeong-Chong Jeon
General Manager
Statutory System Certification Team
Korean Register of Shipping
60, Sinseongno, 23-7, Jang-dong Yuseong-gu
Deajeon
REPUBLIC OF KOREA
Tel.: +82 42 869 9360
Fax: +82 42 862 6020
Email: jcjeon@krs.co.kr

MARSHALL ISLANDS ILES MARSHALL LAS ISLAS MARSHALL

Mr Nicholas Makar
Deputy Commissioner of Maritime Affairs
Republic of the Marshall Islands
Office of the Maritime Administrator
11496 Commerce Park Drive
Reston VA 20191
UNITED STATES
Tel.: +1 703 620 4880
Fax: +1 703 476 8522
Email: nmakar@register-iri.com

Advisers/Conseillers techniques/Consejeros técnicos

Ms Angela Plott
Deputy Commissioner of Maritime Affairs
Republic of the Marshall Islands
c/o International Registries, Inc.
11496 Commerce Park Drive
Reston VA 20191
UNITED STATES
Tel.: 1 703 620 4880
Fax: 1 703 860 2178
Email: aplott@register-iri.com

Mr Dinesh Thareja
Head-Safety Certification
ABS Corporate
16855 North Chase Dr
Houston TX 770 60
UNITED STATES
Tel.: +281 877 6627
Fax: +281 877 5815
Email: dthareja@eagle.org

Mr Thomas Heinan
Senior Deputy Commissioner of Maritime Affairs
Republic of the Marshall Islands
c/o International Registries, Inc.
11496 Commerce Park Drive
Reston VA 20191
UNITED STATES
Tel.: 1 703 620 4880
Fax: 1 703 860 2178
Email: theinan@register-iri.com

PANAMA PANAMÁ

Mr Napoleón Smith
Executive Director
International Representative Office
Panama Maritime Authority
369 Lexington Ave, 14th Floor
New York NY 10017
UNITED STATES
Tel.: +212 869 6440
Fax: +212 575 2285
Email: nsmith@segumar.com

Adviser/Conseillère technique/Consejera técnica

Sra. Nyxkhari Ardila Guillén
Jefa del Departamento de Asuntos Laborales Marítimos
Dirección General de Gente de Mar de la Autoridad Marítima
Edificio Pancanal, Albrook
0483 Balboa Ancón 0533
PANAMÁ
Tel.: +507 501 5066
Fax: +507 501 5210

PHILIPPINES FILIPINAS

Mr Hans Leo Cacdac
Deputy Administrator
Philippine Overseas Employment Administration
Blas F. Ople Bldg, Ortigas Ave. Cr. Edsa Mandaluyong City
Mandaluyong City 1555
PHILIPPINES
Tel.: +632 7221153
Fax: +632 7219498
Email: habyl305@yahoo.com

Advisers/Conseillers techniques/Consejeros técnicos

Mr Noriel Devanadera
Deputy Administrator/Head Dole Maritime Office
Department of Labor and Employment
4th Floor, Dole Bldg. Intramuros
Manila 1002
PHILIPPINES
Tel./Fax: +63 525 8119
Email: mr_noriel@yahoo.com

Mr Ramon T. Tionloc Jr.
Labor Attaché
Department of Labor and Employment
4th Floor, Dole Bldg. Intramuros
Manila 1002
PHILIPPINES

Mrs Gloria Bañas
Deputy Administrator for Planning
Maritime Industry Authority
4th Floor, Trida Bldg, T.M. Kalan St.
Metro Manila
PHILIPPINES
Tel.: +63 2 524 6121
Fax: +63 2 524 6121
Email: odap-marina@yahoo.com

RUSSIAN FEDERATION FÉDÉRATION DE RUSSIE FEDERACIÓN DE RUSIA

Mr Alexander Gorobtsov
Associated Professor
Admiral Makarov State Maritime Academy
Kosaya Linia, 15A
St. Petersburg 199106
RUSSIAN FEDERATION
Tel.: +7812 444 0004 / 7812 322 0682
Fax: +7812 444 2470
Email: mail@gma.ru
Gorobtsov_a@list.ru

Advisers/Conseillers techniques/Consejeros técnicos

Ms Elena Shchurova
Deputy Director of Administrative Department
Ministry of Transport
1-1, Rozhdestvenka str.
109012 Moscow
RUSSIAN FEDERATION
Tel.: +7495 792 1948
Fax: +7495 626 1183
Email: shurovaev@mintrans.ru

Mr Alexander Samsonov
Head of Legal & Organization Department
Federal Agency of Marine & River Transport
Moscow
RUSSIAN FEDERATION
Tel.: +7495 626 10 02
Fax: +7495 626 96 54
Email: samsonovaa@mintrans.ru

Ms Elena Lavrentieva *
Pro-Rector of Academic Makarov State Maritime Academy
Mr Pavel Zemliansky
Head of the ILO Sector
Russian Maritime Register
8, Dvortrovaya Nap
St Petersburg 198510
RUSSIAN FEDERATION
Tel.: +7812 380 19 57
Fax: +7812 380 19 58
Email: zemliansky@rs-head.spb.ru

Mr Viacheslav Bilyk *
Senior State Inspector of the Control over Foreign Vessels
of State Port Control Administration of Kaliningrad Port

UNITED KINGDOM ROYAUME-UNI REINO UNIDO

Ms Mary Martyn
Head of Seafarer Safety & Health
Maritime and Coastguard Agency
Spring Place, 105 Commercial Road
Southampton SO15 1EG
UNITED KINGDOM
Tel.: +44 2380 329216
Fax: +44 2380 329251
Email: mary.martyn@mcga.gov.uk

Advisers/Conseillers techniques/Consejeros técnicos

Mr Roger Janson
Manager Survey Operations Policy
Maritime and Coastguard Agency
Spring Place, 105 Commercial Road
Southampton SO15 1EG
UNITED KINGDOM
Email: roger.janson@mcga.gov.uk

Ms Julie Carlton
Deputy Head of Seafarer Safety and Health and Safety Branch
Maritime and Coastguard Agency
Spring Place, 105 Commercial Road
Southampton SO15 1EG
UNITED KINGDOM
Tel: +44 799 0681 291
Fax: +44 2380 329 390
Email: julie.carlton@mcga.gov.uk

Mr Roland Ives
Lloyds Register
71 Fenchurch Street
London EC3M 4BS
UNITED KINGDOM
Email: roland.ives@lr.org

* Did not arrive by 18.09.2008.
Non arrivés le 18.09.2008.
Sin llegar el 18.09.2008.

Ms Vicky Hutchinson
Shipping Policy
Zone 2/33
Great Minister House
76 Marsham Street
London SW 1P 4DR
UNITED KINGDOM
Tel: +44(0) 20 79 44 5161
Email: vicky.hutchinson@dft.gsl.gov.uk

Mr Malcom Blake-Lawson
Head of Branch
International Shipping & Relations Department for Transport
Great Minister House, Zone 2/33
76 Marsham Street
London SW 1P 4DR
UNITED KINGDOM
Tel: +44(0) 20 79 44 2254
Fax: +44(0) 7944 21821
Email: malcolm.blake-lawson@dft.gsi.gov.uk

Shipowner experts
Experts des armateurs
Expertos de los armadores

Mr Fabrizio Cirnigliaro
International Shipping Federation
Confederazione Italiana Armatori (CONFITARMA)
Piazza S. Apostoli 66
00187 Roma
ITALY
Tel.: +39 06 674 81245
Fax: +39 06 697 83724
Email: fabrizio.cirnigliaro@confitarma.it

Mr Joseph J. Cox
President
Chamber of Shipping of America
1730 M Street NW, Suite 407
Washington DC 20036-4517
UNITED STATES
Tel.: +1 202 775 4399
Fax: +1 202 659 3795
Email: jcox@knowships.org

Ms Maria R. Del Busto
Global Chief Human Resources Officer & VP
Royal Caribbean Cruises Ltd
1050 Caribbean Way
Miami Florida 33132
UNITED STATES
Tel.: +305 539 6307
Fax: +306 539 6232
Email: mbusto@rccl.com

Ms Theresa Hatch
Executive Director
Australian Shipowners' Association
Level 1, 4 Princes Street
Port Melbourne Victoria 3207
AUSTRALIA
Tel.: + 61 3 9646 0755
Fax: + 61 3 9646 2256
Email: teresa.hatch@asa.com.au

Mr Joseph Ludwiczak
General Secretary
Liberian Shipowners' Council Ltd
99 Park Avenue, Suite 1700
New York NY 10016-1601
UNITED STATES
Tel.: +1 212 973 3896
Fax: +1 646 217 3869
Email: jl@liberianshipowners.com

Sr. Hernán Morales Villamor
Asesor Laboral
Asociación Nacional de Armadores
Blanco 795
Valparaíso
CHILE
Tel./Fax: +56 32 2212057
Email: info@armadores-chile.cl / hmorales@ssm.cl

Mr Carlos C. Salinas
Chairman
Philippine Transmarine Carriers, Inc.
Filipino Shipowners' Association
First Maritime Place, 7458 Bagtikan St.
San Antonio Village
Makati City 1203
PHILIPPINES
Tel.: +632 8981193
Fax: + 632 8981194
Email: ccsalinas@ptc.com.ph

Mr David Tongue
International Shipping Federation (ISF)
12 Carthusian Street
London EC1M 6EZ
UNITED KINGDOM
Tel.: +44 20 7417 8844
Fax: +44 20 7417 8877
Email: david.tongue@marisec.org

Admiral Armando Amorin Ferreira Vidigal
Syndarma
Rua Visconde de Inhaúma 134-10 Andar
Rio De Janeiro CEP 20 094
BRAZIL
Tel.: +55 21 2223 1202
Fax: +55 21 2223 0230
Email: syndarma@syndarma.org.br

Mr Shuichoro Yoshida
General Manager, Labour Affairs Group
Marine Division
Japanese Shipowners' Association
Kaiun Bldg, 6-4 Hirakawa-cho
2-chome, Chiyoda-ku
Tokyo 102-8603
JAPAN
Tel.: +81 3 3264 7341
Fax: +81 3 3262 6767
Email: s-yoshida@jsanet.or.jp

Shipowners' advisers/Conseillers techniques des armateurs/Consejeros técnicos de los armadores

Mr Takashi Aihara
Manager, Marine Division
Japanese Shipowners' Association
Kaiun Bldg, 6-4 Hirakawa-cho, 2-chome, Chiyoda-ku
Tokyo 102-8603
JAPAN
Tel.: +81 3 3264 7348
Fax: +81 3 3262 6767
Email: t-aihara@jsanet.or.jp

Mr Gerardo A. Borromeo
Chief Operating Officer
Philippine Transmarine Carriers, Inc.
Filipino Shipowners' Association
Room 503, 5th Floor, Victoria Building
429 United Nations Avenue
Ermita Manila
PHILIPPINES
Tel.: +632 8981193
Fax: + 632 8981194
Email: gborromoe@ptc.com.ph

Mr Kurt Buergin
Swiss Shipowners Association
Avenue des Baumettes 7
Case postale 48
1020 Renens 1
SWITZERLAND
Tel.: +41 21 63 72 241
Fax: +41 21 63 72 202
Email: activity@suisat.com

Mr Georgios Koltsidopoulos
Legal Adviser
Union of Greek Shipowners
85 Akti Miaouli
Piraeus 185 38
GREECE
Tel.: +30 210 429 1159
Fax: +30 210 429 0107
Email: ugs@ath.forthnet.gr

Mr Kimo Kostianen
Marine Adviser
Finnish Shipowners' Association
FINLAND
Email: kimo.kostianen@shipowners.fi

Mr William Mcknight
Japanese Shipowners' Association
Kaiun Bldg, 6-4 Hirakawa-cho
2-chome, Chiyoda-ku
Tokyo 102-8603
JAPAN

Ms Edith Midelfart
Attorney at Law
Norwegian Shipowners' Association
Raadhusgaten 25, PO Box 1452, Vika
0116 Oslo
NORWAY
Tel.: +47 22 40 15 00
Fax: +47 22 40 15 15
Email: em@rederi.no

Ms Alexandra Pohl
Verband Deutscher Reeder
Esplanade 6, Postfach 305580
20354 Hamburg
GERMANY
Tel.: +49 40 35 0970
Fax: +49 40 35 097211
Email: pohl@reederverband.de

Mr Tim Springett
Head of Labour Affairs
The Chamber of Shipping
Carthusian Court, 12 Carthusian Street
London EC1M 6EZ
UNITED KINGDOM
Tel.: +44 20 7417 2820
Fax: +44 20 7726 2080
Email: tim.springett@british-shipping.org

M^{me} Nicole Van Echelpoel
Directrice adjointe
Union royale des armateurs belges
Brouwersvliet 33 bg
2000 Anvers
BELGIQUE
Tel:+32 3 232 72 32
Fax:+32 3 231 39 97
Email:nicky.simons@bzy.be

Mr Guillermo Villa
Vice-President Global, Human Resources Total Reward
Royal Caribbean Cruises Ltd
1050 Caribbean Way
Miami Florida 33132
UNITED STATES
Tel.: 3055396301
Email: GuillermoVilla@rccl.com

Seafarers' experts
Experts des gens de mer
Expertos de la gente de mar

Sr. Marcos Castro

Presidente

Centro de Capitanes de Ultramar y Oficiales de la Marina Mercante
Perú 779/83

Buenos Aires C1068 AAE

ARGENTINA

Tel.: +5411 4300 9700 /01/02/03

Fax: +5411 43009704

Email: marcos_castro@ciudad.com.ar / presidente@capitanes.org.ar

M. Mel Joachim Djedje Li

Secrétaire general

Syndicat des marins ivoiriens au commerce (SYMICOM)

Immeuble Hallany, 01 B.P. 3140

Abidjan 01

CÔTE D'IVOIRE

Tel.: +225 07 88 00 83 / 225 21 35 72 17

Fax: +225 21 35 72 17

Email: dmjoachim@yahoo.fr / syndicat_marins_ivoiriens@yahoo.fr

Mr Igor Kovalchuk

1st Vice President

Seafarers' Union of Russia

6 Bolshoy Koptevskiy Proyezd, PO Box 61

Moscow 125319

RUSSIAN FEDERATION

Tel: +7(0) 495 229 9119

Fax: +7(0) 495 234 4368

Email: kovalchuk@sur.ru

Mr Zhu Linqing

Vice-Chair

Chinese Seamen's Union

10 Fuxingmenwai Street

Beijing 100865

CHINA

Tel.: +8610 6859 1446

Fax: +86 10 6856 2031

Email: zhulinqing@acftu.org.cn

Mr Peter McEwen

Nautilus UK

Maritime Charities Funding Group

750-760 High Road

Leytonstone

London E11 3BB

UNITED KINGDOM

Tel.: +44 20 8989 6677

Email: pmcewen@nautilusuk.org

Mr Birger Mordt

Norsk Sjomannsforbund

Rosenkrantz' Gate 15-17

PO Box 2000 Vika

0125 Oslo

NORWAY

Tel.: +47 (0)24 14 8370

Email: post@dnmf.no / bmor@sjomannsunion.no

Mr Brian Orrell
General Secretary
Nautilus UK
750-760 High Road
Leytonstone
London E11 3BB
UNITED KINGDOM
Tel.: +44 (0)8 989 6677
Email: borrell@nautilusuk.org

Mr Michael J. Rodriguez
Executive Assistant to the President
International Organization of Masters, Mates and Pilots
700 Maritime Boulevard, Suite B
Linthicum Heights Maryland 21090-1941
UNITED STATES
Tel.: 410 850 8700
Fax: 410 850 0973
Email: mrodriguez@bridgedeck.org

Mr Jesus Sale
Vice-President, Internal Affairs
Associated Marine Officers' and Seamen's Union of the Philippines (AMOPSUP)
Seamen's Center, Cabildo Corner Sta. Potenciana Streets
Manila Intramuros
PHILIPPINES
Tel.: +632 52 73535
Fax: +632 52 73534
Email: s_center@amosup.org

Mr Katsuji Taki
Director, Oceangoing Seafarers Department,
International Affairs Bureau
All-Japan Seamen's Union
15-26 Roppongi, 7-Chome, Minato-ku
Tokyo 106-0032
JAPAN
Tel.: +813 5410 8332
Fax: +813 5410 8336
Email: ktaki@jsu.jp

Seafarers' advisers/Conseillers techniques des gens de mer/Consejeros técnicos de la gente de mar

Ms Dope Adakou Ajavon^{*}
SYNTRAPAL
Lome
TOGO
Email: syntrapal@yahoo.fr

Mr Karl Heinz Biesold
Vereinte Dienstleistungsgewerkschaft
Ver.di Bundesvorstand
Paula-Thiede-Ufer 10
10179 Berlin
GERMANY
Tel.: +49 30 6956 2630 / 3820
Email: karl-heinz.biesold@verdi.de

^{*} Did not arrive by 18.09.2008.
Non arrivé le 18.09.2008.
Sin llegar el 18.09.2008.

Mr Kodjo Deakissim *

SYNTRAPAL

Lome

TOGO

Email: syntrapal@yahoo.fr

Mr Gan Fuxiang

Director Department of All-China Federation of Trade Unions

ACFTU

10 Fuxingmenwai Street

Beijing 100865

CHINA

Tel.: +8610 6859 1554

Fax: +86 10 6856 2031

Email: fuxiang_gan@acftu.org.cn

Mr Atchou Gnahouame *

SYNTRAPAL

Lome

TOGO

Email: syntrapal@yahoo.fr

Mr Lee Yong Kee

Singapore Maritime Officers' Union

SINGAPORE

Email: lekyong@warelink.com.sg

Mr Adjevi Kombete Neglokpe *

SYNTRAPAL

Lome

TOGO

Email: syntrapal@yahoo.fr

Mr Yao Konani *

SYNTRAPAL

Lome

TOGO

Ms Mary Liew

Executive Secretary

Singapore Maritime Officers' Union

75 Jellicoe Road

Singapore

SINGAPORE

Mr Ilpo Minkinen

ITF Inspector

Finnish Seamen's Union

Ullantie 25G 01400

Vantaa

FINLAND

Tel: +358 407 28 693

Email: ilpo.minkinen@smu.fi

* Did not arrive by 18.09.2008.

Non arrivés le 18.09.2008.

Sin llegar el 18.09.2008.

Sr. Rubén A. Moreira
Secretario del Interior del Sindicato de Obreros Marítimos Unidos
Confederación General del Trabajo
Perú 1667
Buenos Aires
ARGENTINA
Tel.: +54114 300 7352

Ms Eduarda Moura Pereira de Barros *

Sindimar
BRAZIL

Ms Marina Serova
Seafarers' Union of Russia
Foreign Relations Officer
6 Bolshoy Koptevskiy Proyezd, PO Box 61
Moscow 125319
RUSSIAN FEDERATION
Email: ivanov@sur.ru

Mr Thomas Tay
General Secretary
Singapore Maritime Officers' Union
75 Jellicoe Road
Singapore
SINGAPORE

Mr Hiroyuki Watanabe
Representative, European Office
All-Japan Seamen's Union
International Transport Workers' Federation
ITF House 49-60 Borough Road
London SE1 1DR
UNITED KINGDOM
Tel.: +44 751 928 5458
Email: hwatanabe@jsu.jp

Government participating observers
Gouvernements participant en qualité d'observateurs
Gobiernos participando en calidad de observadores

ALGERIA ALGÉRIE ARGELIA

S.E. M. Idriss Jazaïry
Ambassadeur, représentant permanent
Mission permanente d'Algérie
308, route de Lausanne
1293 Bellevue/Genève
SUISSE
Tel.: +41 22 959 84 84
Fax: +41 22 774 30 49
Email: contact@mission.algerie.ch

* Did not arrive by 18.09.2008.
Non arrivés le 18.09.2008.
Sin llegar el 18.09.2008.

M. Mohamed Khiat
Inspecteur général du travail
Ministère du Travail, de l'Emploi et de la Sécurité sociale
44, boulevard Mohamed Belouizdad
Alger 16001
ALGERIE
Tel.: +213 21 65 9999

M. Larbi Djacta
Ministre conseiller, représentant permanent
Mission permanente d'Algérie
308, route de Lausanne
1293 Bellevue/Genève
SUISSE
Tel.: +41 22 959 84 84
Fax: +41 22 774 30 49
Email: contact@mission.algerie.ch

M. Ahmed Bourbia
Directeur des relations du travail
Ministère du Travail, de l'Emploi et de la Sécurité sociale
44, boulevard Mohamed Belouizdad
Alger
ALGERIE
Tel.: +213 21 66 3831
Fax: +213 21 66 3831

M. El-Hacene El Bey
Conseiller diplomatique
Mission permanente d'Algérie
308, route de Lausanne
1293 Bellevue/Genève
SUISSE
Tel: +41 22 959 84 84
Fax: +41 22 774 30 49

M. Mohamed Khenidjou
Chef de projet et chargé du Bureau des gens de mer
Ministère des Transports
Alger
ALGERIE

M. Youcef Zerizer
Chef des affaires maritimes
Garde-côte algérien, Amirauté
Alger
ALGERIE
Tel.: +213 321 71 2792
Email: zerizer@hotmail.com

M. Toufik Belaouar
Garde-côte algérien
Bejaia Port
Alger
ALGERIE
Fax: +213 34 22 1258
Email: boitepostale12@yahoo.fr

M. Abdelaziz Zaidi
Administrateur
Service national des gardes-côtes
Alger
ALGERIE

M. Abdelaziz Hamichi *
Secrétaire général
Fédération nationale des travailleurs des transports

ANGOLA

Sr. Sebastião Eduardo Neves
Chefe de Departamento
Direcção Nacional de Condições e Rendimento do Trabalho
Rua 1 Congresso Do MPLA
Luanda
ANGOLA
Tel.: +222 39 2381

Sr. Diogo Critóvão Neto
Chefe de Secção de Relações, Gabinete de Relações Internacionais
Ministério da Administração Pública, Emprego e Segurança Social
Rua Do 1 Congresso
MPLA CAIXA POSTAL No. 1986
Luanda
ANGOLA
Tel: +222 39 2381

ARGENTINA ARGENTINE

Sr. Rafael C. Mastropasqua
Asesor de la Dirección Nacional de Fiscalización
Ministerio de Trabajo, Empleo y Seguridad Social
Avenida Leandro N. Alem 650, Piso 6 to.
AR-C 1001 Buenos Aires
ARGENTINA
Tel.: +5411 4310 5932 / 6431
Fax: +5411 4310 5932
Email: rmastrop@trabajo.gov.ar

Sr. Rubén Ramón Becker
Consejero Técnico
Prefecto, Prefectura Naval Argentina
Edudido Madero 235
Buenos Aires
ARGENTINA
Tel.: + 54 11 4318 7400
Fax: +54 11 4318 7402

Sr. Darío Celaya Álvarez
Misión Permanente de Argentina
10, route de l'Aéroport
1215 Genève 15
SUISSE

* Did not arrive by 18.09.2008.
Non arrivé le 18.09.2008.
Sin llegar el 18.09.2008.

BELGIUM BELGIQUE BÉLGICA

Mr Bart Heylbroeck
Counsellor-General
Belgium Maritime Inspectorate
Federal Public Service Mobility and Transport
Notiënkooi 5
8400 Oostende
BELGIUM
Tel.: 32 59 56 1450
Fax: 32 59 56 1474
Email: sc.oostende@mobiliteit.fgov.be

BENIN BÉNIN

M. Charles W. Afouda *

Administrateur des affaires maritimes
Directeur de la Marine marchande
Cotonou
BENIN

CAMEROON CAMEROUN CAMERÚN

M. Francis Ngantcha
Ministre conseiller
Mission permanente du Cameroun
6, rue du Nant
1207 Genève
SUISSE
Fax: +41 22 736 21 65
Email: ngantchaf@bluewin.ch

CANADA CANADÁ

Captain Richard Day
Director, Operations and Environment Programs
Transports Canada, Marine Safety
Tower C, Place De Ville, 330 Sparks Street, 10th Floor
Ottawa Ontario K1A 0N5
CANADA
Tel.: 613 991 3131
Fax: 613 998 0637
Email: dayrh@tc.gc.ca

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Mr Donald Roussel
Directeur exécutif, Affaires réglementaires/assurance
de qualité, Réglementation et affaires internationaux
Transports Canada
Place de Ville, Tour C, 11e étage
330 rue Sparks
Ottawa Ontario
CANADA
Tél.: +613 998 0600
Fax: +613 954 032
Email: roussed@tc.gc.ca

CHINA CHINE

Ms Xinwei Mao
China Classification Society
9 Dongzhimen Nan Da Jie
Beijing
CHINA
Tel.: +86 10 58 11 2288
Email: xwmao@ccs.org.cn

Mr Daze Li
Chief Engineer
Seafarer Management
Department of China Maritime Safety Administration
11 Jianguomennei Ave.
Beijing 100736
CHINA
Tel.: +8610 65292498
Fax: +8610 65292882
Email: lidaze@msa.gov.cn

Ms Xiaoyue Wan
China Classification Society
9 Dongzhimen Nan Da Jie
Beijing
CHINA
Tel: +86 10 58 11 2288
Email: xywan@ccs.org.cn

Mr Zhang Xiaojie
Director
Ministry of Transport
11 Jianguomennei Ave
Beijing 100736
CHINA
Tel.: +8610 65292246
Fax: +8610 65292261
Email: zhangxj@moc.gov.cn

CYPRUS CHYPRE

M. Nicos P. Nicolaou
Counsellor, Deputy Permanent Representative
Permanent Mission of Cyprus
66, rue du Grand-Pré
1202 Genève
SWITZERLAND
Tel: +41 22 791 0084
Email: cyprus@cyprusmission.ch

M^{me} Maria Sologianni
Advisor
Permanent Mission of Cyprus
66, rue du Grand-Pré
1202 Genève
SUISSE

DENMARK DANEMARK DINAMARCA

Mr Martin John
Ship Surveyor
Danish Maritime Authority
Vermundsgade 38 C
2100 Copenhagen
DENMARK
Tel.: +45 39 17 4623
Fax: +45 39 17 4410

Mr Philippe Bauchy
Special Adviser
Danish Maritime Authority
Vermundsgade 38C
2100 COPENHAGEN
DENMARK
Tel.: +45 3917 4621
Email: pb@dma.dk

EL SALVADOR

S.E. Sr. Byron Fernando Larios López *

Misión Permanente de El Salvador
1202 Genève
SUISSE

S.E. Sr. Miguel Angel Alcaine Castro *

Misión Permanente de El Salvador
65, rue de Lausanne
1202 Genève
SUISSE

* Did not arrive by 18.09.2008.
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Sin llegar el 18.09.2008.

Sr. Mario Castro Grande *
Misión Permanente de El Salvador
65, rue de Lausanne
1202 Genève
SUISSE

FINLAND FINLANDE FINLANDIA

Mr Harri Halme
Senior Safety Officer
Ministry of Social Affairs and Health
FINLAND
Email: harri.halme@stm.fi

FRANCE FRANCIA

M. Alain Moussat
Directeur du travail
Direction des affaires maritimes
3, place de Fontenoy
75007 Paris 07 SP
FRANCE
Tel.: +33 1 44 49 83 15
Email: alain.moussat@developpement-durable.gouv.fr

M. Benoît Faist
Administrateur principal des affaires maritimes
Chef du bureau du PSC, Direction des affaires maritimes
3, place de Fontenoy
75007 Paris 07 SP
FRANCE
Tel.: +33 1 44 49 86 31
Fax: +33 1 44 49 86 14
Email: benoit.faist@developpement-durable.gouv.fr

M^{me} Amandine Le François
Ministère de l'Écologie, du Développement durable et des Transport
21, boulevard Gaston-Doumergue
44262 Nantes
FRANCE
Tel.: +33 2 40 20 65 15
Email: amandine.lefrancois@univ-nantes.fr

M. Emmanuel Scanavino
Adjoint au responsable du Département des affaires statutaires
Bureau Véritas
17 bis, place des Reflets
92400 Courbevoie
FRANCE
Tel.: +33 1 42 91 33 29
Email: emmanuel.scanavino@bureauveritas.com

GABON GABÓN

M^{me} Adele Patricia Louzet
Première secrétaire
Mission permanente du Gabon
47, avenue Blanc
1211 Genève 7
SUISSE

GERMANY ALLEMAGNE ALEMANIA

Mr Tilo Berger
See-Berufsgenossenschaft
Reimerstwiete 2
Hamburg 20457
GERMANY
Tel.: +49 40 361 37 213
Fax: +49 40 361 37 295
Email: ism@see-bg.de

INDIA INDE

Captain L.K. Panda *
Ministry of Shipping, road Transport & Highways
NEW DELHI

IRAQ

M. Wisam Al-Qaisi
Troisième secrétaire
Mission permanente d'Iraq
Chemin du Petit-Saconnex, 28a
1209 Genève
SUISSE
Email: mission.iraq@ties.itu.int

IRELAND IRLANDE IRLANDA

Captain Tom O'Callaghan
Nautical Surveyor, Marine Survey Office
Department of Transport
Leeson Lane
Dublin 2
IRELAND
Tel.: +353 1 6783400
Fax: +353 1 6783409
Email: tomocallaghan@transport.ie

* Did not arrive by 18.09.2008.
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ITALY ITALIE ITALIA

Ms Stefania Moltoni
Dirigenti della Direzione Generale del Trasporto Marittimo,
Lacuale e Fluviale
Ministero delle Infrastrutture e dei Trasporti
Viale Dell' Arte 16
00144 Roma
ITALIA
Tel.: +39 06 59 08 4262
Fax: +39 06 59 08 4262
Email: stefania.moltoni@trasporti.gov.it

Mr Giuseppe Alati
Dirigenti della Direzione Generale del Trasporto Marittimo,
Lacuale e Fluviale
Ministero delle Infrastrutture e dei Trasporti
Viale Dell' Arte 16
00144 Roma
ITALIA
Tel.: +39 06 59 08 4801
Email: guiseppe.alati@infrustrutturetrasporti.it

KENYA

Ms Geraldine Mwangeli Maingi
Deputy Director, Shipping and Maritime Affairs
Ministry of Transport
PO Box 52692
Mombasa
KENYA
Tel.: +254 27 2 9200
Fax: +254 272 6362
Email: maingi@transport.go.ke

Mr Wilfred Kagimbi
Chief Surveyor & Receiver, Weeks
Kenya Maritime Authority
P.O. Box 95076
80104
Mombasa
KENYA

Mr Peter Maloba Wamoto
Deputy Labour Commissioner
Ministry of Labour
PO Box 40326-00100, GPO
Nairobi
KENYA
Tel.: +254 272 9354
Fax: +254 271 3980
Email: pmwamoto@hotmail.com

Mr Amos Kituri
Chief Surveyor & Receiver, Weeks
Kenya Maritime Authority
PO Box 95076
80104
Mombasa
KENYA
Email: atikuri@maritimeauthority.co.ke / mwamburikituri@yahoo.com

LATVIA LETTONIE LETONIA

Captain Andris Rankevics
Head of Navigation and Maritime Communication Division
Maritime Department of the Ministry of Transport
Tel.: +371 7028033
Email: andris.rankevics@sam.gov.lv

LIBERIA

Ms Margaret Ansumana
Deputy Commissioner
Bureau of Maritime Affairs
8619 Westwood Center Drive, Suite 300
Vienna Virginia 22182
UNITED STATES
Email: mansuman@liscr.com

Ms Yvonne Clinton *

Bureau of Maritime Affairs
8619 Westwood Center Drive, Suite 300
Vienna Virginia 22182
UNITED STATES

Mr Michael Davis-Sekle *
Liberian Registry

Mr James Walsh
Vice-President
Seafarers' Certification and Documentation, LISC. LLC
Liberian International Ship & Corporate Registry
8619 Westwood Center Drive
Vienna VA 22182
UNITED STATES
Tel.: +1 703 251 2417
Fax: +1 703 790 5655
Email: jwalsh@liscr.com

Mr Olaf Quas
Head of Department
Liberian International Registry
Germenischer Lloyd
Vorsetzer 41
20459 Hamburg
GERMANY
Tel.: +49(0)173-610 8920
Email: olaf.quas@gl-group.com

Mr Geebae *
Liberian Registry

* Did not arrive by 18.09.2008.
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LITHUANIA LITUANIE LITUANIA

Ms Egle Vysniauskaitė
Ministry of Transport & Communications
Gedimino av. 17
01505 Vilnius
LITHUANIA
Tel.: +370 5 2393914
Fax: +370 5 2393880
Email: e.vysniauskaite@transp.lt

LUXEMBOURG LUXEMBURGO

M^{me} Annabel Rossi
Juriste
Commissariat aux affaires maritimes
12-21, Boulevard Royal
2449 Luxembourg
LUXEMBOURG
Tel.: +352 247 84 912

M. Marc Siuda
Conseiller social
Ministère de l'Economie et du Commerce extérieur
Commissariat aux affaires maritimes
12-21, Boulevard Royal
2449 Luxembourg
LUXEMBOURG
Tel: +352 478 4912
Email: cam@cam.etat.lu

M. Marc Glodt
Consultant
LUXEMBOURG
Email: mglodt@pt.lu

M. Alexandre Charbonneau *

Chercheur à l'Université de Luxembourg

MADAGASCAR

M. Roger Rakotonarivo
Conseiller
Mission permanente de Madagascar
32, avenue de Riant-Parc
1209 Genève
SUISSE
Tel.: +41 22 740 1650
Fax: +41 22 740 1616

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MALAYSIA MALAISIE MALASIA

Mr Kanagalingam Selvarasah
Marine Officer
Malaysia Marine Department
PO Box 12, Jalan Lindungan
42007 Port Klang Selangor
MALAYSIA
Tel.: +603 33 46 7644
Fax: +603 3346 7778
Email: kana@marine.gov.my

Mr Aminuddin AB. Rahaman
Labour Attaché
Permanent Mission of Malaysia
International Center Cointrin (ICC)
20, route de Pré-Bois
1215 Genève 15
SWITZERLAND
Tel.: +41 22 710 7510
Email: aminuddin_ar@yahoo.com

MALI MALÍ

M. Ousmane Albou Kader Toure *
Directeur national adjoint des transports terrestres maritimes et fluviaux
Bamako
MALI

MOZAMBIQUE

M. Joaquim Moisés Siuta
Inspecteur général du travail
Ministère du Travail
MOZAMBIQUE
Email: joaquim_siuta@yahoo.com.br

M. Levy André Marrengula *
Institut national de Marinha
Ministère des Transports et des Communications

M. Juvenal Arcanjo Dengo
Premier secrétaire
Mission permanente du Mozambique
13, rue Gautier 1^{er}
1201 Genève
SUISSE
Tel.: +41 22 901 17 83

M. Miguel Raul Tungadza *
Mission permanente du Mozambique
1201 Genève
SUISSE

* Did not arrive by 18.09.2008.
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NAMIBIA NAMIBIE

Mr Bro-Matthew Shinguadja
Labour Commissioner
Office of the Labour Commissioner
Private Bag 13367
Windhoek
NAMIBIA
Tel.: +264 61 379 100
Fax: +264 61 379 129
Email: bro.matthew@mol.gov.na

NETHERLANDS PAYS-BAS PAÍSES BAJOS

Mr Pieter Oost
Policy Adviser
Transport and Water Management Inspectorate
PO Box 8634
3009 AP Rotterdam
NETHERLANDS
Tel.: +317 04 56 4474
Email: Pieter.oost@ivw.nl

Ms Ingeborg Van Gasteren
Senior Policy Adviser
Ministry of Transport, Public Works and Water Management
Plesmarwey 1-6
PO Box 20904
2500 EX The Hague
NETHERLANDS
Tel.: +31 70 35 17486
Fax: +31 70 351 1692
Email: ingeborg.van.gasteren@minvenw.nl

NIGERIA NIGÉRIA

Mr Onubuogo C. Illoh *

Ministry of Labour and Productivity
Federal Secretariat Complex
Abuja
NIGERIA

Mr Auwab A. Abdullahi *

Ministry of Labour and Productivity
Federal Secretariat Complex
Alhaji Shehu Shagari, Annex 2
Abuja
NIGERIA

* Did not arrive by 18.09.2008.
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Mr O. Henry Abebe
Executive Director
Maritime Labour and Cabotage Services
Nigerian Maritime Administration and Safety Agency (NIMASA)
Maritime House, 4 Burma Road
Apapa Lagos
NIGERIA
Tel.: +234 802 292 4900
Email: oyailoabebe@yahoo.com

Ms E.N. Akiga-Gusah
Deputy Director
Nigerian Maritime Administration and Safety Agency (NIMASA)
Maritime House, 4 Burma Road
Apapa Lagos
NIGERIA
Tel.: +8055 24 2080
Fax: 01 271 8152
Email: elizabethgusah@yahoo.com

Captain T. Kerieweregba
Chairman, Marchant Navy Officers Association
Nigerian Maritime Administration and Safety Agency (NIMASA)
Maritime House, 4 Burma Road
Apapa Lagos
NIGERIA

Dr. O.C. Nathaniel
Director-General
International Maritime School
No. 15B, Awolowo Road, Ikoyi
Lagos
NIGERIA
Tel.: +8023 03 6698
Email: drocnath@yahoo.com

Mr Ahmed Tijjani Ramalan
Executive Chairman
International Maritime School
No. 15B, Awolowo Road, Ikoyi
Lagos
NIGERIA
Tel.: +234 8 033 15 4780
Email: ramalan-01@yahoo.co.uk

NORWAY NORVÈGE NORUEGA

Mr Einar Aase
Senior Engineer
Norwegian Maritime Directorate
Postboks 2222
N-5509 Haugesund
NORWAY
Tel.: +47 52 74 50 00
Fax: +47 52 74 50 01
Email: postmottak@sjofartsdir.no / eia@sjofartsdir.no

Mr Haakon Storhaug
Senior Adviser
Norwegian Maritime Directorate
PO Box 2222
N-5509 Haugesund
NORWAY
Tel.: +47 527 45000
Fax: +47 527 45001
Email: hst@sjofartsdir.no

Ms Helle Flotaker
ILO Developer
Det Norske Veritas
Charlotte Andersens V 15
N-0374 Oslo
NORWAY
Tel: +47 900 83 916
Email: Helle.Flotaker@dnv.com

POLAND POLOGNE POLONIA

Mr Marek Leski
Chief of Marine Safety Inspectorate
Ministry of Infrastructure
Maritime Office in Szczecin
Jana z Kolna 9
71-603 Szczecin
POLAND
Tel.: +48 91 4403 594
Fax: +48 91 4339 592
Email: mleski@ums.gov.pl

PORTUGAL

Ms Maria Teresa Paccetti dos Santos Lobo Correia
Assessora Principal
Ministère du Travail et des Affaires sociales
Praça de Londres, Z-40
Lisboa
PORTUGAL

Ms Carlota Leitão Correia
Maritime Legal Expert
Institute For Ports and Shipping
IPTH
Edifício Vasco Dagama
Rue General Gomes De Araujo
Lisboa
PORTUGAL

M. António Valada Da Silva
Ministère du Travail et des Affaires sociales
Lisboa
PORTUGAL
Email: avaladasilva@igfse.lr

M. José António de Sousa Fialho
Conseiller
Mission permanente du Portugal
Rue Antoine-Carteret, 33
1202 Genève
SUISSE
Tel.: +79 39 18 602
Email: sous.fialh@bluewin.ch

QATAR

Mr Faisal Salman Al-Hajiri
Marine Consultant
Customs and Ports General Authority
QATAR
Email: msco@qatar.net.qa

Mr Ali Al Hammadi
Expert Maritime Affairs
Customs and Ports General Authority
27-29, avenue. Bouchet
1209 Genève
SWITZERLAND
Email: maritimecpga@qatar.net.qa

ROMANIA ROUMANIE RUMANIA

Mr Visa Florin
Labour Inspector
Directorate Health and Safety at Work
Inspectia Muncii
Str. Matei Voievod NR 14, Sect 2
Bucuresti
ROMANIA
Tel.: +40 21 302 70 88
Fax: +40 21 302 70 68
Email: florin.visa@inspectiamuncii.ro

Mr Dima Mihaela
Labour Inspector
Directorate Health and Safety at Work
Bucuresti
ROMANIA
Tel.: +40 21 302 70 88
Fax: +40 21 302 70 68
Email: mihaela.dima@inspectiamuncii.ro

SENEGAL SÉNÉGAL

M. Elhadji Ibou Boye
Conseiller
Mission permanente du Sénégal
93, rue de la Servette
1202 Genève
SUISSE

SLOVENIA SLOVÉNIE ESLOVENIA

Ms Karmen Sterbenc
Senior Legal Adviser
Ministry of Labour, Family & Social Affairs
Kotnikova 5
Ljubljana
SLOVENIA
Tel.: +38 61 13 69 8700
Fax: +38 6101306908730
Email: karmen.sterbenc@gov.si

Ms Nina Glas
Legal Adviser
Maritime Directorate
Ministry of Transport
Langusova 4
1000 Ljubljana
SLOVENIA
Tel.: +386 1 4788315
Email: nina.glas@gov.si

Ms Magda Dobrovoljc
Ministry of Transport
Langusova 4
1000 Ljubljana
SLOVENIA
Tel.: + 386 14 78 8263
Email: magda.dobrovolsc@gov.si

SOUTH AFRICA AFRIQUE DU SUD SUDÁFRICA

Captain Nigel Campbell
Head, Occupational Health and Safety Unit
South African Maritime Safety Authority
Carnavon Place, Humeral
Port Elizabeth
SOUTH AFRICA
Fax: +27 41 585 0051
Fax: +27 41 582 1213
Email: ncampbell@samsa.org.za

Mr Virgil Seafeld
Executive Manager
Department of Labour
Private Bag x117
0001 Pretoria
SOUTH AFRICA
Tel.: +12 309 4709 (27)
Email: virgil.seafeld@labour.gov.39

Mr Sipho Ndebele
Minister (Labour)
Permanent Mission of South Africa
65, rue du Rhône
1204 Genève
SUISSE
Tel.: +4122 849 54 54
Email: sipho@bluewin.ch

SPAIN ESPAGNE ESPAÑA

Sr. José M. Pérez Toribio *

Sr. Santos Orizaola Gurría *

Sr. Francisco Arnau Navarro
Consejero de Trabajo
Misión Permanente de España
Avenue Blanc, 53
Genève
SUISSE

Sra. Aránzazu Morala del Campo
Jefa de servicio de la Subdirección General de la Flota y de la Formación
Ministerio de Medio Ambiente y Medio Rural y Marino
Secretaria General del Mar
Calle Ortega y Gasset, 57
28005 Madrid
ESPAÑA
Tel.: +34091 347 36 47
Email: amoralad@mapya.es

SWEDEN SUÈDE SUECIA

Mr Leif Remahl
Senior Administrative Officer
Swedish Maritime Administration
Sjöfartsverket
SE-601 78 Norrköping
SWEDEN
Email: leif.remahl@sjofartsverket.se

Mr Olle Wadmark
Head of Operative Division
Swedish Maritime Administration
Sjöfartsverket
SE-601 78 Norrköping
SWEDEN

Mr Tomas Aström
Deputy Head of Survey and Inspection
Swedish Maritime Administration
Sjöfartsverket
SE-601 78 Norrköping
SWEDEN

UNITED REPUBLIC OF TANZANIA TANZANIE REPÚBLICA UNIDA DE TANZANÍA

Mr Josephat Mberwa Lugakingira
Acting Labour Commissioner
Ministry of Labour, Employment and Youth Development
PO Box 9014
Dar Es Salaam
UNITED REPUBLIC OF TANZANIA
Tel.: +255 07 84 44 1566
Email: jmlug@yahoo.com

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Mr Thomas Justine Mayagilo
Principal, Chief Executive Officer
Dar-Es-Salaam Maritime Institute
P.O.Box 6727
Dar Es Salaam
UNITED REPUBLIC OF TANZANIA
Tel.: +255 22 21 33 645
Fax: +255 22 211 2600 / Mobile:+255 784 32 3529
Email: dmi83@hotmail.com

Mr Aggrey K. Mlimuka
Association of Tanzania Employers
IPS Building, 7th Floor, Samora Avenue/Azikiwe Street
P.O.Box 2971
Dar Es Salaam
UNITED REPUBLIC OF TANZANIA
Tel.: +255 22 2110940
Fax: +255 22 2119434
Email: info@ate.or.tz/ amlimuka@yahoo.com

TUNISIA TUNISIE TÚNEZ

M. Mohamed Fersi
Responsable de la formation et du travail maritime
Ministère du Transport
Boulevard du 7 Novembre 1987
Près de l'aéroport
Tunis-Corthoge 2035
TUNISIE

M. Ali Yahmadi
Directeur des gens de mer
Office de la marine marchande et des ports
Bâtiment administratif
La Gaulette 2060
TUNISIE
Tel.: +216 71 738 036
Fax: +216 71 735 812
Email: a.yahmadi@ommp.nat.tn

TURKEY TURQUIE TURQUÍA

M. Erhan Batur
Conseiller
Mission permanente de Turquie
Chemin du Petit-Saconnex, 28b
1211 Genève 19
SUISSE
Tel.: 022 918 5082
Email: erhan.batur@mfa.gov.tr

M. Ekrem Ozcan
Directeur général adjoint
Sous-secrétariat chargé des affaires maritimes
Denizcilik Mustesarligi
GMK Bulvari N° 128, Maltepe
Ankara
TURQUIE
Tel.: +90(312)232 4704
Email: eozcan@denizcilik.gov.tr

M. Bilal Kazan
Chef de Section
Sous-secrétariat chargé des affaires maritimes
Denizcilik Mustesarligi
GMK Bulvari N° 128, Maltepe
Ankara
TURKEY
Tel.: +90 312 232 3856
Fax: +90 312 232 0921
Email: bkazan@denizcilik.gov.tr

Mr Koksall Nuroglu *
Sous Secrétariat chargé des Affaires maritimes
Email: koksallnuroglu@denizcilik.gov.tr

UKRAINE UCRANIA

Ms Svitlana Opanasenko *
Ministry of Transport and Communications of Ukraine
14 Peremogy Avenue
KYIV 01135
UKRAINE

UNITED STATES ETATS-UNIS ESTADOS UNIDOS

Mr John Hannon
U.S Coast Guard, Flag State Program Manager
Commandant (CG-343)
2100 2nd Street Sw
Washington DC 20593
UNITED STATES
Tel.: +202 372 1222
Fax: +202 372 1918
Email: john.j.hannon2@uscg.mil

Ms Medina Mayte
US Coast Guard, Office of Operating & Environmental Standards
Commandant (CG-5221)
2100 2nd Street Sw
Washington DC 20593
UNITED STATES
Tel.: +202 372 1222
Fax: +202 372 1918

ZAMBIA ZAMBIE

Ms Isabelle Lemba *
First Secretary
Permanent Mission of Zambia
Chemin du Champ-d'Anier, 17-19
1209 Geneva
SUISSE

* Did not arrive by 18.09.2008.
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Representatives of the United Nations, specialized agencies
and other official international organizations

Représentants des Nations Unies, des institutions spécialisées
et d'autres organisations internationales officielles

Representantes de las Naciones Unidas, de los organismos especializados
y de otras organizaciones internacionales oficiales

European Commission
Commission européenne
Comisión Europea

Ms Anne Devouche
Administrator
Directorate General for Transport
Unit G.1 Maritime Affairs, DM 28-03/030
28, rue De Mot
1049 Brussels
BELGIUM
Tel.: +322 29 68 449
Email: anne.devouche@ec.europa.eu

Mr Nicolas Breczewski
Administrator
Directorate General for Employment, Social Affairs & Equal
Opportunities
Unit F.2 Labour Law, J-54-00/062
54, rue Joseph II
1049 Brussels
BELGIUM
Tel.: +322 298 00 89
Fax: +322 299 08 90
Email: nicolas.breczewski@ec.europa.eu

Ms Sabine Boehmert
Administrator
Directorate General for Employment, Social Affairs & Equal Opportunities
Unit D.4 International Affairs & Enlargement, J-27-03/080
27, rue Joseph II
1049 Brussels
BELGIUM
Email: sabine.boehmert@ec.europa.eu

Representatives of non-governmental international organizations
Représentants d'organisations internationales non gouvernementales
Representantes de organizaciones internacionales no gubernamentales

**International Christian Maritime Association (ICMA)
Association maritime chrétienne internationale
Asociación Marítima Cristiana Internacional**

Mr Douglas B. Stevenson
Chair, ICMA Standing Delegation to the ILO
The Seamen's Church Institute of NY & NJ
241 Water Street
New York NY 10038
UNITED STATES
Tel.: +1 212 349 1794
Fax: +1 212 348 8342
Email: dstevenson@seamenschurch.org

Mr Ken Peters
Vice-Chair, ICMA Standing Delegation to the ILO
The Missions to Seafarers
St. Michael's Paternoster Royal
College Hill
London EC4R 2RJ
UNITED KINGDOM

Sr. Domingo Gonzales Joyanes *

Member, ICMA Standing Delegation to the ILO
Paseo de la Castellana N° 166 esc. C.9A
Madrid 28046
ESPAÑA

International Committee on Seafarers' Welfare (ICSW)

M. Jean-Yves Legouas
Chairperson
Seafarers' Health Information Programme
24, Impasse des Dauphines
74890 Bons-en-Chablais
FRANCE
Tel.: +33 9 60 08 36 60
Email: legouas74@orange.fr

Mr Rob Verbist *

Seafarers' Health Information Programme Manager

* Did not arrive by 18.09.2008.
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Sin llegar el 18.09.2008.

International Maritime Health Association (IMHA)
Association internationale de médecine maritime (AIMM)

Dr. Suresh Idnani
Vice-President
International Maritime Health Association (IMHA)
S 2/2 Nova Cidade Complex
Alt Porvorim, Bardez
Goa 403521
INDIA
Tel.: +91 832 241 7036 / + 91 982 212 6604
Fax: + 91 832 241 3021
Email: sureshidnani@hotmail.com

International Organisation of Employers (IOE)
Organisation internationale des employeurs (OIE)
Organización Internacional de Empleadores

Sr. Guillermo Cabral
Gerente de Recursos Humanos
Cámara Naviera Argentina, MARUBA SCA
Emma de la Barra 353 Piso 2
Buenos Aires C1107BXA
ARGENTINA
Tel.: +54 11 4320-3722
Fax: +54 11 4320-3696
Email: gcabral@maruba.com.ar

International Shipping Federation (ISF)
Fédération internationale des armateurs (FIA)

Mr David Dearsley
International Shipping Federation (ISF)
12 Carthusian Street
London EC1M 6EZ
UNITED KINGDOM
Tel.: +44 20 7417 8844
Fax: +44 20 7417 8877

Mr Giles Heimann
International Shipping Federation (ISF)
12 Carthusian Street
London EC1M 6EZ
UNITED KINGDOM
Tel.: +44 20 7417 8844
Fax: +44 20 7417 8877

Mr Tony Mason
International Shipping Federation (ISF)
12 Carthusian Street
London EC1M 6EZ
UNITED KINGDOM
Tel.: +44 20 7417 8844
Fax: +44 20 7417 8877

Ms Natalie Shaw
International Shipping Federation (ISF)
12 Carthusian Street
London EC1M 6EZ
UNITED KINGDOM
Tel.: +44 20 7417 8844
Fax: +44 20 7417 8877
Email: natalie.shaw@marisec.org

M. Guy Sulpice
Directeur
Armateurs de France
47, rue de Monceau
75008 Paris
FRANCE
Tel.: +331 53 89 52 50
Fax: +331 53 89 52 53
Email: g-sulpice@armateursdefrance.org

International Transport Workers' Federation (ITF)
Fédération internationale des ouvriers du transport
Federación Internacional de los Trabajadores del Transporte

Mr Jon Whitlow
International Transport Workers' Federation (ITF)
49-60 Borough Road
London SE1 1DR
UNITED KINGDOM
Tel.: + 44 207 940 9271
Fax: + 44 207 357 7871
Email: whitlow_jon@itf.org.uk

Mr John Bainbridge
International Transport Workers' Federation (ITF)
49-60 Borough Road
London SE1 1DR
UNITED KINGDOM

Mr Steve Cotton *

International Transport Workers' Federation (ITF)
49-60 Borough Road
London SE1 1DR
UNITED KINGDOM

Organization of African Trade Union Unity (OATUU)
Organisation de l'unité syndicale africaine
Organización de la Unidad Sindical Africana

M. Abdoulaye Lellouma Diallo
Representant permanent de l'OATUU
18, chemin de la Planche brûlée
App. A2 103
01210 Ferney Voltaire
FRANCE
Tel/Fax: 33 450 406513
Email: elhadjdiallo@hotmail.com

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Sin llegar el 18.09.2008.

Secretariat of the Meeting
Secrétariat de la réunion
Secretaría de la Reunión

Secretary-General/Secrétaire général/Secretario General

Mr Fashoyin

Deputy Secretaries-General/Secrétaires générales adjointes/Secretarias Generales Adjuntas

Ms Doumbia-Henry

Ms Tinoco

Executive Secretary/Secrétaire exécutif/Secretario Ejecutivo

Mr Appave

Mr Grismann

Experts/Expertos

Mr Wagner

Mr Devlin

Ms McConnell

Mr Atkinson

Ms Bader

Mr Oh

Mr Knaebe

Representatives of the Bureau of Employers' Activities/Représentants du Bureau des activités pour les employeurs/Representantes de la Oficina de Actividades para los Empleadores

M^{me} France-Massin

Mr Hess

Representatives of the Bureau of Workers' Activities/Représentants du Bureau des activités pour les travailleurs/Representantes de la Oficina de Actividades para los Trabajadores

Mr Demaret

Representative of the Office of Legal Services and Office of the Legal Adviser/Représentante des services juridiques et Bureau du Conseiller juridique/Representantes de servicios jurídicos y Oficina del Consejero Jurídico

Ms McCrory

Clerk of the Meeting and Chief of the Secretariat Service/Greffier de la réunion et chef des services du secrétariat/Secretario de Actas y Jefe de los Secretario de Actas y Jefe de los Servicios de Secretaría

Mr Hahn