

INTERNATIONAL LABOUR ORGANIZATION
Sectoral Activities Programme

Final report

**Tripartite Expert Meeting to Develop Guidelines
for Port State Control Officers Carrying out
Inspections under the Maritime Labour
Convention, 2006**

Geneva, 22–26 September 2008



INTERNATIONAL LABOUR OFFICE GENEVA

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Contents

	<i>Page</i>
Introduction	1
Composition	1
Documentation	1
Opening of the Meeting.....	2
Opening statements	2
General statements	3
Chapter 1. Introduction.....	4
1.1. Explanation of the objectives and content of the guidelines.....	4
1.2. Brief overview of the Maritime Labour Convention, 2006, structure	4
Chapter 2. Port State control inspection responsibilities under the Maritime Labour Convention, 2006	5
Chapter 3. Carrying out port State control inspections under the Maritime Labour Convention, 2006	6
3.1. General considerations for Maritime Labour Convention, 2006, port State control inspections.....	6
3.2. Procedure where inspection is initiated by the PSC authority	8
3.3. Procedure for inspections initiated upon receipt of a complaint.....	18
Chapter 4. More detailed inspection of maritime labour conditions on ships	20
4.1. General note.....	20
4.2. The basic requirements; sources of information; examples of deficiencies or non-conformities	21
Chapter 5. Action to be taken by port State control officers when finding deficiencies or non-conformities	26
5.1. Actions to be considered when deficiencies are found.....	26
5.3. Factors to be considered by a port State control officer in deciding whether to accept a rectification proposal.....	32
5.4. Consultation prior to a decision concerning a rectification proposal.....	32
5.5. Form and content of a proposal for rectification.....	33
5.7. Action to be taken if the ship is not allowed to sail	34
Chapter 6. Onshore complaints by seafarers	34
Adoption of the guidelines	35
Report	35
World Maritime Day, 25 September 2008	35
Closing	35
List of participants.....	37

Introduction

1. In accordance with a decision taken by the Governing Body at its 298th Session (March 2007), the Tripartite Meeting of Experts to Develop Guidelines for Port State Control Officers Carrying out Inspections under the Maritime Labour Convention, 2006, was held in Geneva from 22 to 26 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 Argentina, Brazil, Canada, China, France, Germany, Liberia, Nigeria, Norway and South Africa. In addition, 43 governments of other ILO member States attended the Meeting as participating observers. A number of observers from intergovernmental and non-governmental organizations were also present. A list of participants is annexed to this report.
3. The Tripartite Meeting unanimously elected the following Officers:

Chairperson: Mr Richard Day (expert from the Government of Canada)

Vice-Chairpersons: Mr Naoki Saito (representative of the Government of Japan)

Mr Joseph Cox (Shipowner expert from the United States)

Mr Brian Orrell (Seafarer expert from the United Kingdom)

4. It also established a Technical Drafting Committee, chaired by Ms Mayte Medina (representative of the Government of the United States), to work throughout the Meeting, consisting of:

Ms Mary Martyn (representative of the Government of the United Kingdom)

Mr Nicholas Makar (representative of the Government of Marshall Islands)

Mr Peter McEwen (Seafarer expert from the United Kingdom)

Mr Mel Joachim Djedje Li (Seafarer expert from Côte d'Ivoire)

Ms Nicole Van Echelpoel (Shipowner expert from Belgium)

Mr Tim Springett (Shipowner expert from the United Kingdom)

In addition, it was decided that Mr Alain Moussat (expert from the Government of France) would participate for the French text.

Documentation

5. The Meeting had before it a *Proposal for Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006* (MELCBS/2008), prepared by the Office.

Opening of the Meeting

6. The Chairperson observed that the quality of shipping had improved over recent years owing to the concerted efforts of port State regimes. The joint Ministerial Conference of the Paris and Tokyo Memoranda on Port State Control had stressed the need for an improvement in the minimum standards for living and working conditions for seafarers. The Maritime Labour Convention (MLC), 2006, set strict criteria for the working and living conditions of all persons working on board ships. While the onus was on flag States to implement the Convention, port States also had to enforce its provisions through inspections that mirrored, but did not exceed, flag State inspection requirements. The recently adopted guidelines on flag State inspections under the MLC, 2006, contained core chapters on inspection criteria, with which the guidelines on port State control to be discussed at the present Meeting should be consistent. He drew attention to Chapters 1 and 4 of the draft guidelines, which were very similar to Chapters 1 and 3 of the adopted guidelines on flag State inspections and had been aligned with its provisions. He hoped that they would be adopted without substantive amendments.
7. A Deputy Secretary-General of the Meeting, Ms Elizabeth Tinoco, Chief, Sectoral Activities Branch, welcomed all participants, many of whom had participated in the Meeting leading to the adoption of the guidelines on flag State inspections, which had laid the foundations for the present Meeting. Port State control actions were a critical component of the compliance and enforcement regime established in Title 5 of the MLC, 2006, and should be complementary to the responsibilities of the flag State. The role of the port State was particularly important for achieving a level playing field for shipowners. Port State control also rendered the requirements of the MLC, 2006, universal, since it equally applied to ships from States that were not party to the Convention. It was therefore crucial that port State control inspections be carried out on the basis of uniform principles and globally agreed practices, as reflected in Guideline B5.2.1(3) of the MLC, 2006. She hoped that the Meeting would be successful in adopting clear and effective guidelines for the shipping industry.

Opening statements

8. A Deputy Secretary-General of the Meeting, Ms Cleopatra Doumbia-Henry, Director, International Labour Standards Department, recalled the direct relationship of the present Meeting with the previous week's Meeting to adopt guidelines on flag State inspections. The port State control inspection procedures set out in the MLC, 2006, complemented the implementation by flag States of the provisions of the Convention. Port State control inspection and onshore complaint handling procedures were key examples of the international cooperation that was essential to ensure that the aspirations of the MLC, 2006, were translated into reality. Over 25 years of important work had been carried out under the Paris MOU on port State control. The relationship between the Paris MOU and the ILO was long-standing and based on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), which had paved the way for the development of port State control, and was a precursor to the MLC, 2006. The draft guidelines before the present Meeting had benefited significantly from the work of the Paris MOU Task Force.
9. The draft guidelines were intended to ensure uniformity of application in practice, since uncertainty on how to inspect MLC, 2006, requirements on foreign ships coming into port could impede international trade, negatively affect seafarers and shipowners, overload port States and cause concerns and administrative problems for flag States. The guidelines should also assist countries in fitting MLC, 2006, procedures into existing procedures under regional port State control MOUs. The MLC, 2006, differed from Convention No. 147 in its nature and breadth as well as the range of matters subject to port State

inspection, the role of on-board documentation and the role of complaints. While many countries had well-developed systems for port State control inspections, some were less advanced, and the guidelines were therefore also intended to assist them in implementing their obligations under the MLC, 2006. While the guidelines contained in Part B of the Code of the MLC, 2006, were directed to law-makers and had a specified legal status, the draft guidelines to be discussed at the present Meeting were not legally binding and should rather be seen as a “how to” manual.

10. She introduced the draft guidelines which consisted of six chapters, the first containing descriptive text drawn mainly from the Convention, essentially the same as Chapter 1 of the guidelines on flag State inspections. Chapter 2 was brief and highlighted port State control inspection responsibilities, while Chapter 3 outlined the process of carrying out port State control inspections under the MLC, 2006. Chapter 4 addressed in detail the port State inspection of maritime labour conditions on ships and was based on Chapter 3 of the guidelines on flag State inspections. Chapter 5 outlined the action to be taken when a deficiency or non-conformity had been identified and Chapter 6 provided an overview of the onshore complaint-handling process. She concluded by wishing the Meeting a successful outcome.

General statements

11. The Shipowner Vice-Chairperson noted that there had been references to the original port State language in the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), which itself was based on well-established international law. He also noted the call for consistency between the port State and flag State guidelines. The work concerning flag State inspections carried directly forward into the discussion of port State control inspection, though the primary responsibility for enforcement remained with the flag State. The Convention provided for the possibility of exemptions and variations and in many cases referred to the relevant national laws and regulations. This was why it was important for inspectors to review the Maritime Labour Certificate and Declaration of Maritime Labour Compliance (DMLC), as these were the primary documents for checking compliance by the ship. The Convention called for, but did not specifically require, States to have a system of port State control for compliance with the Convention. While some States already had in place sophisticated port State control regimes, others did not and would need simple and practical guidance to help them establish their own systems. He looked forward to the adoption of a jointly agreed document by the end of the week.
12. The Seafarer Vice-Chairperson believed that the MLC, 2006, was one of the most important instruments to come out in years, as it established very clear flag and port State obligations. He was confident that the Convention would attain the necessary number of ratifications to enter into force by 2010 or 2011. He thought that the guidelines would not only provide practical guidance to flag and port State inspectors but would also assist them to understand the objectives and provisions of the Convention. Enforcement was essential to seafarers. Port State control officers had a crucial role to ensure inspections were carried out honestly and ensured compliance. The guidelines were a good basis for discussion, particularly Chapters 1 and 4. He hoped that by the end of the week there would be a clear and simple process to ensure the enforcement of seafarers' rights.
13. The expert from the Government of France, speaking on behalf of the member States of the European Union (EU), thanked the Office for the present opportunity to adopt these guidelines. He considered the draft text to be a good basis for the coming work and looked forward to cooperation with the social partners, colleagues from other Governments and the Office. He expected that the guidelines would become a useful tool to give effect to the MLC, 2006, and ensure its effective implementation. The member States of the EU expected the ILO to keep promoting the Convention and assisting ILO member States to

achieve full worldwide implementation of the MLC, 2006, as well as supporting their efforts to build the necessary adequate competencies. He noted that there was a difference between the approaches in the guidelines for flag States and port States. Port State control was the second line of defence to improve working and living conditions for seafarers. The primary responsibility for implementation lay with the shipowner and the flag State. He was convinced that full application of the MLC, 2006, was an essential dimension of a fair globalization and level playing field in the shipping industry.

14. The representative of the Government of Greece said that the guidelines for port State officials should minimize subjectivity as much as possible. They should not reinvent the wheel, which, as all acknowledged, had been invented by the adoption of the MLC, 2006. With respect to the judgement of port State officials, he could not accept that they could be the judges of national legislation that had been adopted by parliament, in many cases after, or in, consultation with social partners.
15. The representative of the Paris MOU was pleased to have been invited to attend the Meeting as an observer. He acknowledged the long-standing cooperation between the ILO and the Paris MOU including during the development of the proposed guidelines, which were a good basis for discussion. The Paris MOU had also submitted a paper, which commented on the proposed guidelines, for distribution to the Meeting, and hoped this would be seen as a positive contribution. He looked forward to a fruitful meeting and assured the Meeting of his positive participation.

Chapter 1. Introduction

16. To help ensure the complementarity of flag and port State control inspections under the MLC, 2006, the Meeting, when discussing Chapter 1, used as the basis for its discussion, document MELCBS/2008/6, which reflected the changes made to the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*, that had been adopted the previous week by the Tripartite Meeting of Experts to Adopt Guidelines on Flag State Inspections under the Maritime Labour Convention, 2006.

1.1. Explanation of the objectives and content of the guidelines

Paragraph 3

17. The Meeting agreed to a minor change to the second sentence to reflect that the focus of the guidelines was on port State control inspections.

1.2. Brief overview of the Maritime Labour Convention, 2006, structure

Paragraph 8

18. The representative of the Government of Greece, recalling his statement on this paragraph when it was discussed the previous week by the Tripartite Meeting of Experts to Adopt Guidelines on Flag State Inspections, suggested that in the last sentence, the word “maritime” be inserted so that it would read “The MLC, 2006, complementing other major maritime international Conventions, reflects international agreement on the minimum requirements for working and living conditions for seafarers”. The Meeting did not accept this proposal.

1.3.3. Compliance and enforcement

Paragraphs 16 and 17

19. The representative of the Government of the Bahamas suggested that consideration be given to deleting the words “not engaged in international voyages” in the last sentence in paragraph 16 and the second sentence of paragraph 17. However, this suggestion did not receive support.

Paragraph 20

20. The Meeting agreed to delete the words “where warranted”.

Paragraph 22

21. The representative of the Government of the Bahamas, speaking on behalf of the Government group, suggested amending the last sentence of paragraph 22 to read: “It also seeks to take account of the arrangements currently in place under the various regional Memoranda of Understanding (MOU) or agreements on port State control.” This suggestion was accepted by the Meeting.

Paragraph 25

22. The representative of the Government of the Bahamas, speaking on behalf of the Government group, suggested that the heading “Ships that are not certified” should be added before paragraph 25. The Meeting agreed to this proposal.
23. The representative of the Government of Greece, in the Government group meeting, had requested that wording be added to the first sentence to clarify that the port State regime of the MLC, 2006, would apply only after the MLC, 2006, entered into force. The Deputy Secretary-General explained that it was hoped that governments would start using the guidelines right away. She clarified further that there was a distinction between the legal effects at the national and international levels. She said the international legal obligation did not arise until the Convention itself had entered into force.
24. The Technical Drafting Committee also made minor changes to the footnote to this paragraph.

Chapter 2. Port State control inspection responsibilities under the Maritime Labour Convention, 2006

2.2.1. Professional profile of authorized officers/port State control officers under the Maritime Labour Convention, 2006

Paragraph 33

25. The Shipowner Vice-Chairperson expressed concern about the identification and credentials of persons assisting the port State control officers (PSCOs). For security reasons, those persons needed to prove their identity and official capacity before coming on board. He suggested inserting after “persons assisting them” the words “should hold credentials issued by the port State, should be impartial, and”. The expert from the Government of France agreed, basing his opinion on the understanding that it was not necessary to issue a professional card as issued to a PSCO, but that an identity card

accompanied by an authorization from the port State would suffice. Considering also paragraph 56, the Meeting endorsed the Shipowner experts' proposal.

26. The Technical Drafting Committee, after the words "The PSCO and any persons assisting them", added the words "should be impartial", to reflect a suggestion expressed by the Shipowners. The Meeting agreed to this text.

Paragraph 34

27. The Meeting felt that this paragraph appeared repetitive in the light of the content of paragraph 56 and decided to delete any duplicative language. The Technical Drafting Committee revised the text of paragraph 34 to provide that the PSCO and anyone assisting the PSCO should hold credentials which should include a photograph. The Meeting agreed to this text.

Chapter 3. Carrying out port State control inspections under the Maritime Labour Convention, 2006

Paragraph 38

28. The Shipowner Vice-Chairperson questioned the need for the PSCO to also carry a copy of the ILO guidelines on flag State inspection. The Government participants shared the concern and proposed to replace the term "should" with "may" in the last sentence. The Meeting accepted the proposal.

3.1. General considerations for Maritime Labour Convention, 2006, port State control inspections

- 3.1.1. The purpose and subject matter of Maritime Labour Convention, 2006, port State control inspections

Paragraph 39

29. Recalling that ships entering a foreign port had already been inspected by the flag State, the Shipowner Vice-Chairperson found that the language in the last sentence was not accurate and wording should be added to reflect that inspection by PSCOs was limited to reviewing the Maritime Labour Certificate and the DMLC unless clear grounds for a more detailed inspection had been established. With reference to Article V(4), Regulation 5.2.1(1) and the words "in principle" in Standard A5.2.1(2), the Meeting rejected the proposal.

Paragraph 40

30. Concerning the last sentence in bold, the Meeting agreed to insert after "prima facie evidence that the ship is in compliance" the words "with the requirements of this Convention (including seafarers' rights)", to reflect Regulation 5.2.1(2) more closely. A proposal made by the representative of the Government of Greece, suggesting to add after "be the starting point" the words "and may be the only point" in line with the first sentence of paragraph 44, was not supported. The text was sent for redrafting and the text proposed by the Technical Drafting Committee was adopted without further discussion.

3.1.2. Conducting a Maritime Labour Convention, 2006, port State control inspection

- 31.** The Meeting decided to replace the words “how to conduct” in the title of 3.1.2 with the term “conducting”, in view of the expertise of PSCOs. The text was sent for redrafting and the text proposed by the Technical Drafting Committee was adopted without further discussion.

Paragraph 42

- 32.** In the first indent, the Meeting agreed to be more explicit and replace the term “documentation” with “Maritime Labour Certificate and Declaration of Maritime Labour Compliance (DMLC)”.

Paragraph 43

- 33.** The Meeting decided that the last sentence be put in bold to signal its importance.

Paragraph 44

- 34.** Since this paragraph cited detailed provisions on port State inspections, the Shipowner Vice-Chairperson suggested also inserting the relevant wording of Standard A5.2.1(4) requiring that deficiencies be brought to the attention of the master. Furthermore, the Seafarer Vice-Chairperson proposed to include the part of Standard A5.2.1(4) requiring the PSCO to bring the deficiencies to the attention of the appropriate seafarers’ and shipowners’ organizations. The Meeting agreed to both proposals. The text proposed by the Technical Drafting Committee, which infused the guidance from Standard A5.2.1, was adopted without further discussion.

Paragraph 45

- 35.** The Shipowner Vice-Chairperson, supported by the Seafarer Vice-Chairperson, suggested deletion of the second sentence “They may also be carried out at the request of a flag State.”, as there should be no implication that a flag State could walk away from its responsibility by requesting another flag State to conduct its inspections. The representative of the Government of the Bahamas, speaking on behalf of the Government group, supported the deletion of this text because, if a port State carried out such an inspection, it would become a flag State inspection. The Meeting subsequently agreed to delete this sentence.
- 36.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, further suggested that the words “and a document review is not applicable” in the fourth sentence, be replaced with “non-party documents may be taken into account”. He explained that this was to follow the practice with regard to International Maritime Organization (IMO) conventions, where a State may issue a document stating that the ship complied with the convention, even though the State was not yet a party. The PSCO might take this into account, as it at least indicated that an inspection for compliance with the Convention had taken place.
- 37.** The Seafarer Vice-Chairperson objected to this kind of “pseudo certificate”, and noted that a State that was not a party would not be subject to the ILO’s supervisory system, which was critical to ensure full implementation of the Convention. This would only create difficulties for the PSCO.
- 38.** The observer from the International Maritime Organization supported the point brought forward by the representative of the Government of the Bahamas. Under the concept of no

more favourable treatment, a non-party had to show it was trying to give full effect to the Convention, even if it had not ratified it. This would assist PSCOs and should be seen as placing a burden on non-parties rather than as a way to escape the responsibilities of the Convention. This was the approach taken under SOLAS and other IMO instruments.

39. The Seafarer Vice-Chairperson felt that the best way to encourage ratification by non-member States was to have those ships fully inspected. He noted that the MLC, 2006, differed from IMO conventions, as it addressed social issues and seafarers' rights. The Seafarer experts could not agree to the amendment proposed. The Meeting therefore decided not to change the text any further.
40. The representative of the Government of Greece, supported by the expert from the Government of South Africa and the representative from the Netherlands, suggested that, in the sentence reading "If the ship is not flying the flag of a ratifying Member, then the ship may be subject of a more detailed inspection ...", an asterisk should be added to the word "Member", and a note should be added to the text to read "The issue of ships flying the flag of a Member which has not ratified the MLC, 2006, should be taken into account when deciding on priorities for PSC inspections and/or concentrated campaigns." The reason was to reflect the concepts of "no more favourable treatment" and the "level playing field" that were important in the development of the MLC, 2006. The observer from the Paris MOU supported the proposal with, however, the suggestion that the words "and/or concentrated inspection campaigns" should be deleted. The Shipowner Vice-Chairperson and Seafarer Vice-Chairperson agreed to the proposal, as amended by the Paris MOU, but said the wording should be looked at to ensure that it in fact did encourage ratification. The proposal was accepted, subject to any necessary rewording.

Paragraph 46

41. The Meeting agreed that this paragraph, and the associated flowchart, were to be deleted from the guidelines.

3.2. Procedure where inspection is initiated by the PSC authority

3.2.1. Preparing for inspections

Paragraph 47

42. At the suggestion of the Shipowner Vice-Chairperson, it was agreed to change the word "background" to "basic" to put it in line with the MLC, 2006.

Paragraph 48

43. The representative of the Government of the Bahamas, speaking on behalf of the Government group, suggested adding, at the end of the sentence reading "Special attention should be paid to any previously reported deficiencies or non-conformities" the words "plans of action and related action". This was because the plan of action (as called for in Standard A5.2.1, paragraph 6), should be examined by the PSCO. The Shipowner Vice-Chairperson and Seafarer Vice-Chairperson agreed with the principles of the proposal. It was therefore accepted by the Meeting, with the understanding that it might require redrafting.
44. The representative of the Government of Denmark expressed concern that paragraph 48, as worded, had implications for how port States allocated their inspection resources and on what ships they might target for inspection. He said that emphasis should be placed on

deficiencies that had not been rectified, and proposed text along these lines. This proposal did not receive support and was subsequently withdrawn.

- 45.** The Shipowner Vice-Chairperson said that his group had discussed this paragraph at length. He understood that this paragraph aimed to have the PSCO look into the prior history of the ship. However, prior deficiencies were not necessarily “clear grounds” for a more detailed inspection, and suggested that the words “They might constitute clear grounds” in the last sentence be replaced with “There may be clear grounds”, in order not to limit the PSCO.
- 46.** The Seafarer Vice-Chairperson pointed to Standard A5.2.1, paragraph 6(b), which provided that conformities which constituted “a serious or repeated breach ...” were grounds for action. He referred to situations where over a number of years a ship might have had many deficiencies, which might only have been rectified as a result of PSC inspections, and would not otherwise have been rectified. Bearing in mind also differences between serious and less serious deficiencies, he felt that repeated deficiencies could lead to clear grounds.
- 47.** The Meeting agreed to the changes suggested by the Shipowner Vice-Chairperson. The Technical Drafting Committee proposed revising the paragraph by including the words “and any related plan of action to rectify the non-conformities” to make the text more specific, as well as making other minor changes. The proposal was adopted without further discussion.

3.2.2. Sources of information

Paragraph 49

- 48.** The Shipowner Vice-Chairperson, while not suggesting any change to the text, said that it should be borne in mind that any formal records of deficiencies, including electronic records, should also reflect when a deficiency had been corrected.

3.2.3. Scope of the port State control inspection

Paragraph 53

- 49.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, suggested the insertion, after the words “If the documentation is found to be valid and complete”, of the words “by the PSCO having come on board”. The Meeting agreed to this proposal. The Technical Drafting Committee revised the first sentence by including the words “Where the PSCO having come on board finds that”. The proposal was adopted without further discussion.

3.2.5. Review of a ship’s Maritime Labour Convention, 2006, documents in a port State control inspection

Step 1: Boarding the ship and requesting documentation

Paragraph 56

- 50.** The Technical Drafting Committee made changes to this paragraph to take into account earlier changes concerning the PSCO’s document or identity card.

Paragraph 57

51. The Shipowner Vice-Chairperson said that the term “initial inspection” implied that further inspection was automatic; however, further inspection would only take place if the Certificate and the DMLC were not in order. He therefore proposed that the word “initial” should be deleted. The Meeting agreed to this proposal.
52. The Shipowner Vice-Chairperson asked for clarification of what constituted an emergency as mentioned in the last phrase of paragraph 57. The Chairperson explained that the phrase was intended to mean that, if there were deficiencies of a very dangerous nature, then those deficiencies should be dealt with prior to examination of the documentation. The Shipowner Vice-Chairperson found that the wording was unclear and should be reworded. The Meeting agreed that the text should be reworded.
53. The Seafarer Vice-Chairperson, referring to the first sentence of paragraph 57, understood the phrase “PSCOs when boarding a ship should try to gain an impression” to mean that the PSCO would board a ship and immediately ask to look at documentation. He noted that Standard A5.2.1, paragraph 1, used the wording, “an authorized officer, having come on board to carry out an inspection”. This discrepancy raised the issue of whether PSCOs had the right to walk around the ship. He therefore proposed that the sentence should be changed to read, “PSCOs when on board a ship”.
54. The representative of the Government of the Bahamas, speaking on behalf of the Government group, felt that “gain an impression” referred to the impression gained by the PSCO when walking on the quay or up the gangway. He could not agree with the proposal made by the Seafarer Vice-Chairperson. In addition, he proposed, with the support of the Shipowner Vice-Chairperson, that the words “try to” should be deleted from the phrase “should try to gain an impression”.
55. The Seafarer Vice-Chairperson, in response to the representative of the Government of the Bahamas, said that it was not possible for a PSCO to gain an impression of the social conditions on the ship either from the quay or the gangway. He reiterated his belief that the wording in Standard A5.2.1, paragraph 1, “having come on board” did not refer solely to an inspection of documentation and allowed for the possibility of a walk around the ship. The expert from the Government of France added that PSCOs should not be restricted to inspection of documentation, as otherwise there would be no point in the PSCO boarding the ship. The Deputy Secretary-General confirmed that the change proposed by the Seafarers would bring the text in line with Standard A5.2.1, paragraph 1.
56. The Shipowner Vice-Chairperson said that, while in many countries it was the practice to allow PSCOs to walk around ships, the guidelines should not proscribe standard practice but should be consistent with provisions of the MLC, 2006. There were known instances where port State authorities in some countries abused their authority and the guidelines should not be worded in such a way as to allow any further abuse. PSCOs had to ask the permission of the master to walk around the ship: it was not a legal right. The guidelines should not endeavour to create such a right.
57. The representative of the Paris MOU said that there still appeared to be confusion over the role of PSCOs. He recalled that the MLC, 2006, was only one of 13 international Conventions relative to port State control and that a PSCO had to control 50 items of documentation on a ship. The representative of the Government of the Bahamas had been correct in saying that, prior to boarding a ship, the PSCO tried to gain a general impression of the ship, admittedly not of social conditions. In keeping with the ISPS Code, a PSCO must identify him or herself at the gangway and would then be escorted directly to the master’s cabin to inspect documentation. When the Certificate and the DMLC had been inspected, the part of the inspection referred to under the MLC, 2006, ended, but that did

not mean that the inspection itself came to an end: the inspection continued to be carried out according to the 12 other relevant Conventions.

58. The representative of the Government of the Marshall Islands, supported by the representative of the Government of Panama, suggested deleting the first sentence and adding the words “While on board” at the beginning of the second sentence. However, the Shipowner Vice-Chairperson did not support this proposal, which avoided the question of whether the PSCO had the right to walk around the ship. He further noted that ships were not only workplaces, but also living spaces, and the privacy of those on board must be respected.
59. The Seafarer Vice-Chairperson believed that, as concerned their privacy, seafarers would not object to an inspection to ensure that they were enjoying all the rights to which they were entitled. His group could accept the proposal made by the Government of the Marshall Islands, provided that the words “the port State control officer may gain an impression of or” were inserted after the words “While on board,”. The representative of the Government of Kenya, supported by the representative of the Government of the Russian Federation, added that PSCOs had a code of conduct and respected the way of life of those on board ship. PSCOs, they said, should be given a chance to walk around the ship before taking a decision on the conditions on board. The expert from the Government of France added that, while it was normal practice under port State control codes of conduct for inspectors to request the captain’s permission to conduct a tour of the ship, this should not affect the inspector’s authority to report breaches of law.
60. The representative of the International Maritime Organization noted that IMO Assembly Resolution A.787(19), which set out procedures for port State control, included many references to the PSCOs gaining an impression of the ship.
61. The Meeting agreed that paragraph 57 should be redrafted to take into account the views expressed. The Technical Drafting Committee made further adjustments to the paragraph to keep it consistent with the text of the MLC, 2006. These Meeting agreed to the Drafting Committee text.

Step 2: Reviewing the documents

Paragraph 60

62. The Shipowner Vice-Chairperson proposed to insert the words “referred to in the Maritime Labour Certificate and the DMLC” after “further documentation”, so as to limit the scope of the broad term “further documentation” to documents such as seafarers’ employment agreements, safe manning document or medical certificates. The representative of the Government of the Bahamas, speaking on behalf of the Government group, shared the concern and supported the proposal. Following a query from the representative of the Paris MOU, it was confirmed that this would still allow the PSCO to check the table of shipboard working arrangements and records on hours of work or rest as done under Convention No. 147. The proposal was accepted.
63. The Technical Drafting Committee further included a specific reference to the Maritime Labour Certificate and the DMLC. The Meeting agreed to these changes.

Paragraph 61

64. As to the second and third indent, the Shipowner Vice-Chairperson questioned the benefit of referring in guidelines for port State control to the guidelines on flag State inspection and suggested deletion of those references. The Meeting did not support the proposal

considering that PSCOs should be aware of the flag State guidelines to know what they had to enforce.

65. Given the window of three months for the renewal of a certificate, the representative of the Government of the Bahamas, speaking on behalf of the Government group, proposed to add a footnote to clarify that the period of validity of renewal certificates could go up to five years and three months. He further suggested inserting, in the third indent, after “signed” the words “and sealed or stamped” to more closely reflect Appendices A5-I and A5-II of the MLC, 2006. The Meeting accepted both proposals.
66. The Technical Drafting Committee added the reference to the DMLC being “sealed or stamped” and clarified text, in the third bullet point, concerning when the “person authorized to sign” is an employee of the RO.

Paragraph 62

67. The Shipowner Vice-Chairperson, speaking on the third indent, suggested replacing the wording “by providing a reference to the relevant national legal provisions as well as setting out, to the extent necessary (see Guideline B5.1.3), concise information” with “by providing a reference to the relevant national legal provisions; this may include concise information”. The reason was that the present reference to Guideline B5.1.3 appeared to put Part B of the Code on the same standing as the requirements of the MLC, 2006. While a nation had to take Part B into due consideration, it was free as to whether or not reflecting it in national law, and the language in Part B only became relevant for the port State if the flag State had chosen to use it. Similarly, several Government participants understood that Part B of the Code sought to enable flag States to formulate national law and thus should not to be used as guidance for PSCOs. Furthermore, they questioned the added value of such reference for the PSCO actually looking at the Maritime Labour Certificate and the DMLC, since the acceptance of the DMLC was a flag State issue already covered in the flag State guidelines.
68. With reference to Standard A5.1.3(10)(a)(ii), the Deputy Secretary-General of the Meeting explained that Guideline B5.1.3(1) helped clarify “to the extent necessary”. Part B contained “super guidelines”, in comparison to the guidelines under discussion. Governments implementing the MLC, 2006, still had to achieve the objectives set out in the Convention, whether they used Part B or not. The guidance in Part B sought to achieve uniformity when adopting legislation at the national level and could provide assistance in a section relating to port State inspections.
69. The Seafarer Vice-Chairperson criticized the reluctance to refer to non-mandatory guidelines of the MLC, 2006, in non-binding guidelines for port State control. Member States had to give due consideration to Part B of the Code, and some guidelines in Part B was so important that a reference to it or even the inclusion of its wording would be helpful. While recognizing that Guideline B5.1.3 was directed towards the development of national legislation by flag States, he could not agree that this precluded PSCOs from considering useful guidance on what to expect to find in the DMLC. The present guidelines did not only relate to the obligatory aspects of the MLC, 2006. The representative of the Government of the Philippines agreed.
70. The Chairperson suggested that the Technical Drafting Committee should determine whether or not that reference was necessary. The Technical Drafting Committee infused the reference to the MLC, 2006, guidelines into the text. The Meeting agreed to these changes.

Paragraph 63

- 71.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, suggested deletion of the words “at least” to make it clear that the DMLC only addressed the 14 areas listed in Appendix A5-I of the MLC, 2006. The Meeting agreed to this proposal.

Step 3: Determining whether there are clear grounds for believing that the conditions do not conform to requirements

Paragraph 66

- 72.** The Shipowner Vice-Chairperson noted that, as a consequence of changes made to paragraph 60, this paragraph would require redrafting. The Meeting agreed to this proposal. The text proposed by the Technical Drafting Committee was adopted without amendment.

Paragraph 67

- 73.** The Shipowner Vice-Chairperson proposed that the phrase “be sufficient to ensure ongoing compliance with”, contained in the second indent of paragraph 67, be replaced with the phrase “comply with”. The Seafarer Vice-Chairperson concurred with this proposal. However, the representative of the Government of the Bahamas, speaking on behalf of the Government group, stated that he would have preferred that this paragraph be deleted in its entirety. The Meeting agreed that the paragraph should be redrafted. The text proposed by the Technical Drafting Committee was adopted without amendment.

Paragraphs 68 and 69

- 74.** The Shipowner Vice-Chairperson found that paragraph 68 was too ambiguous; the particular concern arising out of this ambiguity was that the paragraph appeared to grant PSCOs too much discretion in making judgements and permitted them to take actions that were unjustified or inappropriate. He suggested that the paragraph should be redrafted.
- 75.** The Seafarer Vice-Chairperson expressed great satisfaction with the language of paragraphs 68 and 69. He considered that the two paragraphs succeeded in striking the appropriate balance between affording flexibility through national laws and ensuring compliance with the requirements of the MLC, 2006.
- 76.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, voiced his concern over the emphasis on national law rather than the provisions of the MLC, 2006. Paragraph 68 called for the PSCO to make an assessment of national law based on the DMLC. The paragraph should be modified so as to ensure that the PSCO did not exceed his or her area of competence. Evaluating national laws in the light of the requirements of the MLC, 2006, was a matter for the ILO supervisory bodies.
- 77.** The representative of the Government of Greece, supported by the representative of the Government of Malaysia, stated that, where national laws established standards higher than those provided for in the MLC, 2006, situations could arise where the PSCO determined that the DMLC, though compliant with the provisions of the MLC, 2006, did not comply with the provisions of the national legislation. He queried whether, in such situations, the PSCO would then be acting outside the proper scope of his or her competence. The representative of the Government of the Philippines stated that he was not entirely in agreement with the statement made by the representative of the Government of Greece. If the Maritime Labour Certificate and the DMLC were on face not in compliance, the PSCO

should act in accordance with the last sentence of paragraph 68. In paragraph 69, the reference to substantially equivalent provisions should not draw the PSCO into trying to interpret national laws.

- 78.** The representative of the International Maritime Organization, supported by the Seafarer Vice-Chairperson, said that the PSCO as an individual could not make such an assessment; however, he or she could inform the port State control authority which could look into the matter. The representative of the Government of Denmark said he could not support this view.
- 79.** The expert from the Government of Canada considered that a number of scenarios were plausible under paragraph 68, including one in which it was determined that national laws were themselves not in compliance with the MLC, 2006; and one in which it was determined that conditions on the ship were not in conformity with the MLC, 2006. It was unclear which course of action the PSCO ought to take for each eventuality. He considered therefore that paragraphs 68 and 69 contained too many concepts that were insufficiently defined. Considerable work needed to be done in order to clarify these elements and render each one distinct from the other so that, inter alia, clear courses of action would be set out on the basis of the PSCO's specific findings.
- 80.** The expert from the Government of Norway stated that the PSCO should inspect the ship with regard to the DMLC, Part I. This should be explicitly stated in paragraph 68. The focus of the inspection should be on the ship – not the flag State. The representative of the Government of the Marshall Islands recalled that the flag and port State guidelines complemented each other. The issues involved in the present discussion had also been discussed in the Meeting on guidelines for flag States, and this should be taken into account in paragraphs 68 and 69.
- 81.** The Seafarer Vice-Chairperson said that neither the ILO supervisory system nor national laws and regulations were 100 per cent effective, so the PSCO would need in some instances to look into these matters and make a judgement. Paragraph 68 provided that the PSCO might take action only where there were clear grounds for believing that conditions did not conform to the requirements of the MLC, 2006. Adequate safeguards existed, therefore, to ensure that the PSCO did not exercise undue discretion in discharging his or her duties. If the PSCO did not possess such authority, paragraphs 68 and 69 might as well be done away with altogether. The PSCO could challenge laws and regulations if they were wrong; the question was to whom such challenges should be addressed. He recalled the principles contained in Article III, paragraph 1, of the MLC, 2006, and that it was important to know when the rights enshrined in this Article were not being delivered. If the text was to be redrafted, it must include the authority of the PSCO to check national laws and regulations and substantial equivalencies.
- 82.** The expert from the Government of France said that at this point in the discussion it was important to stress that the PSCO always had the responsibility to inform his or her authority of any deficiencies encountered during inspections.
- 83.** The Deputy Secretary-General noted that a State that ratified a Convention was required to give effect to the provisions of the Convention. Furthermore, the ILO Constitution required the State to report to the ILO supervisory bodies on the implementation of the Convention. In its yearly report, the Committee of Experts on the Application of Conventions and Recommendations provided information about States that had not complied with their constitutional obligation to engage in a dialogue with the Office on the implementation of international labour standards. She noted that one of the ILO's main Conventions set the minimum age for employment at 14. The MLC, 2006, however, set the minimum age at 16. According to Regulation 5.2.1, paragraph 3, of the MLC, 2006, the PSCO could limit

his or her inspection to the verification of the DMLC. What would a PSCO do if the DMLC referred to a minimum age of 14, and a 14-year-old child was found on board?

- 84.** The representative of the Paris MOU said that, if a 14-year-old child was found on board, this would indeed be a serious matter. The ship would not to be permitted to sail with this crew member, and the port State would open dialogue with the flag State on how to resolve the matter. Adding to the comments made by the representative of the Paris MOU, the representative of the Government of Cyprus stated that PSCOs in his country were instructed to disregard any waivers or exemptions issued by flag States that would be in contravention of the MLC, 2006. In this regard, he recalled a case related to STCW requirements where a 19-year-old master of a vessel was barred from continuing his voyage despite holding an official master's certificate from his home country. On the other hand, Cypriot vessels had been faced with ridiculous PSCO decisions, which were upheld by the PSCOs' superiors. He therefore requested clarity on how to understand these paragraphs.
- 85.** The Meeting agreed to establish a working group on paragraphs 66–69 of the draft guidelines.
- 86.** A working group, led by the representative of the Government of Norway, in his capacity as Vice-Chairperson of the Government group, was formed to examine and reformulate paragraphs 66–70 of the proposed guidelines (MELCBS/2008).
- 87.** The representative of the Government of Norway explained that the working group had sought to address all concerns voiced during the plenary sessions and wanted to present a clear and simple redraft tailored to the needs of PSCOs. In this regard, minor changes were made to paragraphs 66 and 67 in keeping with what had been agreed by the Meeting. The main changes were made to paragraphs 68 and 69. The new wording of paragraph 68 was written to reflect its new purpose, as a preface to paragraph 69. The focus of paragraph 69 had been changed from one of assessing whether national legislation of flag States complied with the MLC, 2006, to whether the inspected ship complied with national laws and regulations as set out in the DMLC, Part I, or specific MLC, 2006, requirements. The paragraph set out action to be taken to determine whether a more detailed inspection was warranted. After commenting on the changes made to the paragraph, he further noted that the intent of this paragraph was to ensure the PSCO could act quickly and efficiently in order to avoid undue delay to the ship. He also indicated this might result in consequential changes to paragraph 85.
- 88.** The Shipowner Vice-Chairperson said that the working group's text addressed the concerns he had had with the original Office draft, which had seemed to place the PSCO in the position of judging national laws implementing the provisions of the MLC, 2006. He suggested that it be considered for possible drafting improvements.
- 89.** The Seafarer Vice-Chairperson generally supported the working group's text but suggested that, to reflect the agreed changes to paragraph 66 and to ensure overall consistency in the guidelines, the words "or documents referred to in the certificate or DMLC or other elements" should be included. The Meeting agreed to this and to consequential changes to paragraph 85.
- 90.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, expressed support with the proposal made by the working group but said that his group had many questions on the precise meaning of some of the text. He suggested that the Technical Drafting Committee should look at the text. Specifically, consideration should be given to deleting, in subparagraph "(d)", the words "if necessary" from the phrase "information provided by the Master and, if necessary, by the flag State"

and redrafting the beginning of the last sentence of that subparagraph so that it would read “If further clarifications are necessary ...”.

91. The expert from the Government of France, while generally supporting the draft, pointed out that there were merits in consulting with flag States early in the inspection. From a practical point of view, this might take a long time and lead to delays.
92. The Meeting agreed to send the working group’s proposed new paragraphs 66–70 to the Technical Drafting Committee, along with the abovementioned amendments suggested by the Government group. A proposal by the Government group to insert the word “otherwise” at the beginning of the proposed new paragraph 69, subparagraph “(b)”, was not supported by the Seafarer Vice-Chairperson.

Paragraph 71

93. To be in line with paragraph 57, and in light of previous discussions, the Seafarer Vice-Chairperson suggested that “general impressions” be inserted and “when going on board” be deleted, so that paragraph 71 read as follows “Clear grounds from other elements. Clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention may arise in several other contexts, including during the preparations for inspections (see sections 3.2.1 and 3.2.2 above) general impressions, visual observations (as in paragraph 56) and during the investigation of a complaint (as in paragraphs 83 and 115).”
94. The Shipowner Vice-Chairperson agreed with the insertion of “general impressions” but suggested to make the deletion of “when going on board” subject to the discussion of paragraph 70. The Chairperson agreed that the term “when going on board” was closely linked to the previous discussion.
95. The text proposed by the Technical Drafting Committee was adopted without amendment.

Paragraph 72

96. The representative of the Government of the Bahamas, speaking on behalf of the Government group, suggested replacing the words “the inspection must come to an end” with “a more detailed inspection should not be carried out”. The representative of the Paris MOU suggested a different ending, that is, to replace “the inspection must come to an end” with “the inspection must be limited to the review of the Certificate and the DMLC”. The Meeting agreed to the text from the Government group.
97. The expert from the Government of France, speaking on behalf of the Members of the European Union, suggested inserting, after the word “Convention”, the words “or during the investigation of a complaint”. Following further discussion, the Deputy Secretary-General explained that paragraph 71 enumerated circumstances leading to “clear grounds”. Paragraph 72 would encapsulate all elements of paragraph 71. However, she said that paragraph 83 would refer to another set of issues possibly giving rise to another set of inspections. It was agreed that the text of paragraph 72 should be looked at closely to determine if redrafting was necessary. The Seafarer Vice-Chairperson found the explanation provided by the Deputy Secretary-General helpful, but he reserved the right to go back to it at a later stage.

Step 4: Determining whether there are reasonable grounds to believe that the ship has changed flag to avoid compliance with the Convention

Paragraph 73

- 98.** The Shipowner Vice-Chairperson proposed the deletion of the second sentence. Furthermore, he felt that additional guidance should be provided to PSCOs with regard to the three elements that they needed to verify and suggested that the final sentence should be amended to read: “The PSCO could form an opinion on the purpose of changing flag by looking at the ship’s records concerning compliance such as outstanding deficiencies which have not been transferred to the new flag records and talking to the shipowner’s representative who may provide rationale on why the flag has changed and to the authorities of the previous flag State or States who may provide information on difficulties regarding enforcement.”
- 99.** For essentially the same reasons, the representative of the Government of the Bahamas, speaking on behalf of the Government group, proposed that the final sentence should be replaced by the wording proposed by the Paris MOU in its submission to the Meeting, reading: “The PSCO could form an opinion by looking at the ship’s record of compliance. Significant outstanding deficiencies which have not been transferred to the new flag’s records (for example, if an interim certificate is still in place) may be reasonable grounds. The previous flag State may provide information on difficulties it had in enforcing compliance. The shipowner’s representative may be able to inform the PSCO of legitimate reasons for changing flag which were not for the purpose of avoiding compliance.”
- 100.** The Seafarer Vice-Chairperson concurred provided that the words “may provide information on difficulties” be replaced with the phrase “may provide information which could include information on difficulties”. The Meeting agreed to insert wording according to the proposals made by the Shipowner experts and the Paris MOU, with the addition suggested by the Seafarer experts.
- 101.** The Meeting further decided that the words “reasonable grounds” in the first sentence be placed in bold font, as should the beginning of the fourth sentence, “There must be ‘reasonable grounds’, rather than ‘clear grounds’”, in order to highlight their importance.
- 102.** The Technical Drafting Committee further changed the last sentence of paragraph 73 from “The PSCO could form an opinion on the purpose of changing flag by looking at a ship’s record of compliance” to “The PSCO could form an opinion on the purpose of changing flag by looking at any relevant inspection report” to better reflect the wording of the MLC, 2006. This was accepted.

Paragraph 74

- 103.** As a consequential amendment, the Meeting agreed to bring the phrase “the inspection must come to an end” into line with the wording agreed on for paragraph 72. It was again decided to place the words “reasonable grounds” in bold font.

Step 5: Determining whether or not to carry out a more detailed inspection

Paragraph 75

- 104.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, suggested that the second sentence be amended to avoid the use of the word “mandatory” and to use instead the word “shall”. It was so agreed.

Paragraph 76

- 105.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, proposed the deletion of the word “immediately” from the first sentence, since informing the ship’s master immediately would be impractical in many cases. The Shipowner Vice-Chairperson suggested rather replacing the term “immediately” with the words “as soon as possible”. The Meeting so decided.

3.3. Procedure for inspections initiated upon receipt of a complaint

Paragraph 78

- 106.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, said that there had been no consensus on replacing the words “a record of the time when the complaint was received” with “a record of the complaint” as proposed by the Paris MOU in its submission to the Meeting, since some Government participants had preferred to maintain the time element. The Meeting decided to adopt the paragraph as is.

Paragraph 79

- 107.** The Seafarer Vice-Chairperson proposed that the final sentence should be placed in bold font to highlight its importance. It was so agreed.

Paragraph 80

- 108.** The Seafarer Vice-Chairperson, while acknowledging the wording of Standard A5.2.2(7), believed that there was a general principle of law stipulating, for reasons of due process, confidentiality with respect to all persons filing complaints, whether they were seafarers or other parties such as welfare organizations, dockworkers or pilots. He appealed to the Meeting to amend the paragraph to extend confidentiality to non-seafarers, for instance by including the wording from point 2.6.4 of IMO Resolution A.787(19) (“In the case that an inspection is initiated based on a report or complaint, especially if it is from a crew member, the source of the information should not be disclosed.”). Third parties who had access to the vessel and wished to report a violation of seafarers’ rights to port State control authorities should be encouraged to file a complaint and be able to do so in confidence.
- 109.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, stated that Governments had initially preferred using the wording of Standard A5.2.2(7). The Shipowner Vice-Chairperson stressed the importance of the confidentiality of complaints and the responsibility of PSCOs to respect that confidentiality, and suggested adding after the word “seafarers” the phrase “or others who may be included under national laws and regulations”, as the addition would accommodate the Seafarers’ concerns and still be in line with the MLC, 2006. Several Government participants expressed sympathy and support for the position of the Seafarer experts, feeling that, in view of the definition of complaints in Standard A5.2.1(3), the extension of confidentiality to other parties would not go beyond the MLC, 2006. The representative of the Government of the Philippines felt that mechanisms related to confidentiality were already established in flag States and could be extended to port States, and noted that the specific provisions of the Tokyo MOU already provided for confidentiality.

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- 110.** Given the agreement in principle that confidentiality should not only apply to seafarers, it was decided to leave it to the Technical Drafting Committee to adjust the narrowly worded paragraph to the wider scope of Standard A5.2.1(3).
- 111.** The expert from the United States, as Chairperson of the Technical Drafting Committee, when submitting the Committee’s proposed text to the plenary, explained that it had followed the instructions given by the plenary, as well as its understanding that it should attempt to reflect in the text the range of possible complainants provided for in Standard A5.2.1(3). The Committee proposed new text to read:
- “Appropriate steps must be taken to safeguard the confidentiality of complaints submitted by a seafarer, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including any interest in safety or health hazards to seafarers on board. In accordance with national laws and regulations, the records maintained by the port State authority should be confidential.”
- 112.** The Shipowner Vice-Chairperson, supported by the representatives of the Governments of Denmark, Malaysia and Sweden, said he could not accept this new text, and preferred to retain the original text as drafted by the Office (in paragraph 80 of MELCBS/2008), with one change: replacing, in that text, the word “should” with “must”.
- 113.** The Seafarer Vice-Chairperson said that his group preferred the text provided by the Technical Drafting Committee, not the original text. The representative of the Government of the Netherlands said that his delegation could agree to keep the original Office text (as in paragraph 80 of MELCBS/2008), but wished to add the words “any person with an interest in the safety of the ship”, while the expert from the Government of France said that, if the Meeting agreed to accept the original Office text, he would prefer deletion of the words “Unless the complainant has clearly indicated otherwise”.
- 114.** The Shipowner Vice-Chairperson recalled that Standard A5.2.2, paragraph 7, which was relevant to this paragraph, provided that, “Appropriate steps shall be taken to safeguard the confidentiality of complaints made by seafarers.” The other possible complainants included in the Technical Drafting Committee’s proposed new text were drawn from those listed in Standard A5.2.1, paragraph 3. This was an expansion of the provisions of the MLC, 2006, and thus could not be supported by his group. He also could not support a counter-proposal by the Seafarer Vice-Chairperson to use the original Office text but to add a new sentence reading: “This will also apply when other complainants request confidentiality.”
- 115.** The representative of the Government of the Bahamas, supported by several other Government representatives, suggested simply replicating the text of Standard A5.2.2, paragraph 7.
- 116.** The expert from the Government of Brazil supported the proposal made by the representative of the Bahamas, but proposed that the phrase “In accordance with national laws and regulations, the records maintained by the port State authority should be confidential” should be retained. The expert from the Government of France supported the proposal from the expert from the Government of the Bahamas and added that, in cases where a complaint made by a seafarer was transmitted to the competent authority by his or her trade union, confidentiality must continue to apply with regard to the seafarer. He recalled that other Conventions also dealt with similar issues and many port State authorities already applied the concept of confidentiality.
- 117.** The Seafarer and Shipowner Vice-Chairpersons supported the proposal of the representative of the Government of the Bahamas and proposed the addition of the

reference “(Standard A2.2, paragraph 7)” and the placing of the entire paragraph in bold text. The Meeting agreed to this.

118. Following this exchange, the Seafarer spokesperson was appalled that the general principles of confidentiality so lauded by the secretariat had not been extended beyond seafarers and was saddened that the Meeting had not taken the opportunity to harmonize the MLC, 2006, with the IMO regime.

119. In addition, in a text submitted in writing, the Seafarer experts expressed their extreme disappointment with the decision taken on paragraph 80, which totally ignored the strong legal advice provided by the Office that the confidentiality of complainants was guaranteed under the general principles governing the ILO and thus all member States. The decision ignored the Preamble and key Articles of the MLC, 2006. The Seafarer experts could only assume that the position of the Shipowner experts to veto any compromise wording was due to them considering it acceptable for organizations such as the missionary societies and trade unions, and even more importantly for other individuals such as pilots, to face intimidation, so as to try and ensure that they did not make complaints. This could only be seen as a direct attack on the protection of the fundamental rights of seafarers.

Chapter 4. More detailed inspection of maritime labour conditions on ships

120. To help ensure the complementarity of flag and port State control inspections under the MLC, 2006, the Meeting, when discussing Chapter 4, used, as the basis for its discussion, document MELCBS/2008/6, which reflected the changes to the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*, that had been adopted the previous week by the Tripartite Meeting of Experts to Adopt Guidelines on Flag State Inspections under the Maritime Labour Convention, 2006.

4.1. General note

Paragraph 84

121. The representative of the Government of the Bahamas, speaking on behalf of the Government group, asked that “however” be deleted under paragraph 84 as it gave the wrong impression for the text that came after it. The Meeting accepted this proposal.

Paragraph 85

122. It was noted that there might be consequential amendments to this paragraph as a result of changes to paragraph 45. The text proposed by the Technical Drafting Committee was adopted without further discussion.

Paragraph 87

123. The representative of the Government of the Bahamas, speaking on behalf of the Government group, suggested that “carried out in the flag State” should read “carried out by the flag State”. He thought that “choose two or three” should be replaced by “choose several”. The Meeting agreed to these changes.

124. The representative of the Government of the Bahamas, speaking on behalf of the Government group, suggested that the following be deleted from the first line of paragraph 87: “that are evidently substandard”, “of aspects” and “on a ship”. The paragraph would have to be redrafted to smooth out the remaining wording. The

Shipowner Vice-Chairperson asserted that “already has clear grounds” should stay as it was a key sentence. The Seafarer Vice-Chairperson reserved his position until he could see the language coming from the Technical Drafting Committee.

125. The representative of the Government of the Bahamas, speaking on behalf of the Government group, further wished to delete “with a view to ascertaining whether the flag State inspections of the ship have been carried out and can be relied upon and whether the shipowner’s measures for ensuring ongoing compliance are adequate and are being adequately implemented” as this was not the function of the port State officer. The Shipowner Vice-Chairperson recognized that it would be difficult for the PSCO to be the auditor of whether the Convention requirements were adequately reflected in those approved by the flag State. However, the PSCO would have a view as to whether the Convention requirements were being met on the ship at that time. The PSCO could check if the appropriate inspections had been carried out as part of his basic review. The Seafarer Vice-Chairperson thought that there were many flag States in existence that should not be flag States. The wording in the text was appropriate for those flag States and he hoped that the MLC, 2006, would get rid of some of them. He did not support changing the text. The representative of the Government of Malaysia understood the Seafarers’ point of view, but it was not for the PSCO to audit flag State inspections. He did not agree with retaining this in paragraph 87 and asked that the words “can be relied upon” be deleted. The Meeting agreed that only the words “can be relied upon” would be deleted. The text proposed by the Technical Drafting Committee was adopted without further discussion. Moreover, a new paragraph to define the scope of the PSCO’s function in enforcement, was placed at the end of section 4.1 and was adopted with a minor change, introducing a catch-all phrase to cover all references to national laws or regulations throughout the guidelines.

4.2. *The basic requirements; sources of information; examples of deficiencies or non-conformities*

126. The Meeting decided that headings of the Regulations in this section should include specific references to the items listed in Appendix A5-III of the MLC, 2006. This would facilitate the work of PSCOs. Furthermore, the representative of the Government of the United States, speaking as Chairperson of the Technical Drafting Committee, noted that references to the MLC, 2006, requirements had not been included on a regular basis in the “Basic requirements”, and that the text needed to be harmonized in that respect. The representative of the Government of the Bahamas, speaking on behalf of the Government group, said it would be helpful for the PSCO to also include references to the MLC, 2006, requirements in the “Examples of deficiencies” throughout the text. While the Shipowner Vice-Chairperson agreed, the Seafarer experts rejected the proposal considering that, in social matters, such cross-references would oversimplify since they disregarded the severity or repetition of the deficiency. Moreover, the exercise would become difficult and confusing, as in some cases there would need to be multiple references. Noting the lack of consensus, the Shipowner Vice-Chairperson reminded everyone that governments could include references when developing their own port State guidelines. The Meeting decided to add references to the “Basic requirements” but not to the “Examples of deficiencies”.

Regulation 1.2 – Medical certificate

Basic requirements

127. The Shipowner Vice-Chairperson pointed out that medical certificates could expire during a voyage and that Standard A1.2, paragraph 9, of the MLC, 2006, allowed them to stay in force until arrival in the next port. He suggested adding an additional indent to the last bullet point, which concerned the period of validity, that would read “If a certificate expires during the voyage it continues to be in force until the next port when a certificate

can be obtained”. The Seafarer Vice-Chairperson had no problem making the text consistent with Standard A1.2, paragraph 9, of the MLC, 2006. The Meeting agreed to this proposal. The text proposed by the Technical Drafting Committee which, inter alia, incorporated the wording of Standard A1.2(8) and (9) in a Note, in order to accurately reflect two different scenarios, was adopted without further discussion.

- 128.** The representative of the Government of Algeria asked that “as a minimum” be added to the second bullet point so that it read “must as a minimum be provided” and was consistent with Standard A1.2, paragraph 10. The Meeting agreed to this proposal.

Sources of information

- 129.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, drew attention to the last bullet point, which concerned the “Flag State’s list, if it exists, of duly qualified medical practitioners”. He thought that most flag States did not have a list of duly qualified medical practitioners. Many flag States would be recognizing certifications from other countries and a list of practitioners within the country was not useful for the PSCO. He felt that the bullet point should be deleted.
- 130.** The Shipowner Vice-Chairperson thought that, in the previous discussion on flag State guidelines, the Governments had said that they did have such a list. The representative of the Government of the United States said that sometimes a different authority might have the list, not necessarily only the flag State. She suggested that the sentence be changed to “list of duly recognized practitioners if it exists”.
- 131.** The Seafarer Vice-Chairperson said he would accept using the text agreed on the previous week. The representative of the Government of the Marshall Islands, supported by the representative of the Government of the United States and the Seafarer Vice-Chairperson, pointed out that the text before the Meeting was not what had been accepted the previous week. The Meeting agreed that this matter should be examined by the Technical Drafting Committee to ensure consistency between the two sets of guidelines. The Shipowner Vice-Chairperson noted that, during this and other discussions the terms “flag State” and “competent authority” had been used to refer to the flag State responsibility under the MLC, 2006, and asked that the Technical Drafting Committee take this into account in its work in order to ensure consistency and avoid confusion.
- 132.** The representative of the Government of the United Kingdom, speaking on the third bullet point, thought that “where appropriate” should be added after “colour vision certificates” in line with the flag State guidelines. The Meeting agreed. The text proposed by the Technical Drafting Committee, which, inter alia, deleted the bullet concerning the list of qualified practitioners, was adopted without further discussion.

Examples of deficiencies

- 133.** The text proposed by the Technical Drafting Committee was adopted without further discussion.

Regulation 1.3 – Training and qualifications

Sources of information

- 134.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, thought that, in the third bullet point, the words “national law” should be replaced by “international Conventions”, as it was highly unlikely that a PSCO would be familiar with national laws. He understood that Part I of the DMLC would include national legislation to demonstrate that the administration had complied with the MLC,

2006, not any additional laws beyond the Convention. Part II of the DMLC would show how the shipowner had complied with the Convention.

- 135.** At the request of the Seafarer Vice-Chairperson, the Office clarified that national requirements for qualifications would be listed in Part I of the DMLC. The Seafarer Vice-Chairperson therefore thought that the text could remain unchanged. The Shipowner Vice-Chairperson had no strong views on this point.
- 136.** The Deputy Secretary-General said that the port State control guidelines contained a number of references to national law. The Technical Drafting Committee could draft text, to be inserted into the “General note” at the beginning of Chapter 4, that would explain the issue of port State control in terms of national laws. It was not for the PSCOs to enforce national law but to inspect for compliance with the MLC, 2006. Where national laws were superior to the requirements of the Convention, it was not for PSCOs to enforce the higher requirement. She was concerned that putting in a reference to “international Conventions” might wrongly give the impression in these guidelines that States had obligations concerning international Conventions that they had not ratified.
- 137.** The representative of the Government of the Bahamas said that it would be helpful to look at the specimen DMLC in Appendix A5-II of the Convention. There was no indication that one should put down national laws that went beyond the Convention.
- 138.** The Meeting agreed to replace the words “national law” with “the MLC, 2006”.

Examples of deficiencies

- 139.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, suggested the addition of the following new bullet point: “absence of valid dispensation issued in accordance with the STCW Convention”. It was so agreed. The text proposed by the Technical Drafting Committee, which made it clear that not all ships had dispensations, was adopted without further discussion.

Regulation 1.4 – Recruitment and placement

- 140.** On a query as to why the text on recruitment and placement did not reflect the wording of the flag State guidelines (MEFS/2008/8), a representative of the Office replied that Chapter 4 of the port State guidelines, while based on Chapter 3 of the flag State guidelines, had been adapted to the PSC context. Chapter 4 of the port State guidelines was limited to the 14 areas to be inspected by the PSCO and thus could only deal with private recruitment and placement services, whereas the flag State guidelines contained guidance on both public and private agencies.

Sources of information

- 141.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, proposed deleting the first bullet point. It would be difficult for port States to check the flag States’ national web sites, as they would be drafted in the respective national language and would, in case of ships with multinational crews, refer to the labour-supplying States’ web sites (also in the respective national languages). The Shipowner and Seafarer Vice-Chairpersons found that the information on national web sites could be useful and should therefore be left as an option under sources of information. The Meeting agreed to retain the bullet point while replacing the words “flag States” with “competent authorities”, in line with the wording used in the flag State guidelines (MEFS/2008/8).

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- 142.** There was agreement that the text in the second bullet point accurately reflected the discussion held in the Meeting to adopt flag State guidelines concerning the responsibility of the flag State in case seafarers were engaged through a recruitment and placement service based in a State not party to the MLC, 2006. The Meeting considered, however, that the clarity of the text could be enhanced. The text proposed by the Technical Drafting Committee was adopted without further discussion.

Regulation 2.1 – Seafarers’ employment agreements

- 143.** The Meeting decided that, for reasons of consistency, the phrase “(or other evidence of contractual or similar arrangements)” at the end of the first bullet point under “Basic requirements” should also be repeated in the first bullet point under “Sources of information” and in the first bullet point under “Examples of deficiencies”.

Regulation 2.2 – Wages

- 144.** The representative of the Government of Norway proposed the insertion of the following footnote to the Title: “In the framework of port State responsibility, the PSCO may not be empowered to handle complaints regarding wages. The PSCO should, however, as a minimum, collect or gather evidence and ensure that the matter is transmitted to the relevant competent authority ashore”. Such an addition would address the issue that PSCOs in many countries did not have the competence or the mandate to deal with complaints concerning wages.

- 145.** Considering that the same problem applied to many areas, the Shipowner Vice-Chairperson wondered whether it might be more useful to include general guidance on the issue of PSCOs not being mandated to deal with certain issues. The Deputy Secretary-General of the Meeting said that the MLC, 2006, was cross-cutting and involved many ministries and competent authorities. On certain issues of implementation, specific expertise was required. Should the proposal be accepted in principle, such guidance should rather form part of the “General note”. The Shipowner Vice-Chairperson noted that, in view of the multitude of stakeholders, privacy and confidentiality were paramount, especially with regard to complaints about wages.

- 146.** The Seafarer Vice-Chairperson, referring to paragraph 41 in Chapter 3, was appalled that it was being implied that, if there were a serious complaint regarding wages, the PSCO was not empowered to deal with it and that he could merely gather evidence and let the ship sail. Payment of wages was mentioned in Appendix A5-III and was a detainable item. PSCOs had to be trained to be able to inspect under the MLC, 2006. Seafarers’ unions won claims totalling millions of dollars every year in back payment of unpaid wages, and sought to work alongside PSCOs to identify ships on which seafarers were not paid pursuant to their employment agreements.

- 147.** In the absence of support, the representative of the Government of Norway withdrew his proposal.

Regulation 2.3 – Hours of work and hours of rest

Basic requirements

- 148.** The Shipowner Vice-Chairperson proposed the deletion of the fourth bullet point under “Basic requirements” concerning fatigue, considering that it was appropriate for the flag State but not relevant in the context of guidelines for PSCOs. The Seafarer Vice-Chairperson argued that fatigue was an important issue to which PSCOs should give particular attention during inspection. The proposal was not accepted.

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- 149.** The Shipowner Vice-Chairperson further suggested that the text of paragraphs 7 and 8 of Standard A2.3 of the MLC, 2006, could be incorporated under the third asterisk, since the provisions concerning drills and standby would be an important point of reference for PSCOs. The Meeting agreed.

Sources of information

- 150.** The proposed deletion of the fifth bullet point concerning fatigue was also rejected.

Examples of deficiency

- 151.** The Meeting decided that the words “and rest” should be deleted from the last bullet point, as limits to rest could obviously not be exceeded.
- 152.** The representative of the International Maritime Organization, supported by the representative of the Government of Malaysia, suggested that wording be added to indicate that the PSCO should take account of any fatigue caused by the inspection itself. The proposal was not accepted. While noting the lack of support, the representative of the International Maritime Organization wished to highlight the importance of the issue of multiple inspections as a potential contributing factor to fatigue of the crew. He hoped that the PSCO’s findings would, in future, help make progress towards the pending issue of the mutual recognition of inspections carried out by many PSC regimes. This would avoid re-inspection of ships which had demonstrated full compliance and where there was an absence of complaints. The representative of the Government of Malaysia supported the comments made by the representative of the International Maritime Organization.

Regulation 2.7 – Manning levels

Basic requirements

- 153.** The Shipowner Vice-Chairperson noted that the wording “ships must have a sufficient number of seafarers employed on board” differed from that in Regulation 2.7 of the MLC, 2006, which stated that “each Member shall require that all ships that fly its flag have a sufficient number of seafarers employed on board”. He stressed the flag State’s responsibility to ensure that ships have a sufficient number of seafarers on board.
- 154.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, proposed that the wording of the second bullet point should be redrafted to reflect that ships must, as a minimum, comply with the manning levels listed on the Safe Manning Document (SMD), to avoid a situation in which ships could be found deficient for having more seafarers on board than listed in the SMD. The representative of the Government of Sweden reminded the Meeting that the same ambiguous wording had been used in the flag State guidelines (MEFS/2008). The Seafarer Vice-Chairperson supported the proposal recalling that during the Meeting’s discussion of paragraph 98 in Chapter 5 of the draft guidelines, it had been agreed that manning levels not only had to be in accordance with the SMD but also had to comply with MLC, 2006, requirements and thus might need to be higher. The representative of the Government of Greece expressed the concern that, should the change be accepted, the guidelines for PSCOs would deviate from the flag State guidelines, which would amount to the port State enforcing a requirement in lieu of the flag State. The Deputy Secretary-General of the Meeting stated that the adopted text of the flag State guidelines (MEFS/2008) could no longer be amended. While it would be consistent to keep the identical wording in the port State guidelines, the Meeting had the discretion to introduce changes where need be. Despite the resulting divergence, the Meeting believed that a rewording of the bullet would be beneficial.

Examples of deficiencies

- 155.** As a consequential amendment, it was decided to redraft the ambiguous wording in the first bullet, for the reasons detailed above.

Regulation 4.1 – Medical care on board ship and ashore

- 156.** The Shipowner Vice-Chairperson, referring to Regulation 4.1(3) of the MLC, 2006, proposed that a new bullet point be added under “Basic requirements”, which would read: “Seafarers on board ships who are in need of immediate medical care should be given access to the medical facilities on shore.” He also suggested that, under “Examples of deficiencies”, a new bullet point be added reading: “Seafarers not permitted shore leave for immediate medical care.” Several Government participants objected emphasizing that the proposed example of deficiency was not appropriate, as it constituted a deficiency of the port State and not of the ship being inspected by the PSCO. It was, however, felt that the point was relevant and valid, since breaches did occur where seafarers were not allowed access to port State medical facilities. The Meeting therefore decided that the Technical Drafting Committee could consider the most appropriate place to include wording concerning port State responsibility, so as to bring it to the attention of the PSCO. The text proposed by the Technical Drafting Committee, including the new wording placed in a Note under the “Basic requirements”, was adopted without further discussion.

Regulation 4.3 – Health and safety protection and accident prevention

Sources of information

- 157.** In the eighth bullet point, the Meeting decided to include wording to signal that evidence might not be available. The text proposed by the Technical Drafting Committee was adopted without further discussion.

Chapter 5. Action to be taken by port State control officers when finding deficiencies or non-conformities

5.1. Actions to be considered when deficiencies are found

Paragraph 88

- 158.** In line with the Tripartite Expert Meeting to Adopt Guidelines on Flag State Inspections under the MLC, 2006, the Meeting decided to remove the proposed flowcharts, redraft them and introduce them into training material currently under development by the ILO. The text proposed by the Technical Drafting Committee deleting the reference to flowcharts was therefore adopted without further discussion.

Paragraph 89

- 159.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, said that his group had discussed whether or not all deficiencies reported by the PSCO should include a reference to the MLC, 2006, Regulations and Standards concerned. Some Governments felt that all deficiencies should include a reference to the MLC, 2006, provisions, but many others thought this would impose an excessive burden on the PSCOs. As a group, the Governments therefore proposed that new

text, as part of paragraph 89 or in an entirely new paragraph, should be included, wherever appropriate, in the section “Step 1: Notification of any deficiencies”. The new text would set out that, in case of the notification of deficiencies leading to detention of a ship, the PSCO should include in the his report references to relevant provisions of the MLC, 2006.

- 160.** The representative of the Government of Denmark said that he preferred that all deficiencies should include such references, as this was good conduct and provided the history of previous deficiencies that could usefully be taken into consideration when determining whether or not to carry out a more detailed inspection as set out in Step 5 of the procedure provided in section 3.2.5.
- 161.** The Shipowner Vice-Chairperson recognized the importance of the availability of the information on the past violations of the MLC, 2006, as referred to by the representative of the Government of Denmark. He considered that the impact on the workload of the PSCOs would not be a major issue as it was expected that adequate resources would be made available for the PSCOs in order to implement the inspections prescribed by the MLC, 2006.
- 162.** The Seafarer Vice-Chairperson was concerned that such a requirement could limit the exercise of professional judgement by the PSCO. The latter had to take account of a variety of factors when deciding whether to detain a ship or not. He considered that the proposal might be a disincentive for the effective operation of the PSCOs, and he was therefore against it.
- 163.** The representative of the Government of South Africa pointed out that the standard PSC report form allowed the possibility to provide appropriate reference to provisions of Conventions for all listed deficiencies but that this practice should be required only for detainable ones.
- 164.** The representative of the International Maritime Organization added that it was normal for a decision by the PSCO to be justified with references to the relevant provisions of the appropriate Convention. However, it was also important to keep in mind the workload of the PSCOs, as mentioned by the Seafarer Vice-Chairperson. He suggested that the proposal could be accommodated under section 5.7, “Action to be taken if the ship is not allowed to sail”.
- 165.** The Deputy Secretary-General stated that the MLC, 2006, did not specifically require that all deficiencies would have to be linked to its specific Regulation or Standard. She noted the difficulty of identifying the source reference of every single deficiency found on a detained ship.
- 166.** The representative of the Government of Greece further noted the proposal did not add anything to the guidelines as drafted, as paragraph 98 already implied that deficiencies are to be linked to the Regulations and Standards of the MLC, 2006.
- 167.** The Meeting subsequently decided not to adopt the text proposed by the Government group.

Paragraph 90

- 168.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, suggested deleting the second sentence of paragraph 89 as it was clear that well-run ships would not have deficiencies and it was therefore redundant. The Shipowner Vice-Chairperson wanted to retain the wording. The PSCO would not only conduct the inspection in regard to the documentation provided but also take account of his or her own experience in inspection. The Seafarer Vice-Chairperson also wished to retain

the text. The representative of the Paris MOU suggested to delete the words “Deficiencies which, having regard to their nature or quantity or repetition, would be significant”, but this was not accepted by the Meeting, and the Office text was retained.

- 169.** The representative of the Government of Greece, supported by the expert from the Government of South Africa and the representative from the Government of Malaysia, recalling discussions at the previous week’s Meeting on flag State guidelines, was of the opinion that, if a private recruitment and placement service had made a mistake, the rectification would not be at the expense of the seafarer. He proposed inserting the appropriate wording in paragraphs 89 or 90 or another appropriate place. The expert from the Government of the Philippines, supported by the expert from the Government of France, agreed with the view expressed by the representative of the Government of Greece, and emphasized that the insertion of such text should not be seen as encouragement of illegal conduct by private recruitment and placement services in non-ratifying States. The Seafarer and Shipowner Vice-Chairpersons also supported the amendment proposed by the representative of the Government of Greece. The text proposed by the Technical Drafting Committee was adopted without further discussion.

Paragraph 95

- 170.** The text proposed by the Technical Drafting Committee was adopted without further discussion.

Paragraph 96

- 171.** The Seafarer Vice-Chairperson understood this paragraph as permitting a ship to sail even with serious or hazardous deficiencies as long as a rectification plan existed. While the decision should clearly be left to the professional judgement of the PSCO, he suggested changing the wording to clarify that for serious cases, the permission to sail shall not be granted even if a rectification plan was agreed. He proposed adding a new sentence reading, “It is clear that some non-conformities are so serious or hazardous that they will require immediate corrective action and the PSCO should exercise professional judgement in determining whether a ship should be permitted to sail until the non-conformities have been corrected, regardless of whether there is a proposal or plan to rectify them”.
- 172.** The Shipowner Vice-Chairperson understood paragraph 96 in such way as that the authority remained fully with the PSCO, so that a ship was only allowed to sail once its plan for rectification had been accepted by the PSCO. While he agreed in principle with the proposal made by the Seafarer Vice-Chairperson, he outlined that in case of detection of a non-conformity, all parties involved had to get together and find a solution. The final decision rested with the PSCO. He suggested that perhaps the paragraph required redrafting.
- 173.** The representative of the Government of the Bahamas recalled that the aim of the guidelines was the provision of greater clarity to the PSCO. While he did not disagree with the proposal of the Seafarer Vice-Chairperson, he found that it made decision-making more complicated for the PSCO. The original wording of paragraph 96 should be given preference, as it was clear and simple. The representative of the Government of the Marshall Islands noted that it must be borne in mind that paragraph 96 should be read in conjunction with paragraph 95. The amendment proposed by the Seafarer experts was not accepted.
- 174.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, suggested that the words “proposal or plan of action to rectify” should be replaced with “proposal for a plan of action to rectify” throughout the guidelines, in the name of consistency. The Meeting agreed. The relevant insertions proposed by the

Technical Drafting Committee, which were only made where considered appropriate (e.g. in paragraph 102), were adopted.

Paragraph 98

175. The representative of the Government of the Netherlands suggested that, in the second sentence, the words “proposal to rectify” should be changed to “plan of action”, to make them consistent with the wording in Standard A5.2.1(6) and not unduly confuse PSCOs. After further discussion, the Seafarer Vice-Chairperson suggested using the wording along the lines of “proposal for a plan of action to rectify”. It was agreed that the words “proposal or plan of action to rectify” should be replaced with “proposal for a plan of action to rectify” where appropriate.

Third indent

176. The Shipowner Vice-Chairperson, supported by the representative of the Government of Cyprus, suggested changing the third indent (which read “insufficient manning (Regulation 2.7), including that caused by the removal from the SMD of under-age seafarers;” by adding the words “bearing in mind any flag State dispensations”. The Seafarer Vice-Chairperson understood the thinking behind the proposal, but also expressed concern that, with a dispensation, the ship could sail while being sufficiently manned.

177. The representative of the Government of the Bahamas, speaking on behalf of the Government group, said that there were diverging views within his group with regard to this third indented text. Some had preferred changing the words “insufficient manning” to read “manning not in accordance with the safe manning document”, while others preferred the existing text. The representative of the Government of Greece, as one of those wishing to change the text, referred to Standard A2.7, paragraph 1. He also supported the suggestion by the Shipowners.

178. The Seafarer Vice-Chairperson, also referring to Standard A2.7, paragraph 1, noted that it called for compliance with the standards of the Convention and not only with the safe manning document. He asked the Office if this text should be read to mean that safe manning might include requirements that were higher than those reflected in the safe manning document. If so, he preferred the existing Office text.

179. The Deputy Secretary-General referred to Regulation 2.7 and Standards A2.7 and confirmed that the words “, and to comply with the standards of this Convention” indicated a requirement broader than simply compliance with the safe manning document. The existing text (“insufficient manning”) of the third indent of paragraph 98 reflected this.

180. The representative of the Government of Sweden suggested keeping “insufficient manning” and adding “non-conformities with the safe manning document”, while the representative of the Government of the Marshall Islands further noted that the two main elements – sufficiency of seafarers on board and compliance with the safe manning document – were addressed in Regulation 2.7. Both elements had been covered in the basic requirements for Regulation 2.7 as set out in the flag State guidelines as adopted (MEFS/2008/8) and were mirrored in the new proposed text for Chapter 4 of the present guidelines. The representative of the Government of the United States cautioned that care must be taken not to conflict with the requirements of the SOLAS Convention.

181. Bearing the above discussion in mind, the Seafarer Vice-Chairperson and Shipowner Vice-Chairperson agreed that the existing text was sufficient. The representative of the Government of Norway, supported by the representative of the Government of Greece, said that in future safe manning documents would also reflect the requirements of the MLC, 2006. The representative of the Government of the Netherlands suggested that the

reference in the indented text to “(Regulation 2.7)” should be expanded to read “Regulation 2.7 and Standard A2.7”. The Meeting agreed that the text would be amended only to include this expanded reference.

Fourth indent

- 182.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, indicated that several Government participants supported the Paris MOU proposal of removing indents 4 and 5 from the list, and placing them in a separate explanatory section of the guidelines. The indents in paragraph 98 should then be divided into two categories: serious deficiencies that warranted immediate detention; and deficiencies that warranted detention in the event of repetition.
- 183.** The Shipowner Vice-Chairperson did not support the removal of the two indents from the list of detainable items, since the operating parameters of the Paris MOU should not determine the position of the two indents in the text. The Seafarer Vice-Chairperson expressed his extreme disappointment that the issue of seafarers’ rights that had been debated during the discussions on the MLC, 2006, was being reopened by the Paris MOU. Indents 4 and 5 had been placed in the section titled “Examples of circumstances that may require detention of the ship” because they clearly constituted detainable items in accordance with Articles III and IV of the MLC, 2006. The Seafarers could not agree to remove those indents from the list and he doubted that consensus would be possible for that removal.
- 184.** The representative of the Paris MOU explained that the proposed amendment did not seek to ignore the rights mentioned in Articles III and IV of the MLC, 2006. However, all other indents listed in paragraph 98 were the subject of detailed guidance contained in Chapter 4. While the fourth and fifth indents could remain in the list, additional guidance would be necessary to assist the PSCOs in carrying out their function. Considering also Standard A5.2.1(8), this position was shared by the representatives of the Governments of Bahamas, Denmark, Finland, Greece, Malaysia, Russian Federation, Sweden and the Philippines, and the expert from the Government of Canada, who felt that the concerns of all parties could be met by inserting cross-references to Chapter 4 in the two indents and expanding Chapter 4 to provide specific guidance on indents 4 and 5, in view of the need to train PSCOs on their new responsibilities.
- 185.** The Deputy Secretary-General of the Meeting referred to the wording of Regulation 5.2(1) (“reviewing compliance with the requirements of this Convention (including seafarers’ rights)”), Standard A5.2.1(1) (“grounds to believe that any deficiencies constitute a serious breach of the requirements of this Convention (including seafarers’ rights)”) and Standard A5.2.1(6) (“non-conformity constitutes a serious or repeated breach of the requirements of this Convention (including seafarers’ rights)”), of the MLC, 2006. This wording referring to seafarers’ rights formed the background to the inclusion of indents 4 and 5 into the list of detainable items. Breaches of the rights laid down in Articles III and IV of the MLC, 2006, were of a kind that should not be difficult for PSCOs to identify. Article IV constituted the umbrella provision, the content of which was elaborated upon in detail in the Titles of the Convention and in Chapter 4 of the guidelines. Article III simply enunciated the fundamental principles and rights at work, that is, freedom of association and the right to collective bargaining; elimination of forced or compulsory labour; abolition of child labour; and elimination of discrimination in respect of employment and occupation. The only subject where it would be difficult for the PSCO to identify a deficiency was freedom of association, but deficiencies in this field normally led to a complaint.
- 186.** In light of the clarifications given, the experts from the Governments of Greece, Nigeria and South Africa, and the representative of the Government of the Marshall Islands,

supported retaining the text as it stood and pointed out that governments needed to train and sensitize PSCOs to their new responsibilities with regard to seafarers' rights. Given that Chapter 1 of the guidelines already provided some information on seafarers' rights, it was not necessary to expand Chapter 4. The Seafarer Vice-Chairperson agreed the issue could be addressed in the training material being developed by the ILO, since all PSCOs would need training on the MLC, 2006.

- 187.** The Shipowner Vice-Chairperson suggested adding, at the end of the fourth indent after the phrase “deficiencies constituting a violation of fundamental rights and principles or seafarers’ employment and social rights in Articles III and IV”, the words “as implemented by the flag State”. The reason was that the PSCO had to use the flag State provisions as the measuring stick for the enforcement of seafarers’ rights. The amendment was also in line with the language of Article III (“Each Member shall satisfy itself that the provisions of its law and regulations respect, in the context of this Convention, the fundamental rights”). The Seafarer Vice-Chairperson opposed the linkage to national legislation, whereas some Government participants (Denmark and Greece) supported the amendment. In the absence of consensus, the proposal was withdrawn.
- 188.** The Meeting decided to leave indents 4 and 5 as is.

Ninth indent

- 189.** As regards the ninth indent, the Shipowner Vice-Chairperson suggested deletion of the words “or is inadequate” after “ventilation and/or air conditioning or heating that is not working”, since the PSCO would have to make a subjective evaluation and it was the right of the flag State to determine the adequacy of equipment. With reference to Guideline B3.1.2(2)(a), the Seafarer Vice-Chairperson objected, recalling that the term “inadequate” had to be considered in the light of the areas the ship was trading in (Arctic region or the tropics). In the spirit of compromise, the Shipowner Vice-Chairperson proposed to replace “or is inadequate” with the words “or is not working adequately”. The Meeting agreed.
- 190.** The text proposed by the Technical Drafting Committee on the whole of paragraph 98 was adopted. The insertion after paragraph 98 of two new paragraphs based on wording from Guideline B5.2.1(1) and (2) was also accepted. In addition, the representative of the Government of the Bahamas, speaking on behalf of the Government group, expressed his support for the proposal made by the representative of the International Maritime Organization to also introduce wording from Guideline B5.2.1(3), which referred to cooperation among Members. The representative of the International Maritime Organization, supported by several Government participants (France, Malaysia and the United States), explained that the proposal sought to highlight the importance of global harmonization of policies, especially as regards the detention of ships. A representative of the Office recalled that paragraph 3 of Guideline B5.2.1 was being implemented through the adoption of port State guidelines. Considering that the guidelines were just one element of cooperation on the MLC, 2006, and that internationally harmonized policies were essential for the future, it was decided to make reference to Guideline B5.2.1(3) of the MLC, 2006, in the introduction to the present guidelines.

5.3. Factors to be considered by a port State control officer in deciding whether to accept a rectification proposal

Paragraph 99

- 191.** The representative of the Government of the Bahamas, on behalf of the Government group, stated that the text should remain as drafted. However, a footnote should be added after the end of the first phrase which would refer to the following text: “All regional PSC agreements are using a PSC inspection report to inform the master of the ship on the results of an inspection in accordance with ILO resolution No. 787. In case of a detention, other relevant parties are also informed. The PSC inspection report should be considered equivalent to the proposal for rectification.”
- 192.** The Shipowner Vice-Chairperson did not support the addition of this footnote. He said that making a proposal for rectification was the responsibility of shipowners and not of PSCOs. The proposal would allow the PSCO to impose the plan. The Seafarer Vice-Chairperson did not support the proposal as it may compromise the possibilities for the Seafarer representatives to be involved in the elaboration of a proposal for rectification. He further pointed out that, rather than adapting the MLC, 2006, to current PSCO practice, it was PSCO practice that must change as the result of the adoption of the MLC, 2006.
- 193.** The representative of the Government of the Bahamas, speaking on behalf of the Government group stated that the intention of the proposal had been to promote consistency between existing port State control arrangements and the one under the MLC, 2006. The representative of the Government of France added that the proposal also aimed at avoiding different inspection reports under different Conventions, and he suggested that the Seafarers’ concerns could be addressed by adding in the last phrase of the proposed text the word “accepted” before “proposal for rectification”.
- 194.** The representative of the Government of Brazil stated that the ILO always sought to take into account the differences between laws and practices in different countries, including Brazil and those in the Vina del Mar MOU. The proposal under discussion would not be appropriate as inspection reports were not equivalent to proposals for rectification in many countries.
- 195.** As the Shipowners’ and Seafarers’ groups and some Government representatives opposed the proposal, it was not adopted.

Paragraph 100

- 196.** Considering that a flag State could choose between two regimes, the representative of the Government of the Bahamas, speaking on behalf of the Government group, suggested aligning the seventh indent with a similar provision in the flag State guidelines (MEFS/2008/8) to read: “whether or not the appropriate work or rest periods for seafarers are being observed”. The Meeting accepted the proposal.

5.4. Consultation prior to a decision concerning a rectification proposal

Paragraph 101

- 197.** In order to strengthen the relationship of the PSCO with interested parties, the Shipowner Vice-Chairperson proposed to change the wording of the second sentence to read: “It will be important for the PSCO to work with other interested parties”, thus using the word

“will” instead of “may”. In sentence four, the phrase “the PSCO may also consider cooperating” should be replaced with “the PSCO should cooperate”. The Meeting agreed to both proposals.

- 198.** With reference to the discussions on indents four and five in paragraph 98 concerning seafarers’ rights, where Governments had felt the need to provide more guidance and assistance to the PSCO, the Seafarer Vice-Chairperson suggested infusing in the present paragraph wording from Part B of the Code, namely Guideline B5.2.1(1) and (2), which would cater for the Governments’ concerns. The Shipowner Vice-Chairperson concurred noting that the relevant guideline contained information that might be beneficial to the PSCO. Commenting in general on incorporating wording from Part B of the Code in the port State guidelines, the representative of the Government of the Bahamas, speaking on behalf of the Government group, explained that, to avoid creating uncertainty on the legal status of the guidelines, the Government group preferred to include into the port State guidelines only text from the Articles, Regulations and Standards. The representative of the Government of Greece was concerned that the Meeting could go beyond its mandate, since resolution IV talked about “guidance for port State control officers”, while Guideline B5.2.1 referred to the competent authority. Other Government participants, however, supported the proposal made by the Seafarer experts, as PSCOs would have new and increased responsibilities under the MLC, 2006, regime of port State control. The proposal of the Seafarer Vice-Chairperson was accepted.
- 199.** The Meeting decided to replace the words “issuing the relevant certificate” in the last sentence with the more precise wording “issuing the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance”.
- 200.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, suggested to delete the third sentence (“For example, the PSCO may request the shipowner’s representative or the seafarers’ representatives to propose a plan of action for correcting the situation.”) and to add at the end of the second sentence “for example seafarer and shipowner organizations”. The Shipowner and Seafarer Vice-Chairpersons opposed the Government group’s proposal, since seafarers’ and shipowners’ organizations might be too distant from the actual events on board, and representatives of the seafarers and the shipowner were more likely to be the PSCO’s first and appropriate addressees, because the plan of action would normally relate to the rights of seafarers on board. The Chairperson concluded that the amendment proposed by the Government participants had not been accepted by the social partners, and that the second and third sentences would thus be retained as they were.
- 201.** The Technical Drafting Committee decided that the appropriate place to introduce wording from Guideline B5.2.1(1) and (2) would be after paragraph 98. The text proposed by the Technical Drafting Committee on paragraph 101 was adopted without further discussion.

5.5. Form and content of a proposal for rectification

Paragraph 102

- 202.** The representative of the Government of the Bahamas, speaking on behalf of the Government group, said that the phrase “an undertaking by the shipowner to allow the ship to be inspected by PSCOs in other ports” should be modified. The term “allow” was considered inappropriate as port States did not need the shipowner’s permission to carry out inspections. The Shipowner Vice-Chairperson, while believing that the paragraph simply dealt with the steps to be taken by shipowners to rectify situations and did not detract from the PSCO’s authority to conduct inspections, accepted its review. The text proposed by the Technical Drafting Committee was adopted without further discussion.

5.7. Action to be taken if the ship is not allowed to sail

Paragraph 105

- 203.** The Meeting questioned the coherence of the wording “through the fastest means of communication in writing”. It was suggested to either delete “in writing” and insert a reference to email and fax or to delete “through the fastest means of communication”. The Meeting decided that PSCOs had to communicate in writing by the fastest means available (mail, fax or email). The text proposed by the Technical Drafting Committee was adopted without further discussion.
- 204.** Furthermore, the Shipowner Vice-Chairperson, with reference to Standard A5.2.1(8), requested that an additional paragraph be added to address undue detention or delay of ships. He suggested the following wording: “Where a ship has been unduly detained or delayed, compensation should be paid for any loss or damage suffered.” The Seafarer Vice-Chairperson agreed as long as the last sentence of Standard A5.2.1(8) concerning the burden of proof was not omitted. Some Government participants opposed the proposal stating that the relevant MLC, 2006, requirement, including the obligation to pay compensation, was addressed at the Member and not at the inspector. Recognizing that Standard A5.2.1(8) was directed to port State authorities, whereas the guidelines were made for port State inspectors, it was agreed to adjust the wording, e.g. to “... bearing in mind that if a ship is found to be unduly detained or delayed, compensation should be paid”. The Meeting also decided to take into consideration the wording of paragraph 95, so as to comprehensively deal with the issue and for clarity. The new paragraph proposed by the Technical Drafting Committee was adopted without further discussion.

Chapter 6. Onshore complaints by seafarers

Paragraph 107

- 205.** The text proposed by the Technical Drafting Committee, which deleted wording due to the removal of the flowcharts, was adopted without further discussion.

Step 1: Determining whether the complaint should be handled under the port State control inspection procedures (paragraphs 108 and 109)

Paragraph 108

- 206.** The Seafarer Vice-Chairperson proposed inserting, at the beginning of paragraph 108, the words “The PSCO must undertake an initial investigation to determine ...”. The words “is of a general nature, concerning all seafarers on the ship or a category of them, the PSCO should consider” should be deleted. At the end of the paragraph, after “(including seafarers’ rights)”, the words “even if they relate to a single seafarer” should be inserted. The MLC, 2006, did differentiate between complaints concerning an individual seafarer and complaints concerning a category of seafarers (Guideline B5.2.2(1)–(3)). It should not, therefore, be suggested that the former was less important than the latter. The Shipowner Vice-Chairperson and several Government participants supported the proposed text because it shifted the focus of the paragraph from the number of seafarers concerned by a complaint to the severity of the situation, which seemed more appropriate. Considering also that an initial investigation was mandatory according to Standard A5.2.2(1), the Meeting endorsed the proposal. The text proposed by the Technical Drafting Committee was adopted without further discussion.

Step 2: Ascertaining whether on-board complaint procedures have been explored

Paragraphs 110 and 111

207. The Seafarer Vice-Chairperson drew the Meeting's attention to the possible need for a consequential amendment to paragraphs 110 and 111 in the light of the changes made to paragraph 108. This was accepted. The text proposed by the Technical Drafting Committee on paragraphs 110 and 111, as a consequential amendment due to the changes to paragraph 108, was adopted without further discussion.

Adoption of the guidelines

208. The guidelines were adopted by consensus.

Report

209. 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.

World Maritime Day, 25 September 2008

210. On 25 September 2008, the Chairperson invited the representative of the International Maritime Organization to speak on the occasion of the World Maritime Day. The representative of the International Maritime Organization outlined that, in his message, the Secretary-General of the International Maritime Organization, Mr Efthimios E. Mitropoulos, had emphasized again the need to further the cooperation within the system of the United Nations and made explicit reference to the common projects with the ILO. The representative of the International Maritime Organization found that the Meeting's contribution to improving the working and living conditions of seafarers and its coinciding with the World Maritime Day was a fitting way to celebrate this day.

Closing

211. The Shipowner Vice-Chairperson said that the guidelines for PSCOs would be useful to existing PSC regimes, and those in development.

212. The Seafarer Vice-Chairperson said that the guidelines would provide the necessary security for workers that had thus far never existed in the maritime industry. The document constituted a major breakthrough for seafarers all over the world.

213. Both Chairpersons highlighted the cooperation between their groups.

214. The representative of the Government of the Bahamas, speaking on behalf of the Government group, said that, although the adoption of the MLC in 2006 had constituted a major milestone in the maritime industry, the Convention could only be effective if it was implemented properly. Both the guidelines for flag State inspection and those for PSCOs would ensure that seafarers were properly treated in their occupations.

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- 215.** The Deputy Secretary-General of the Meeting said that the efforts of all those who had participated in the Meeting had been rewarded. The next stage for all concerned was to ensure the effective implementation of the guidelines. For its part, the Office would work to develop training materials based on both sets of guidelines.
- 216.** The Chairperson said that the guidelines that had been developed and adopted for PSCOs carrying out inspections under the MLC, 2006, would ensure that PSC regimes adjusted their focus to issues pertaining to the MLC, 2006.
- 217.** Thanks were expressed to the Officers of the Meeting; for the work of the Technical Drafting Committee and its Chairperson, Ms Mayte Medina; for the assistance of the experts to the Meeting, Ms Moira McConnel and Mr Dominick Devlin; to the members of the secretariat and, in particular, to the interpreters.

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Non arrivé le 25.09.2008
Sin llegar el 25.09.2008

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